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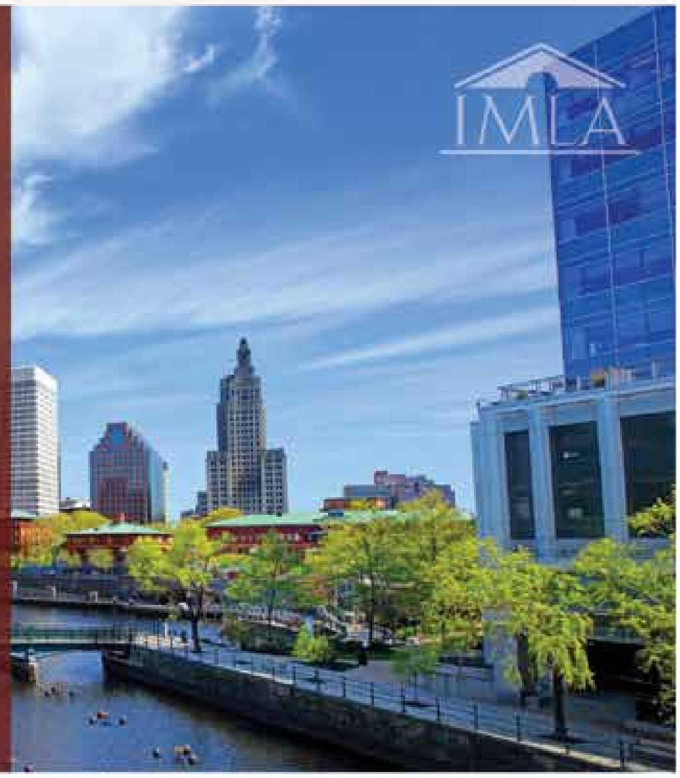

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We hope to see you in Providence!

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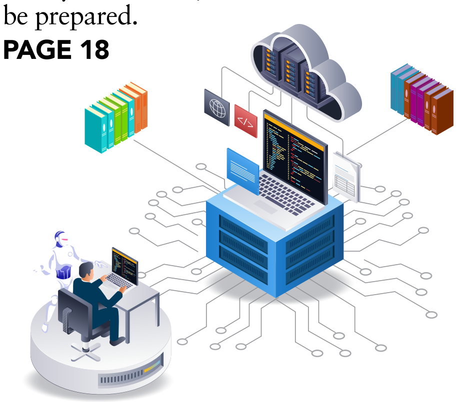

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EDITOR'S NOTE

BY: ERICH EISELT
IMLA Deputy General Counsel and Director of Legal Advocacy

Exit Stage Left, With Gratitude

As you might infer from the title above, this marks my final issue as Editor of *Municipal Lawyer*. For nearly thirteen years, 3,000 pages and 75 Editor's Letters, it has been an honor to lead the *ML*.

I think this March-April 2025 issue epitomizes much of what is great about our organization. First, the content: from pointers by Galen Gatten about better communication skills as municipal lawyers, to Debra Rosman's tutorial on the nuts and bolts of municipal bonds, to Monica Ciriello's take on current Canadian caselaw, to Amanda Karras's timely information regarding federal immigration policies, to mechanisms that local governments can use in ameliorating the housing crisis, authored by Kevin Ramakrishna and Joseph Shumow--all provide useful information passed along by our colleagues.

Absolutely valuable is our cover feature by Jeb Brown and John Peters, explaining the application of Artificial Intelligence to local government law practice. It is not only well-written and comprehensive, but aligns with an objective I've had since taking the helm at the *ML*: discussing the legal implications of leading-edge technologies as they emerge in our communities. Whether short term rentals, ride sharing, drones, dockless bikes and scooters, body cameras, and more, it has been enriching to learn about and discuss these new influences. Our AI authors make clear that this rapidly-emerging technology, which we are only beginning to incorporate into municipal law practice, could be the most transformative of all. (As an aside, the March-April *ML* cover itself is illustrative, combining a human-generated primary figure by Trujillo Design with a *ChatGPT*-provided neural network background).

Second, behind the content are the people: in *Day in the Life* authored by Avery Morris, we hear from one of our own--Sofia Hernandez--providing a history that will no doubt connect on many levels as she recounts her journey from iterations of private practice to a satisfying home in the city law department. In *Scholarships*, we congratulate our winning law student applicants, just beginning their path towards joining our ranks. And to better highlight our people going forward, we announce a new section of *ML,* to begin in earnest with our May-June issue: a segment devoted to member news, where we'll honor the accomplishments, passages, and lives of our IMLA extended family as reported by you. Those pages will document our continuum, both as an association and as individuals. (Speaking of continuity, it's worth noting that, within IMLA's staff is a valued and long-time teammate known to many of you--Trina Shropshire Paschal--who personally worked with founder Charles Rhyne during the end of his IMLA leadership, in one sense linking our organization today to its inception 90 years ago).

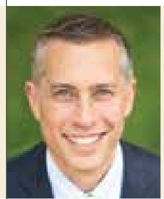
To reiterate, behind the articles and the editing, it's been about the people. Getting to know thirteen different IMLA Presidents, each with their own style but all devoted to the mission and progress of our association; interacting with dozens of authors interested in communicating the fruits of their learning and experience; and communicating with individual members willing to profile their careers and trajectories while offering a glimpse into their personal lives, has been more than rewarding.

But this transition is not a goodbye to IMLA. While placing *ML*'s future in the very capable hands of Edward Maggio, IMLA's newest lawyer, I'll devote more time to an arena where IMLA is taking a leadership role—legal advocacy. As IMLA President Jeff Dana notes in his President's Letter, our profile as local government amicus has elevated with the leadership of IMLA Executive Director and General Counsel Amanda Karras, now encompassing participation by the National League of Cities, the National Association of Counties, the Government Finance Officers' Association, and the International City/County Management Association. Evaluating requested amicus participation, defining for IMLA's Legal Advocacy Committee what we see as the local government interest in a case, and collaborating wth outstanding pro bono authors is engaging and worthwhile. I'll also remain as a co-leader of IMLA's Affirmative Litigation Group and will enthusiastically head our Scholarship Committee (see page 29 of this issue) as we review the inspiring applications and statements of future municipal lawyers. And I'll continue contributing articles to *Municipal Lawyer*.

Thanks again for the opportunity, IMLA colleagues.

Erich Eiselt

PRESIDENT'S LETTER



BY: **JEFF DANA**
City Solicitor, Providence, Rhode Island and IMLA President

IMLA's Benefits for Local Government— Many Visible, and Many Behind the Scenes

The IMLA Mid-Year Seminar is almost here, taking place again at the venerable Omni Shoreham Hotel above Rock Creek in Washington DC. As always, the IMLA team have put together a robust agenda. In addition to the specialized track of programming which focuses on representing municipalities in cases brought pursuant to 42 USC Section 1983, there will be sessions covering an array of topics that are relevant to the broader work of local government attorneys. Additionally, we will have leading edge Supreme Court practitioners providing us with our annual Supreme Court update. Of course, there will also be plenty of opportunities to reconnect with fellow IMLA colleagues, to meet new members, and enjoy springtime in the Nation's Capital. Please check out the agenda on the IMLA website and register today!

In addition to the excellent legal education and fun networking opportunities at the Seminar, we also will be honoring the numerous attorneys who have volunteered their time drafting amicus briefs to support IMLA and local governments at the US Supreme Court and in appellate cases around the country. While less obvious than IMLA's excellent conference programming and educational resources, IMLA members should take pride in how IMLA stepped into the void created by the dissolution of the State and Local Legal Center in 2022. IMLA, under the leadership of our Executive Director Amanda Karras, helped establish the Local Government Legal Center (LGLC), a partnership between the National Association of Counties, the National League of Cities, the Government Finance Officers Association, the International City/County Management Association, and IMLA. The LGLC partnership ensures that local government interests remain fully represented in prominent cases being adjudicated in courts throughout the nation.

Many of our amicus briefs are filed in cases before the United States Supreme Court which have national impact; as I write this note, the Court has just decided *Lackey v. Stinnie*, a 7-2 reversal and win for local governments, holding that plaintiffs suing governmental actors are not entitled to Section 1988 attorney's fees unless the court grants "enduring relief." While the LGLC amicus filing was not mentioned in the Court's *Lackey* opinion, our participation figured significantly in last year's major homelessness decision—*Grants Pass v. Johnson*, where Justice Gorsuch cited our LGLC amicus brief nearly 20 times in his majority opinion. And as important as our participation may be in national cases, we believe that IMLA's filings in local litigation, where we bring a nationwide perspective on behalf of 2,500 localities and more than 8,000 local government attorneys, can be just as valuable. Again, we owe sincere gratitude to our pro bono amicus authors as well as to the dedicated IMLA staff attorneys who provide amicus briefing on behalf of local government.

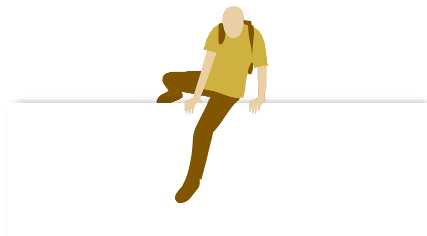
I also want to recognize IMLA's Legal Advocacy Committee which is comprised of a diverse group of dedicated and talented attorneys. Given that IMLA is now filing an amicus brief on average every two weeks, the Legal Advocacy Committee does a phenomenal job of vetting prospective amicus involvement, responding rapidly and offering insights that ensure our participation is well-reasoned. IMLA is a non-partisan organization with members from throughout North America. As such, it engages in amicus efforts where the underlying matters in a case affect local government. While so many issues seem to be polarizing at the moment, we shouldn't let that dissuade us from participating in advocacy that protects the interests of local government. As referenced above, IMLA, and our fellow local government partner organizations, are uniquely positioned to effectively engage in such advocacy.

I hope to see you in late April at the IMLA Mid-Year Seminar in Washington, DC, in my own City of Providence for our IMLA Construction Law Seminar in late June, and/or at the IMLA Annual Conference, slated for New Orleans in October of this year. More information about each of these conferences is available at IMLA.org/events.

Please allow yourself the time to be active in IMLA and to enjoy the myriad benefits of your membership!

Federal Immigration Law and Local Authority—Where is the Line?

AMANDA KARRAS,
IMLA Executive Director and General Counsel



Introduction

As fans of the hit-musical *Hamilton* will recall, Thomas Jefferson enters the stage in Act II with the song "What did I Miss?" (All of Act I and quite a lot, as it turned out). In that spirt, this article attempts to summarize the significant developments in immigration law since President Trump was sworn in for his second term. Immediately after his inauguration, he issued a blitz of Executive Orders on a wide range of topics, from the environment to diversity, equity, and inclusion to immigration. It was on this last subject that many local governments had found themselves in the federal government's crosshairs during the first Trump Administration.

While the legal ramifications of the President's current immigration Executive Orders are still coming to light, it may be helpful to review some recent history. In 2017, many cities and counties declared themselves "sanctuary jurisdictions" or enacted "welcoming ordinances" which made them targets of the federal government's immigration enforcement efforts.[1] Many other localities, however, did not consider themselves so-called sanctuary jurisdictions and that term was largely left undefined. Regardless of whether a city or county considered itself a "sanctuary" beginning in early 2017, all local governments were required to certify compliance with certain immigration-related conditions in federal grants. We are beginning to see parallels emerge between the first and second Trump presidency in this area, though there are additional wrinkles as well.

Immigration Policy 2.0: The President's newly-prioritized immigration policy began to take shape within hours after his inauguration. On January 20, 2025, he signed numerous immigration related Executive Orders, including one entitled "Protecting the American People Against Invasion."[2] This new Executive Order revoked several Biden-era immigration measures and directed new immigration enforcement priorities for the federal government. As relevant to local governments, Section 17 and Section 18 of the "Invasion" Executive Order provide:

> Sec. 17. Sanctuary Jurisdictions. The Attorney General and the Secretary of Homeland Security shall, to the maximum extent possible under law, evaluate and undertake any lawful actions to ensure that so-called "sanctuary" jurisdictions, which seek to interfere with the lawful exercise of Federal law enforcement operations, do not receive access to Federal funds. Further, the Attorney General and the Secretary of Homeland Security shall evaluate and undertake any other lawful actions, criminal or civil, that they deem warranted based on any such jurisdiction's practices that interfere with the enforcement of Federal law.
>
> Sec. 18. Information Sharing. (a) The Secretary of Homeland Security shall promptly issue guidance to ensure maximum compliance by Department of Homeland Security personnel with the provisions of 8 U.S.C. 1373 and 8 U.S.C. 1644 and ensure that State and local governments are provided with the information necessary to fulfill law enforcement, citizenship, or immigration status verification requirements authorized by law…[3]

This new Executive Order was not a carbon copy of the prior iteration from 2017 but contains some similarities. Specifically, the 2017 version, "Enhancing Public Safety in the Interior of the United States," stated that "Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States." That Executive Order announced a policy to "[e]nsure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." As with the new "Invasion" Executive Order, the 2017 precursor hinged largely on 8 U.S.C. §1373—which dictates that "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." The 2017 Executive Order mandated that States and local governments comply with 8 U.S.C. §1373 and directed the Attorney General to ensure that jurisdictions that "willfully refuse to comply with 8 U.S.C. §1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary."[4]

Both the 2025 and the 2017 Executive Orders direct the Attorney General to withhold federal funds from local governments under certain circumstances. We have already seen movement in that direction. On February 5, 2025, newly-installed Attorney General Pam Bondi issued a memorandum to all Justice Department employees entitled "Sanctuary Jurisdiction Directives" (Bondi Memo).[5] In the Bondi Memo, she mandates that "Sanctuary jurisdictions should not receive access to federal grants administered by the Department of Justice. The Department will exercise its own authority to impose any conditions of funding that do not violate applicable constitutional or statutory limitations."[6] The Bondi Memo then defines "sanctuary jurisdictions" as those that "refuse to comply with 8 U.S.C. §1373, refuse to certify compliance with§ 1373, or willfully fail to comply with other applicable federal immigration laws."[7] The Bondi Memo indicates that the federal government will require any jurisdiction that applies for grants to comply with 8 U.S.C. §1373.[8]

Immediately thereafter, on February 6, 2025, the Department of Justice (DOJ) sued the State of Illinois, Chicago, and Cook County for declaratory and injunctive relief, claiming that the state and localities' laws related to immigration violate the Supremacy Clause.[9] The next day, a coalition of local governments led by San Francsico and Santa Clara County, filed a lawsuit against the Trump Administration seeking to enjoin enforcement of the "Invasion" Executive Order and the Bondi Memo based on violations of the Tenth Amendment, Separation of Powers, Spending Clause, Due Process Clause, and the Administrative Procedure Act.[10] The lawsuit seeks to enjoin the Trump Administration from implementing any funding freeze related to their sanctuary policies. Based on both complaints as well as other actions by the President and Attorney General thus far, it is clear that state and local compliance with 8 U.S.C. §1373 and federal detainer requests (seeking to keep persons in custody for up to 48 hours for immigration removal purposes) will once again be at the forefront of conditions on grants and litigation between states / localities and the federal government. For those experiencing a sense of *deja vu,* it may be helpful to revisit some of the past litigation to better understand the legal landscape.

The 2017-2020 Litigation

In July 2017, the Department of Justice began imposing immigration-related conditions on the Edward Byrne Memorial Justice Assistance Grant ("Bryne JAG"), which is the leading source of federal justice funding to state and local jurisdictions.[11] The Byrne JAG grant "provides states and local governments with funding necessary to support a range of program areas including law enforcement, prosecution, indigent defense, courts, crime prevention and education, …crime victim and witness initiatives."[12] The formula to allocate funds under the program is based on population and reported crime. The DOJ is required to issue grants in "accordance with the [specified] formula."[13]

The DOJ imposed three primary conditions to start, generally known as the "access condition," the "notice condition," and the "compliance condition." The "access condition" required grant recipients to allow DHS personnel to access their detention facilities to meet with undocumented immigrants to ascertain their right to remain in United States.[14] The "notice condition" required grant recipients to "provide at least 48 hours' advance notice to DHS (Department of Homeland Security) regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act."[15] The Chief Legal Officer of the jurisdiction was also required to certify compliance with 8 U.S.C. §1373 (the "compliance" condition").[16]

The conditions imposed on the Byrne JAG grant recipients became the focus of litigation between local governments and the Trump administration over the next several years. In subsequent solicitations, the DOJ imposed an additional condition on local governments pertaining to 8 U.S.C. §1324[17], and also sought to find statutory hooks for the notice and access conditions.[18] For example, the FY19 Byrne JAG solicitation contained a requirement that localities would not "publicly disclose federal law enforcement information in an attempt to conceal, harbor, or shield certain individuals from detection, including in violation of 18 U.S.C. §§1071 or 1072, or 8 U.S.C. §1324(a)."[19]

In response to the federal government's conditions on the Byrne JAG grant, states and local governments including (but not limited to), Chicago, New York City, Philadelphia, Los

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Amanda Karras serves as IMLA's Executive Director and General Counsel and is responsible for management of all facets of the organization. Prior to joining IMLA, she worked in private practice in Boston, focusing on employment law and litigation. Amanda holds a BA in sociology from Colby College and a JD from Suffolk University Law School, where she graduated magna cum laude and served as an Articles Editor for the Suffolk Law Review. Amanda is admitted to practice in Massachusetts, the U.S. District Court for Massachusetts, and the United States Supreme Court.

Immigration *cont'd from page 7*

Angeles, San Francisco, and Providence, brought suit. The localities argued, among other things, that the Attorney General exceeded his authority and violated the Separation of Powers doctrine by imposing substantive conditions on the formula grant. The localities also argued that §1373 is unconstitutional under the Tenth Amendment and therefore the Attorney General could not require compliance with that law under *South Dakota v. Dole*.[20]

The majority of circuits agreed with the local governments that the imposition of the conditions on the formula grant was unlawful; however, the Second Circuit disagreed, creating a circuit split which remains unresolved.[21]

○ **Second Circuit Decision:** *City of New York v. U.S. Dep't of Justice,* 951 F.3d 84 (2d Cir. 2020). The Second Circuit upheld the DOJ's authority to impose the three conditions. It interpreted the Byrne JAG statute as providing broad discretion in setting grant conditions, including those at issue in the case. For example, the court held that the §1373 condition was authorized by the provision requiring grant applications to certify compliance with "all applicable Federal laws." 34 U.S.C. §10153(a)(5)(D). The Second Circuit also rejected the City's argument that §1373 is unconstitutional under the Tenth Amendment.

○ **Third Circuit Decision:** *City of Philadelphia v. Attorney General*, 916 F.3d 276 (3d Cir. 2019). The Third Circuit held that the DOJ lacked statutory authority to impose the conditions, emphasizing Byrne JAG's nature as a mandatory formula grant. Because the court found that the DOJ lacked the authority to impose the conditions, it did not reach the constitutional issues in the case.

○ **Seventh Circuit Decision:** *City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020). The Seventh Circuit ruled that the conditions exceeded the DOJ's statutory authority and violated separation of powers principles. It held not only that imposing the three original conditions exceeded DOJ's authority, but so did the imposition of the "harboring" condition set forth in 8 U.S.C §1324. The Seventh Circuit did not reach the question of the constitutionality of §1373 because it concluded that §1373 could not be considered an "applicable federal law" under §10153; however, it characterized the district court's conclusion that §1373 is unconstitutional as "compelling."

○ **Ninth Circuit Decision:** *City of Los Angeles v. Barr*, 941 F.3d 931 (9th Cir. 2019); *City & Cnty. of San Francisco v. Barr*, **965 F.3d 753 (9th Cir. 2020).** The Ninth circuit found that the DOJ lacked the statutory authority to impose the Access and Notice conditions. The court did not address the §1373 condition as it held that the cities and state laws complied with the federal law.

○ **First Circuit Decision:** *City of Providence v. Barr*, 954 F.3d 23 (1st Cir. 2020). The First Circuit concluded that the DOJ's actions exceeded its authority and rejected the Second Circuit's reasoning.

Next Steps for Local Governments and Open Questions

Local government attorneys will need to review the case law in their jurisdiction to assess risks associated with policymaker preferences in this area. As of this writing, we do not know precisely what conditions the Attorney General or Secretary of Homeland Security will focus on (though §1373 and detainers seem a good bet) nor what funding may be targeted. In addition to the uncertainty around the funding that may be targeted and what conditions may be attached to that funding, there are several areas of the law in this area that are murky at best. For example, we do not know whether an administrative warrant issued by Immigration and Customs Enforcement (ICE) provides probable cause under the Fourth Amendment for local law enforcement officers to detain an individual pursuant to an ICE detainer request. We also do not know whether 8 U.S.C. §1373 violates the Tenth Amendment. And finally, we do not know what the terms "harbor," "conceal," and "shield" mean under 8 U.S.C. §1324. Each of these areas is briefly discussed below, but local government attorneys should carefully research the case law in their jurisdiction on these open questions. And there may be state laws that implicate these questions as well.

ICE Detainer Requests and the Fourth Amendment

One of the first things we learn as lawyers is that the Fourth Amendment requires the government to establish probable cause both to arrest and detain someone.[22] But what type of probable cause satisfies this requirement? In other words, does a local government have probable cause under the Fourth Amendment to detain someone purely pursuant to an administrative warrant issued by ICE? Circuit courts are split on the question of whether a local government violates the Fourth Amendment by holding an individual pursuant to an administrative warrant (or detainer) issued by ICE. The Second Circuit recently acknowledged the split while sidestepping the issue itself.[23]

On one side, the Fifth Circuit in *City of El Cenzio v. Texas* held that ICE detainers provide sufficient probable cause under the Fourth Amendment to uphold a Texas law requiring that localities hold individuals pursuant to detainer requests under the collective-knowledge doctrine.[24] The court rejected the city's arguments that state and local officers may only arrest individuals based on criminal probable cause.[25]

In contrast, First and Third Circuit case law indicates that an administrative warrant issued by ICE does not provide a sufficient basis for a local government to hold an individual under the Fourth Amendment.[26] In *Galarza v. Szalczyk,* the Third Circuit concluded that ICE detainers are permissive and therefore do not require local governments to detain individuals subject to removal.[27] The court reasoned that because Lehigh County, Pennsylvania was free to disregard the detainer request but instead chose to honor it, the County would be liable for violating the Fourth Amendment rights of the individual who was detained (who happened to have been a U.S. citizen erroneously subjected to a detainer request).[28] Similarly, in *Morales v. Chadbourne,* a U.S. citizen was erroneously held pursuant to an ICE detainer after a state court ordered her released from criminal custody for the original offense which had resulted in her arrest.[29] She sued the ICE agents for civil damages, alleging the detainer violated her Fourth Amendment rights. The court held that because the detainer kept her in custody "for a new purpose after she was entitled to release, she was subject to a new seizure for Fourth Amendment purposes – one that must be supported by a new probable cause justification."[30]

Local government attorneys need to ensure they understand the risks associated with detainer requests based on their circuit's case law. As noted, the circuits are split, which means in some areas compliance may be permitted (or required, depending on state law), while in other jurisdictions, compliance with detainer requests may result in a finding that the locality has violated the Fourth Amendment, which could prove costly. For example, a group of individuals who were detained pursuant to ICE immigration detainer requests sued Suffolk County, New York for violating the Fourth Amendment based on the County's policy to honor all such detainer requests. The court rejected the notion that ICE detainers provided probable cause and concluded that the County had violated the Fourth Amendment.[31] The damages in the case against the County amounted to $60 million and ICE was notably dismissed from the litigation.[32] And aside from possible damage awards, local governments also face an unfunded mandate if detainer requests are deemed mandatory as housing immigrants in local jails without any federal funding will quickly sap local budgets and resources.

That said, localities that would like to comply with ICE detainer requests should review whether a "287G agreement" makes sense for their jurisdiction. 287G agreements allow local governments to assist immigration enforcement efforts under Section 287(g) of the Immigration and Nationality Act (INA). Through the agreement, ICE delegates to state or local law enforcement the authority to perform specified immigration officer functions under the agency's discretion.[33] Some case law suggests that if a locality wants to comply with ICE detainer requests, 287G agreements *may* provide some basis for probable cause to hold individuals pursuant to detainer requests.[34] However, the case law is uncertain as to whether a 287G agreement would completely insulate a locality from liability and it may vary by your jurisdiction.

8 U.S.C. §1373 – Anti-Commandeering

Central to local democracy is the idea that local governments, through their constituents, enact the policies that most comport with their citizens' interests and values within the bounds of federal and state law. Many local governments have enacted policies that either dictate that they do not collect immigration-related information during police officer interactions and/or do not share immigration related information with the federal government.

Some of these policies run headfirst into 8 U.S.C. §1373, quoted earlier in this article, which prohibits local governments from restricting their employees from sharing immigration-related information with the federal government. However, merely prohibiting the *collection* of this information would not, on its face, appear to violate the statute. Either way, it appears that §1373 will again be playing a central role in the conflict between the federal government's immigration enforcement priorities and local government policies.

That said, the statute rests on shaky constitutional ground. Several district courts concluded that §1373 was unconstitutional under the Tenth Amendment after the Supreme Court's decision in *New Jersey Thoroughbred Horsemen's Ass'n v. Nat'l Collegiate Athletic Ass'n,* 584 U.S. 453 (2018).[35] *See City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 330 (E.D. Pa. 2018), *aff'd in part, vacated in part sub nom. City of Philadelphia v. Att'y Gen. of United States*, 916 F.3d 276 (3d Cir. 2019) (concluding that "[b]ecause Section 1373 directly tells states and state actors that they must refrain from enacting certain state laws, it is unconstitutional under the Tenth Amendment."); *see also City of Chicago v. Sessions,* 321 F. Supp. 3d 855, 872 (N.D. Ill. 2018), *aff'd and remanded sub nom. City of Chicago v. Barr*, 957 F.3d 772 (7th Cir. 2020), *opinion amended and superseded,* 961 F.3d 882 (7th Cir. 2020), and *aff'd and remanded sub nom. City of Chicago v. Barr,* 961 F.3d 882 (7th Cir. 2020) (concluding "Section 1373 impermissibly directs the functioning of local government in contravention of Tenth Amendment principles, and the Attorney General's reliance on the purported information sharing carve-out—which is not confirmed in *Printz* nor in any other controlling case—cannot save it. Section 1373 is thus unconstitutional on its face."). The Third and Seventh Circuits did not reach the issue on appeal under constitutional avoidance principles as they invalidated the conditions on a narrower basis. Conversely, the Second Circuit upheld the constitutionality of the law in *City of New York v. U.S. Dep't of Justice,* 951 F.3d 84 (2d Cir. 2020).

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There is therefore reason to believe that the law may be unconstitutional, but there is not a great weight of authority on this subject and there is at least one circuit case that indicates the law is valid. Unless and until the Supreme Court weighs in on this issue, the law remains uncertain in this area.

8 U.S.C. §1324 and Criminal Prosecution of Local Officials

Finally, a word on 8 U.S.C. §1324--the criminal "harboring statute" featured prominently in the Administration's immigration efforts and referenced earlier in this article. The terms "harbors," "shields," and "conceals" are undefined in the statute, and there appear to be no prosecutions under the statute against local officials. That said, the Acting Attorney General issued a memorandum on January 21, 2025, which directs a maximalist approach to prosecutions for immigration offenses, including for violations of §1324. The memo states, "[f]ederal law prohibits state and local actors from resisting, obstructing, and otherwise failing to comply with lawful immigration-related commands and requests pursuant to, for example, the President's extensive Article II authority…"[36] The memo goes on to instruct that U.S. Attorneys "shall investigate incidents involving such misconduct for violations of 18 U.S.C. §371 [conspiracy to commit offenses to defraud the United States], and violations of other statutes, such as 8 U.S.C. §§1324, 1373."[37]

While we do not know how the terms in §1324 will be interpreted by federal prosecutors or judges in the context of local officials, it is safe to assume that the federal government will be aggressive in seeking to enforce this statute. And while there is uncertainty around these terms, we have some clues from the first Trump Administration. For example, in the FY2019 Byrne JAG solicitation, local governments were required to certify they would not "publicly disclose federal law enforcement information in an attempt to conceal, harbor, or shield certain individuals from detection" including in violation of §1324.[38] And in that same time frame, Thomas Homan, the then-US Immigration and Customs Enforcement chief, indicated that the Justice Department was reviewing whether the then-Oakland mayor had obstructed justice by warning immigrants in her community of an impending ICE raid.[39]

We can therefore assume that any efforts by local officials to warn their communities of impending ICE activities may be seen as potentially violating §1324 (whether a judge would agree is an open question). Homan, who is also the incoming "border czar," has more recently indicated he is willing to jail Denver Mayor Mike Johnston over comments the mayor made about local police stopping federal forces from coming into the city to deport undocumented immigrants.[40] (The mayor later walked those comments back.)[41]

CONCLUSION

There are a lot of unknowns in this area, but we can be certain that local governments need a steady hand from their chief legal officers. City and county attorneys are going to be called on to navigate this thorny legal morass. IMLA will continue to provide resources to members in this area. If you are interested in keeping up to date on these issues, join our immigration working group. **ML**

NOTES

1. For a review of the first Trump Administration sanctuary city immigration policies, *see Tenth Amendment-Sanctuary for Sanctuary Cities,* Municipal Lawyer. March/April 2017, vol. 58, no. 2.
2. Executive Order: Protecting the American People Against Invasion (January 20, 2025) ("Invasion EO"), available at: https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/
3. *See Invasion EO*.
4. San Francisco filed suit challenging the validity of the Executive Order 13768, which was ultimately struck down by federal courts. City & Cnty. of San Francisco v. Trump, 897 F.3d 1225, 1234–35 (9th Cir. 2018) (concluding that "[b]ecause the Executive Order directs Executive Branch administrative agencies to withhold funding that Congress has not tied to compliance with §1373, there is no reasonable argument that the President has not exceeded his authority.").
5. The Bondi Memo is available at: https://www.justice.gov/ag/media/1388531/dl?inline
6. *Id.*
7. *Id.*
8. The Bondi Memo also touches on criminal matters that may be relevant to localities, which is discussed more fully below.
9. *See* United States v. Illinois, No. 1:25-cv-1285 (N.D. Ill., Feb. 6, 2025). The federal government made similar arguments in its lawsuit against California during the First Trump administration. Those arguments – that the Supremacy Clause preempted California's law which limited cooperation between state and local governments and federal immigration authorities ran headfirst into the Tenth Amendment. United States v. California, 921 F.3d 865, 876 (9th Cir. 2019).
10. City & Cty. of San Francisco et. al v. Trump, et. al, No. 25-1350 (N.D. Cal., Feb. 7, 2025) available at: https://storage.courtlistener.com/recap/gov.uscourts.cand.444175/gov.uscourts.cand.444175.1.0_1.pdf
11. The FY2017 Byrne JAG Local Solicitation is available here: https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/BJA-2017-11301.pdf
12. *See* Edward Byrne Memorial Jus-

tice Assistance Grant (JAG) Program Overview, available at: https://bja.ojp.gov/program/jag/overview

13. 34 U.S.C. §10156.

14. *See* note *11, FY2017* Byrne JAG Local Solicitation, p. 30.

15. *Id.* The Attorney General later amended this condition to clarify that "[i]n the event that ...the scheduled release date and time for an alien are such as not to permit the advance notice [of scheduled release]...it shall not be a violation of this condition to provide only as much advance notice as practicable." *See* City of Chicago v. Sessions, 321 F. Supp. 3d 855, 862 (N.D. Ill. 2018), *aff'd and remanded sub nom.* City of Chicago v. Barr, 957 F.3d 772 (7th Cir. 2020), *opinion amended and superseded*, 961 F.3d 882 (7th Cir. 2020), and *aff'd and remanded sub nom.* City of Chicago v. Barr, 961 F.3d 882 (7th Cir. 2020).

16. *Id.*

17. 8 U.S.C. §1324 is a criminal law that provides in relevant part:

> **a) Criminal penalties** … (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; (iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; …

8. U.S.C. §1324 was challenged on a First Amendment overbreadth basis in an unrelated context. The Supreme Court in *United States v. Hansen* upheld the law, reading the terms "encourage" and "induce" more narrowly to only apply in their criminal law sense for "solicitation" and "facilitation" and thus concluded that the law did not violate the First Amendment. United States v. Hansen, 599 U.S. 762, 774 (2023). The Court also found that the terms "encourage" and "induce" implicitly contain a *mens rea* requirement of intent. *Id.* at 779.

18. For example, later solicitations included requirements that localities not impede the exercise of DHS agents authority under 8 U.S.C. §1357(a), which was associated with the Access Condition. These subsequent solicitations also required localities to agree not "impede the exercise of authority of the federal government under 8 U.S.C. §1266(a) & (c) and 8 U.S.C. §1231(a)(4), which were associated with the Notice Condition. Later solicitations also included certifying compliance with 8 U.S.C. §1644 which is substantially similar to 8 U.S.C. §1373. The FY2019 Solicitation which contains the §1324 conditions can be found here: https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/BJA-2019-15141.PDF.

19. *Id.*

20. In *South Dakota v. Dole,* the Supreme Court explained that its "earlier opinions stand[] for the unexceptionable proposition that the [Spending] power may not be used to induce the States to engage in activities that would themselves be unconstitutional." South Dakota v. Dole, 483 U.S. 203, 210 (1987).

21. The Supreme Court was considering three petitions raising these issues, but dismissed them after President Biden came into office on joint stipulation of the parties.

22. *See* Gerstein v. Pugh, 420 U.S. 103, 111 (1975) (noting "[t]he standard for arrest is probable cause, defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense."). *Gerstein* held that the "Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Id.* at 114. The Supreme Court subsequently held that to comply with *Gerstein,* local governments must generally provide judicial determinations of probable cause within 48 hours of arrest. Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991).

23. See Jimenez v. City of Cohoes Police Dep't, No. 23-955, 2024 WL 1551149, at *2, n.2 (2d Cir. Apr. 10, 2024).

24. City of El Cenizo v. Texas, 890 F.3d 164 (5th Cir. 2018).

25. *Id.*

26. According to the Second Circuit in *Jiminez,* the Eighth Circuit, Ninth Circuit, and Fourth Circuit have also ruled on these issues:

> the Eighth Circuit has held that local officials are entitled to rely on an ICE official's probable-cause determination in a detainer and are therefore entitled to qualified immunity if the detention turns out to be erroneous. *See Mendoza v. U.S. Immigr. & Customs Enf't*, 849 F.3d 408, 419 (8th Cir. 2017). And the Ninth Circuit reversed a district court's conclusion that ICE violates the Fourth Amendment by issuing detainers to state and local law enforcement agencies in states that do not authorize civil immigration arrests; the court was presented with the question of whether probable cause may be imputed to state or local officers who act pursuant to an ICE detainer, but it ultimately remanded the case for consideration first of whether the ICE detainer database was sufficiently reliable to establish probable cause at all. *See Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 801, 818 & n.23, 819–24 (9th Cir. 2020). By contrast, the Fourth Circuit has

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Local Government's Growing Role in Housing Affordability

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INTRODUCTION

Municipalities across the nation are vigorously seeking solutions to combat housing unaffordability. Approved projects are frequently treated as political victories as opposed to manifestations of sound policy, which is no surprise. Housing solutions depend largely on budgetary support at every level of government affecting a municipality.[1] Fortunately, this effort has generally been an otherwise-rare example of bipartisanship; for example, the incoming Trump Administration rapidly issued an Executive Order titled "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis."[2]

It is challenging to reconcile all words and actions, however. The new Administration's policies related to other issues, including taxes, immigration, and tariffs will have immense impacts on the ability to fund affordable housing projects.[3] From a municipal perspective, understanding affordable housing deals is becoming essential for at least two reasons: the potential for growing financing gaps, and the struggle for developers to find adequate labor and property management. Municipalities should expect that developers will begin arguing about the financial strains and uncertainties that exist in the newly changed market, but developers make money building projects, so we should not expect the market to dry up, and perhaps use this as a chance to find opportunity.

This article is not intended to be political but instead is aimed at providing information that municipalities can use to help in their negotiations with developers and to create affordable housing policies. To foresee and understand developers' arguments, we will discuss the potential impacts of the Trump Administration's policies on housing. In particular, the article will discuss the federal tax code's Low Income Housing Tax Credits (LIHTC) Program and the Pathways to Removing Obstacles (PRO) Housing Program offered through the United States Department of Housing and Urban Development (HUD).

I. Federal Programs

A. LIHTC

There are effectively two categories of solutions in affordable housing: zoning changes and financial incentives. Undeniably, zoning changes can help create more housing units, which will stabilize rent. However, the vast majority of affordable housing projects are funded through federal low-income housing tax credits (LIHTC) designed to provide equity contributions into the deal in exchange for affordability.[4] Given that LIHTC deals are controlled by the market, understanding the conditions that bolster or hinder LIHTC development can help municipalities predict issues developers will face, and give them a better negotiating position.

1. Historical Underpinnings

The LIHTC program, or "Section 42", was established as part of the 1986 Tax Reform Act.[5] The program is administered by the Internal Revenue Service (IRS) at the federal level.[6] Since its inception, the LIHTC program has been politically popular.[7] It supports the construction and development industry, which Republicans tend to like. It helps provide a social safety net to moderate income households, which Democrats tend to like. Finally, the funds that support the program are not subject to biennial Congressional appropriations. The IRS determines the aggregate amount of credits available across the country and allocates them on a pro rata basis to jurisdictions.[8] For these reasons, the program has remained politically viable and popular.

Note that although the program is entitled "Low-Income Housing Tax

Credit," it is not aimed at the most needy: the projects that are built and funded are specifically geared for persons earning at least 30% of an area's median income, and in many cases, the subsidized units can benefit people earning up to 60% of an area's median income.[9] And some developments will include market rate units, which are not directly subsidized by the LIHTC program.[10] Although there is no specific definition of what constitutes "low-income" and what constitutes "moderate-income," it's important to understand that the program does not incentive any operational costs, nor does it work well for individuals or families that make less than 30% of an area's median income.[11]

2. How LIHTC Works

Once the IRS allocates the amount of LIHTC each jurisdiction can award, the jurisdictions have wide autonomy in creating and administering the program. Each jurisdiction is required under Section 42 to create a "qualified allocation plan" or QAP.[12] The QAP for each jurisdiction indicates how competitive credits will be awarded to various projects.[13] Although it varies by jurisdiction, as a general matter, there are typically about 2x - 5x more projects that request LIHTC than can be awarded.[14]

The developer of a potential LIHTC project submits an application to the jurisdiction's LIHTC allocator. The application tends to be an expensive endeavor. For example, most applications will require, as a threshold matter, that the applicant has site control (i.e., the applicant can acquire property when it chooses to do so, without any ability for the seller to terminate the buyer's rights).[15] That site control must last long enough for the buyer to apply for and get an award of tax credits (i.e., months, if not a year or more), which tends to be much longer than the market would dictate a property be under contract. Further, the application typically requires some preliminary architectural rendering, zoning and entitlement work, site due diligence like title, survey, and environmental reviews, a market study to show viability, and a preliminary indication of the sources required to build the development.[16] None of those items are inexpensive to secure, especially if a developer only has a one-in-three chance of receiving an allocation.

3. Typical Project Structure/Gaps

Developers that secure an award can then move ahead with a financial closing. The developer must first find a tax credit investor to acquire 99.99% of the project owner's beneficial interest in exchange for 99.99% of the credit award.[17] Investors desiring to use the tax credit to offset other taxable income will offer proceeds to be paid to the developer during construction.

The amount investors are willing to pay will vary significantly based on the project's underlying financials, the project's location, whether the project helps the investor in complying with the Community Reinvestment Act,[18] the risk profile of the developer, and, perhaps most notably, macroeconomic trends. For example, in the Great Recession, where most large financial institutions had very little tax burden, the amount investors (typically, large financial institutions) were willing to pay for tax credits plummeted.[19] Meanwhile, in the lead-up to the Great Recession, the demand for tax credits in some markets (with large bank presences) was so high that investors would buy the credits for more than face value.[20] The impact of pricing is demonstrated in an example below.

In parallel track with securing an investor to purchase the developer's beneficial interest and obtain the tax credit, developers must also seek debt commitments to fund the project.[21] The amount of senior debt available to a tax credit development will necessarily be limited by the potential stream of income from the property. In a market rate deal, banks will underwrite the transaction based on market rents for the proposed development. In a LIHTC deal, banks need to underwrite based on the reduced amount of rent available due to the rent caps applicable to the project. In most cases, those rent caps are well below market rate rents. (That is, in fact, the point of the LIHTC program: to deliver below market rental units to qualifying individuals and families based on their income.) However, the rent limits typically attract senior loan amounts that do not provide enough dollars to actually build the development.

There are a variety of inputs that impact the total tax credit equity that can be raised by a project: whether a project is in a qualified census tract; the number of affordable units compared to the total units or the amount of square footage as compared to the total square footage of the building (the "Applicable Percentage"); and the "eligible" project costs. For the purpose of the example in this article, the assumption is that all of the

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units (100%) in the development are below-market affordable units, which creates an Applicable Percentage of 100%, and the project is not in a qualified census tract. For simplicity, "Qualified Basis" includes most construction costs except the cost of land and permanent financing.[22]

By way of example, if a project has a total development cost of $12,000,000 with $2,000,000 applied to cost of land and permanent financing, it has an eligible basis of $10,000,000. If the Applicable Percentage is 100% (all units are affordable), then the Qualified Basis is $10,000,000. The next step is dependent on whether the project is using 9% (competitive) tax credits, or 4% (noncompetitive) tax credits. Put simply, the Qualified Basis is multiplied by either 9% or 4% to determine the annual credit, which is multiplied by ten to determine the total credit. Note that the compliance period for LIHTC is fifteen years, though the credit only last for ten years. In our example, a 9% credit would provide a $9,000,000 total tax credit, and a 4% credit would provide a $4,000,000 total tax credit. The total credit in either case is then multiplied by the percentage ownership interest acquired by the investor entity (usually 99.99%). So for our example, the 9% credit would yield an $8,999,100 tax credit for this project, while the 4% deal would yield a $3,999,600. This is the "Tax Credit" that now has to be sold at a market price.

Currently tax credits are being sold for about $.84 on the dollar, which is, effectively, 84% of the Tax Credit. In our example, that means the total equity that can be raised is $7,559,224 in our 9% deal, and $3,359,664 for the 4% deal. In each case, the Tax Credit will not yield enough to cover the $10,000,000 Qualified Basis. Gaps are therefore a very real--and in recent years growing--part of a LIHTC transaction. Construction pricing increases (be it from supply shortages in the aftermath of COVID, or labor shortages in recent years, or potential disruptions in supply chains due to tariffs) create larger gaps for projects. Increases in utility costs and insurance premiums are causing permanent loan amounts to be scaled back, which creates a larger gap in LIHTC transactions. Each of these macroeconomic ripples sends shockwaves through individual LIHTC developments and jeopardizes their ability to get closed. For those reasons, gap financing on LIHTC transactions has become more critical than ever in helping to deliver affordable units to communities.

PRO Housing

In recognition, in part, of the gaps noted above, on January 14, 2025, HUD awarded just over $100 million in grants to municipalities across 15 states in an effort to "address[] local housing barriers such as outdated local regulations and land use policies, inadequate infrastructure, lack of available financing for development, and risks associated with extreme weather and an aging housing stock."[24] Just last year, HUD awarded $85 million for housing projects spanning 19 states and the District of Columbia.[25] Both grants are part of HUD's Pathways to Removing Obstacles to Housing (PRO Housing) program, which aims to remove barriers to affordable housing in urban and rural areas alike, such as those caused by outdated zoning and land use policy, lack of resources, or threats posed by natural hazards, to name a few.[26]

In its two short years of existence, HUD's PRO Housing program has created tangible impact for dozens of cities across the U.S. By way of example, the City of Milwaukee has used its Round 1 PRO Housing grant of $2.1 million to provide subsidies to developers of vacant lots and abandoned homes.[27] The PRO Housing program was oversubscribed for each of its funding rounds: in fiscal year 2023, $13 in funding was requested for every $1 available, and in 2024, $10 in funding was requested for every available $1.[28] Awards granted to communities ranged from $1,000,000 to $7,000,000.[29] Given the level of demand for grants, HUD intends to continue its PRO Housing program.[30]

In this very fast changing political world, PRO Housing funds could be eliminated as part of Federal budget cuts, but so far, these funds have not been stopped. Local governments, metropolitan planning organizations, and multijurisdictional entities who have affordable housing needs should stay informed on the program ahead of the next application cycle.

1. Background on HUD PRO Housing

HUD has received funding for the PRO Housing program through the Consolidated Appropriation Acts of 2023 and 2024 (Appropriation Act(s)), each of which awarded HUD with funds to carry out the competitive grant under the umbrella of its pre-existing Community Development Block Grant (CDBG) statutory framework.[31] The CDBG was formed under title I of the Housing and Community Development Act of 1974.[32] Under this Act, the objective of the CDBG program is to bolster urban communities by providing those with low to moderate income with "decent housing, a suitable living environment, and expanding economic opportunities."[33] Likewise, under the CDBG and as directed by Congress under the Appropriation Acts, the PRO Housing program prioritized applicants who have demonstrated a commitment to implementing affordable housing initiatives, have an acute need for affordable housing for populations with incomes below the area median income, and have identified a barrier to integrating affordable housing across communities that they intend to tackle with PRO Housing funding.[34]

2. Impact of the Program to Date

Milwaukee was one of the 21 communities awarded PRO Housing funding in fiscal year 2023. Though the funding is being used to support a variety of initiatives (such as, *inter alia*, building the capacity of local developers, enabling the City to provide development subsidies, and utilizing city-owned public lots),[35] the money is mainly being used by Milwaukee to expand "Growing MKE," its citywide planning effort to increase housing supply.[36] Specific goals of Growing MKE include "supporting new housing that creates walkable urban neighborhoods, increasing transit options and access to jobs, and providing more quality, affordable housing choices."[37]

Currently, Growing MKE is taking aim at Milwaukee's zoning code. As drafted, detached accessory dwelling units are prohibited in single-family districts, mid-sized housing options (such as townhomes, triplexes, and fourplexes) are restricted in many of Milwaukee's residentially zoned districts, and 40% of residential parcels only allow for one housing unit.[38] Growing MKE plans to update the zoning code to address these barriers to developing affordable housing. Specific recommendations for the zoning code include: (i) expanding the types of housing allowed in residential neighborhoods; (ii) allowing housing on business corridors and multi-family zoning district; (iii) conforming building design standards to support walkable urban neighborhoods; and (iv) reducing or eliminating required parking minimums for new housing developments.[39] The City Plan Commission vote, originally set for July 2024, has been postponed as Growing MKE continues to solicit public feedback regarding its proposed set of zoning changes.[40]

Also among HUD's first round PRO Housing grant awardees was the city and county of Denver, which received just over $4,500,000 in funding.[41] Denver identified a variety of existing barriers to affordable housing in its application to HUD, such as "high cost of land and development, aging housing stock, inadequate infrastructure, displacement pressures, environmental hazards, and outdated policies when it came to land use and permitting."[42] Like Milwaukee, Denver intends to improve its zoning code with its PRO Housing award. Denver's three primary uses for the funding will be (i) reviewing development regulations and processes to identify opportunities to increase affordable housing supply; (ii) expanding city staffing to fast-track the review of affordable housing projects; and (iii) implementing a loan fund to finance infrastructure and utility projects.[43] In mid-2024, Denver Mayor Mike Johnston spoke of Denver's progress in expanding its affordable housing initiatives. Specifically, Johnston noted that that the city identified, built, and opened 1,200 units of transitional housing, which resulted in moving more than 1,600 people experiencing homelessness into transitional housing.[44]

A number of other communities across the country also intend to use their PRO Housing awards to modernize land use policies and zoning codes, incentivize new housing development and refresh existing housing stock and infrastructure. Oakland, California, whose has the largest per capita rate of homelessness among the 50 largest cities in the U.S., will use its $7,000,000 grant to create a rapid response homelessness housing program.[45] The Louisville-Jefferson County Metropolitan Area intends to use part of its $7,000,000 grant to expand factory-built housing.[46] And the City of Evanston, Indiana will bolster the development of affordable housing units on city-owned land with a portion of its $7,000,000 grant.[47] PRO Housing has a six-year performance period, meaning that projects awarded funding in fiscal year 2023 are anticipated to be completed by September 30, 2029, and projects awarded funding in fiscal year 2024 are anticipated to be completed by September 30, 2030.[48]

III. Muddled Message

Despite the Administration's support for reducing the cost of living in the Executive Order, "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis,"[49] other policies challenge that objective. The Executive Order requires:

> the heads of all executive departments and agencies to deliver emergency price relief, consistent with applicable law, to the American people and increase the prosperity of the American worker. This shall include pursuing appropriate actions to: lower the cost of housing and expand housing supply; eliminate unnecessary administrative expenses and rent-seeking practices that increase healthcare costs; eliminate counterproductive requirements that raise the costs of home appliances; create employment opportunities for American workers, including drawing discouraged workers into the labor force; and eliminate harmful, coercive 'climate' policies that increase the costs of food and fuel."[50]

However, the major policy goals of the Administration are focused on immigration, tax cuts, and tariffs. So far, we have seen the beginnings of the effects of immigration and tariffs, but we can also gauge the potential impact of corporate tax cuts on the LIHTC program based on prior Trump Administration actions.

Immigration

Immediately following President Trump's inauguration, he issued multiple Executive Orders[51] relating to immigration including "Protecting the Meaning and Value of American Citizenship,"[52] and "Protecting the American People Against Invasion."[53] The ultimate outcome of these orders on the construction industry (including disaster recovery work) has yet to

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Housing *cont'd from page 15*

be seen, but they seem likely to result in labor shortages, which will make affordable housing development more challenging and costly.[54]

Tariffs

The Trump Administration rapidly enacted tariffs on goods from Canada, Mexico, and China.[55] According to the Tax Foundation, "The tariffs on Canada and Mexico alone would increase taxes by $958 billion between 2025 and 2034 on a conventional basis, amounting to an average tax increase of more than $670 per US household in 2025."[56] The National Association of Homebuilders promptly issued a letter to the Trump Administration noting the negative effect tariffs have on housing costs:

> Since January 2021, inputs to residential construction saw price increases of just over 30%. Our sector relies heavily on a diverse and cost-efficient supply chain for building materials such as lumber, steel, gypsum and aluminum. While home building is inherently domestic, builders rely on components produced abroad, with Canada and Mexico representing nearly 25% of building materials imports. Imposing additional tariffs on these imports will lead to higher material costs, which will ultimately be passed on to home buyers in the form of increased housing prices. Further supply chain disruptions from increased tariffs coupled with increased demand for materials could also hinder rebuilding efforts in areas affected by natural disasters, which you have pledged to help rebuild as quickly as possible.[57]

Tax Policy

The value of tax credits depends on the level of taxation; when tax liabilities are lowered, the need to seek tax shelters is also lowered. Following the 2016 election, LIHTC value plummeted on speculation of substantial corporate tax cuts. The Tax Cuts and Jobs Act ultimately slashed the corporate income tax rate from 35% to 21%.[58] Pricing for tax credits dropped from $1.05 per dollar in December 2015 to $.91 by May of 2017.[59] Revisiting the example of tax credit financing above, a value of $1.05 would have created about $500,000 more of equity in the project and reduced the financing gap by the same amount. The value of a one dollar tax credit is currently in the mid-80 cent range. Similarly, the Administration's most recent tax reform proposal includes an additional drop in the corporate tax rate to 15%.[60] Just as in 2017, if another tax break becomes law, we should expect gaps in affordable housing tax credit financing to grow.

III. MUNICIPALITIES' ROLE WILL GROW

In the immediate future, we see policies that will greatly impact the cost of housing construction and financing. Local government will be increasingly pressured to make accommodation to developers in order to make projects work. What municipalities need to know is that greater financial investment in affordable housing is a good choice. They need to consider that tax credit deals work because there are low debt payments, and if developers are forced to add more debt, the deal will only become more challenging.

Developers make money on building projects through developer fees and rental revenues, so we should expect development to continue, even if it becomes more challenging. As the call for local investment increases, there will be opportunities for local government to get greater security in the deal to protect against potential community harm if a deal fails. Municipalities need to be ready to take advantage of those opportunities. **ML**

NOTES

1. See Drew Desilver, *A Look at the State of Affordable Housing in the U.S.*, Pew Rsch. Ctr. (Oct. 25, 2024), https://www.pewresearch.org/short-reads/2024/10/25/a-look-at-the-state-of-affordable-housing-in-the-us/ for a discussion of the various factors that contribute to housing unaffordability.
2. Executive Order, *Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis*, White House (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/delivering-emergency-price-relief-for-american-families-and-defeating-the-cost-of-living-crisis/.
3. *See, e.g.*, Andrew Dehan & Michele Petry, *How the Trump Administration's Tariffs and Deportations Could Affect the Housing Market*, Bankrate (Feb. 11, 2025), https://www.bankrate.com/real-estate/trump-policies-housing-market/.
4. *See* Ted M. Handel & David C. Nahas, *Leveraging the Low-Income Housing Tax Credits Program*, 26 L.A. Law. 23, 23 (2004).
5. Lance Bocarsly & Rachel Rosner, *The Low Income Housing Tax Credit: A Valuable Tool for Financing the Development of Affordable Housing*, 33 Practical Real Est. Law. 29, 30 (Jan. 2017).
6. *Id.*
7. *Id.* at 39.
8. *See 2024 Federal LIHTC by State*, Novogradac (last visited Feb. 12, 2025), https://www.novoco.com/resource-centers/affordable-housing-tax-credits/2024-federal-lihtc-information-by-state?gad_source=1&gclid=CjwKCAiA2JG9BhAuEiwAH_zf3tCWA05a-H50qWAEJf-3yxA1kEgd7Ow1pOJXbNn_E1G0oeMQ1HuDNRoC1JEQAvD_BwE. It is pro rata by population across each of the 50 states, Washington, D.C., and Puerto Rico. *Id.*
9. *See* Bocarsly & Rosner, *supra* note 5, at 32 (noting that the LITHC program

caps rent at 30% of the median area income). The "qualified low income housing" standard only requires that the residential housing either (a) have at least 20% of its units occupied by families with incomes of 50% or less of the median area income or (b) have at least 40% of its units occupied by families with incomes of 60% or less. *Id.* at 33.

10. *Id.* at 34.

11. *See supra* notes 9-10 and accompanying footnotes.

12. Bocarsly & Rosner, *supra* note 5, at 33

13. *Id.*

14. *See, e.g.*, Donna Kimura, *LIHTC Demand Grows in Several States*, Affordable Hous. Fin. (Jan. 1, 2009), https://www.housingfinance.com/news/lihtc-demand-grows-in-several-states_o.

15. *See* 24 CFR § 578.25 (2025) ("Applicants … must prove to HUD's satisfaction that the applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.").

16. *E.g., Housing Tax Credits*, WHEDA (last visited Feb. 12, 2025), https://www.wheda.com/developers-and-property-managers/tax-credits/htc (discussing the LIHTC application process in Wisconsin).

17. *See About the LIHTC,* Novogradac (last visited Feb. 12, 2025), https://www.novoco.com/resource-centers/affordable-housing-tax-credits/about-lihtc ("...due to limitations and the lack of enough taxable income, most developers choose to find tax credit investors, who provide cash that is channeled into the development.").

18. The Community Reinvestment Act was passed as a way to encourage financial institutions to meet the credit needs of communities that they serve, including low- and moderate-income communities. For a general overview of the Community Reinvestment Act, see Bd. Gov'rs. Fed. Rsrv. Sys., *Community Reinvestment Act* (last updated March 28, 2024), https://www.federalreserve.gov/consumerscommunities/cra_about.htm.

19. *The Tax Credit Market During the Great Recession*, Nat'l Hous. Conf. (last visited Feb. 12, 2025), https://nhc.org/policy-guide/low-income-housing-tax-credit-the-basics/the-tax-credit-market-during-the-great-recession/#:~:text=During%20the%20recession%2C%20two%20of,their%20need%20for%20tax%20credits.

20. *Id.* ("In March 2007, 9 percent tax credits were selling for 95 cents per tax credit dollar, however during the economic downturn they sold for as little as 60 to 68 cents per tax credit dollar.").

21. See generally Elizabeth Kneebone & Carolina K. Reid, *The Complexity of Financing Low-Income Housing Tax Credit Housing in the United States*, Terner Ctr. (April 2021), https://ternercenter.berkeley.edu/wp-content/uploads/2021/04/LIHTC-Complexity-Final.pdf for an overview of debt financing in LIHTC projects.

22. Bocarsly & Rosner, *supra* note 5, at 34.

23. The "automatic" 4 percent tax credit covers new construction that uses additional subsidies or the acquisition cost of existing buildings, while the "competitive" 9 percent tax credit supports new construction without any additional federal subsidies. Novogradac, *supra* note 18.

24. *FY24 Award Announcement*, U.S. Dept. Hous. & Urban Dev. (last updated Jan. 24, 2025), https://www.hud.gov/program_offices/comm_planning/pro_housing/FY24-Award-Announcement.

25. *FY23 Award Announcement*, U.S. Dept. Hous. & Urban Dev. (last updated July 1, 2024), https://www.hud.gov/program_offices/comm_planning/pro_housing/fy23awards.

26. *Pathways to Removing Obstacles to Housing (PRO Housing)*, U.S. Dept. Hous. & Urban Dev. (last updated January 14, 2024), https://www.hud.gov/program_offices/comm_planning/pro_housing.

27. Tajma Hall, *Milwaukee Receives $2 Million Federal HUD Grant to Increase Affordable Housing*, CBS58 (Jun. 26, 2024 4:15 PM), https://cbs58.com/news/milwaukee-receives-2-million-federal-hud-grant-to-increase-affordable-housing.

28. U.S. Dept. Hous. & Urban Dev., *supra* note 25; U.S. Dept. Hous. & Urban Dev., HUD Awards $85 Million in PRO Housing Funding (2024), https://www.hud.gov/sites/dfiles/CPD/documents/PRO_Housing_FY23_Awardees_Fact_Sheet.pdf.

29. U.S. Dept. Hous. & Urban Dev., HUD Awards $85 Million in PRO Housing Funding (2024), https://www.hud.gov/sites/dfiles/CPD/documents/PRO_Housing_FY23_Awardees_Fact_Sheet.pdf.

30. Brenna Donegan, *HUD Announces Second Round of PRO Housing Grant Recipients*, Am. Planning. Ass'n (Feb. 5, 2025), https://www.planning.org/blog/9305357/hud-announces-second-round-of-pro-housing-grant-recipients/.

31. U.S. Dept. Hous. & Urban Dev., FR-6700-N-98, Pathways to Removing Obstacles to Housing (PRO Housing) 4 (2024), https://www.hud.gov/sites/dfiles/CFO/documents/Foa_Content_of_FR-6700-N-98_updated.pdf.

32. *Community Development Block Grant Program*, U.S. Dept. Hous. & Urban Dev. (last updated Sept. 4, 2024), https://www.hud.gov/program_offices/comm_planning/cdbg.

33. 42 U.S.C. § 5301(c).

34. U.S. Dept. Hous. & Urban Dev., *supra* note 32, at 4.

35. U.S. Dept. Hous. & Urban Dev., PRO Housing Profile:

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Understanding and Using Artificial Intelligence for Municipal Attorneys

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INTRODUCTION:

Artificial Intelligence (AI) is not a futuristic concept. It is here. That means municipal employees, including attorneys, staff, and elected officials, among others, are often using AI daily, many without policy guidance, training, and/or other guardrails in place to maximize efficiency and minimize abuse or mistakes. AI is here to stay, and its use will grow exponentially in the future. The current uses of AI within municipalities include screening job applicants, writing job descriptions, drafting documents (including reports to City Councils), analyzing large data sets, predicting crimes or inventory levels from data, onboarding employees, implementing drones, report writing, plus many more critical and sensitive administrative and operational activities. In short, AI is the new municipal employee assistant that can help improve efficiency, performance, and become a personnel "multiplier" when used effectively with human collaboration.

AI: What is It?

The term, Artificial Intelligence, is not new and is credited to John McCarthy who coined the term at the "Dartmouth Conference" on technology held at Dartmouth College in 1956.[1] There are many definitions of AI. An often-cited definition is, "The capacity of machines to mimic human cognitive functions such as learning, problem-solving, and pattern recognition, enabling them to perform tasks that normally require human intelligence. It includes various subfields, such as machine learning and natural language processing."[2]

15 U.S. Code §9401(3) defines AI as: a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to:

(A) perceive real and virtual environments;
(B) abstract such perceptions into models through analysis in an automated manner; and
C) use model inference to formulate options for information or action.[3]

There are also definitions established by state statute,[4] municipal code or policy,[5] the National Institute of Technology Standards (NIST), [6] the National Artificial Intelligence Initiative Act of 2020,[7] advocacy groups such as the American Civil Liberty Union (ACLU), [8] federal Executive Order,[9] and similar regulatory bodies.[10] Check to see if your municipality has included an AI definition in its policy, or if one needs to be created to assist with policy, training, and general guidance.

Human Collaboration and AI

Human collaboration is both a critical and necessary component when using AI. Currently, AI does not have emotion and will perform when requested by humans. AI cannot use "past experiences" to help arrive at certain conclusions or insights. The educational level of AI is about fourth grade, and many fourth graders or younger people can outperform AI on many tasks that are relatively simple. In contrast, AI shines when used to analyze large data sets, make predictions, and as a personal assistant when summarizing legal cases, engaging in motion practice, analyzing expert or similar documents, and developing deposition questions. These topics will be discussed in more detail later in this article.

Important AI Definitions
AI requires a basic understanding of select definitions to maximize its functions and to use it effectively. Although the term AI has been previously defined, here are other important definitions for helping to understand AI and some of its unique terminology:

AI Governance: Municipal and/or agency policies, rules, regulations, and guidelines to limit discretion and guide employees on the authorized uses of AI.

AI Training Data: Documents and data used to train AI.

Algorithm: A set of instructions the user follows to achieve a task (e.g., image, develop a lesson plan) or to solve a problem.

Bias: In AI, the outcome reflects human bias because of prompting, data input, and/or data analysis of biased information.

Deepfake: An artificial image or video "generated by a special kind of machine learning called 'deep' learning . . . [and is] dangerous."[11]

Expandable AI: "The outcomes or results can be understood in proper context by humans. This differs from the 'black box' model of AI, where people cannot trace or understand how AI arrived at a particular result."[12]

Generative AI: A subset of AI that can "generate original data, like text, audio, images, or videos without relying on pre-existing information."[13]

Hallucinations: Simply, information provided by Generative AI that is incorrect or is nonexistent. In contrast when employees provide inaccurate or false information, it is called making a "mistake."

Machine Learning: "is a branch of artificial intelligence and computer science that focuses on the using [of] data and algorithm to enable AI to imitate the way that humans learn, gradually improving its accuracy."[14]

Natural Language Processing (NLP): In short, spoken, or written text that models human language when using Generative AI.

Neural Network: "A machine learning program, or model, that makes decisions in a manner similar to the human brain, by using processes that mimic the way biological neurons work together to identify phenomena, weigh options and arrive at conclusions."[15]

Prompt: Written or spoken inputs by humans to produce desired outcomes from AI.

Shadow AI: Employees who use AI when policy prohibits it and/or when untrained. In short, they are using it in the "shadows."

Popular AI Tools
AI has become a "buzzword." Many people and organizations have tried to capitalize on the naivete of individuals, municipalities, and organizations, often offering advice that is incorrect. This compromises AI legitimacy, scares people, or terminates any further inquiry into this ubiquitous tool. Some so-called AI advisors or leaders ban employees from using AI through policy or directives, which is neither realistic, practical, nor helpful. The AI "buzz" is quieting because the focus is upon the critical understanding of how to use AI tools and platforms to improve efficiency and productivity. The adage, "AI will not replace you, but someone who knows AI will," is becoming truer.

Not all AI tools and platforms are the same, nor do they work the same. Giving three different AI tools the same request (prompt) may generate three different answers or informational responses. This process is also an effective way to check for AI response accuracy by comparing the output and identifying consistencies and discrepancies. Here is a summary of three popular AI tools: *ChatGPT*, *Gemini*, and *Copilot*.

ChatGPT is available with or without a subscription; however, the former provides limited use. Developed and offered by OpenAI, this is a very popular form of Generative AI. As a personal AI assistant, it will provide answers to prompts, analyze data and documents, help to create, and compare documents, generate images, plus many more functions.

Gemini is produced and offered by Google. Like *ChatGPT*, it has a free and a subscription model. There is a limit on how many inquiries one can make using the free model per session, but it is a good place to begin learning how to use AI.

Copilot is offered by Microsoft. It searches the World Wide Web for information to provide answers to Generative AI prompts and does data and document analysis. It works very similarly to the other two AI tools described above.

Prompts are the Keys to Success
AI inquiries begin with prompts. Prompting is an art and a result of thinking about the potential output. Prompts contain four key elements: clarity, context, specificity, and structure. It is suggested that you "begin at the end," in other words, what information is being sought by the AI user. As a municipal lawyer, through effective prompting, AI can compare legal documents (think contracts), develop deposition questions, identify relevant cases on a specific topic, or predict outcomes after analyzing large data sets.

Prompting can be used by municipal departments to develop job descriptions or analyze applicant resumes (think Human Resources), develop lesson plans and multiple-choice assessment questions (think public safety), analyze budgets or equipment inventories (think Finance, Public Works, and Parks and

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Recreation).The list of functions is only limited by one's imagination. Thinking is required to create a prompt that will produce desired results.

For a moment, think about going into a restaurant for a meal. After reviewing the menu, the order is placed for a hamburger. A few minutes later a waitperson returns with just a plain hamburger on a plate—no bun, lettuce, tomato, onion, or fries. When asked about these missing items, the waitperson says, "Only a hamburger was ordered. If you wanted the other stuff, you needed to request it." This is also true when writing an AI prompt because AI is not a mind reader.

Prompts must be clear and concise (clarity) and provide background information (context). A prompt might read, "I am a municipal lawyer who is seeking the latest case law summaries on the definition of curtilage." This prompt tells AI about the person making the inquiry and is clear and concise. The rest of the prompt can be more specific, such as "only identify case law in the Tenth Circuit since 2010." Prompts must have clarity, context, specificity, and structure. Do not make the prompt so convoluted that it makes it impossible for AI to understand it or to provide understandable output.

If the prompt was not specific enough or needs to be revised, simply revise the prompt and the request. For example, a prompt asked to compare the alleged complaints about an employee's behavior against the department policy manual. The prompt read, "I am a municipal attorney investigating alleged complaints from a citizen about an employee's behavior. The complaint alleges the public works employee refused to pick up a citizen's trash and when asked about it, he was rude to the citizen. Please identify the policy violations using the online XYZ policy manual."

In a few seconds, AI identifies the possible policy violations but failed to provide the section numbers for each policy because that was not requested. To identify the section numbers, simply amend the prompt: "Great. Using this information, please identify the specific section numbers for each identified policy violation." AI will add section numbers to the original output.

Accuracy and Verification: A Must

After AI generates output, the information *must* be verified and checked for accuracy. It is always helpful to know some background about the topic, but that is not always possible. When in doubt, use the same prompt to ask two or three AI tools, and then compare the responses. This may help to validate the accuracy of the information. For example, the media reported that AI told a person to "glue" the cheese on pizza after being asked how to keep cheese from sliding off pizza. While technically correct, the answer is not a realistic one.

One informational method is asking AI to include references in its response to a prompt. The references are usually shown at the bottom of the response and can easily be checked by opening them and reading the information. It is recommended that AI always be asked to provide references for generated responses so the human can verify the accuracy of the response. It is well known that groups of people across the globe are attempting to upload false and misleading information onto the World Wide Web so AI will obtain it.

The increasing use by law enforcement of body-worn camera AI Tools to generate draft Incident Reports of police officers has raised serious concerns, including their accuracy and completeness. Recently, one District Attorney's office prohibited police officers from submitting AI-generated Incident Reports after discovering that AI had included an officer's name in a report who was never on the scene.[16]

Ethical Considerations

Privacy issues are critical when uploading information into an AI tool or platform. Many AI tools share input and output with the World Wide Web, therefore, before uploading information or documents containing personal or sensitive information, always consider this information as becoming public. Disclosing personal or sensitive information, such as health care records of inmates or employees, may result in potential litigation. Some subscription AI tools and platforms have privacy settings that may reduce or eliminate these risks. Lastly, employees who use AI to harass, embarrass, or create false images of co-workers are being unethical in their use of AI. A comprehensive AI policy will include ethical guidelines for the responsible use of AI.

Risk Management Considerations

<u>AI Policy and Training Concerns</u>: A 2024 national AI survey of state and local law enforcement agencies conducted by the Henderson, Nevada-based Institute for the Prevention of In-Custody Deaths, Inc. (IPICD) found that 74 percent (n=150) of respondents (N=203) reported their agency did not have an AI policy. An additional 15 percent (n=31) of respondents reported not knowing if their agencies had such a policy, with 93 percent (n=148) reporting not receiving training on using AI by their municipal employer (N=159).

Guidance in the form of written policies, procedures, rules, and/or memoranda help limit employee discretion while simultaneously directing the employees and vendors about what is acceptable and prohibited when using AI for municipal activities. Prohibiting AI use is not a policy, but a "rule" that will be violated. *Shadow AI* use by employees (think *Alexa, Siri, GPS, ChatGPT*, etc.) will continue so, it must be managed.

Some municipalities are prohibiting police officers from using AI in report writing. The problem with such outright prohibition is that *Grammarly* is often used to check report spelling, punctuation, etc. The banning of such an AI tool is often an "unforeseen" consequence of such a rule.

Another policy concern is potential is potential *Monell* liability.[17] Would a municipality be liable for an employee sharing personal or healthcare information through an AI tool that placed such information on the World Wide Web? Without AI policies, procedures, rules, and/or memoranda limiting employee discretion on using AI and/or providing guidance to them, might this be argued to be "deliberate indifference" on the part of the policy makers? These and related questions might be eliminated through the development, implementation, and training of employees on AI use parameters.

Training Employees in AI: As previously discussed, 93 percent of the respondents who took the AI law enforcement survey reported receiving no training on AI by their employers. When employees use AI in their daily work tasks, it can be argued this is a *core task* of the employee and that any constitutional harm caused by an employee misusing or improperly using AI because (s)he was not trained by the municipality was the nexus to the injury. Aside from a "failure to train" claim in a *core task*,[18] an argument can also be made that it was negligence by the municipality and/or department leadership not to train employees.

Lastly, employees cannot be trained in a policy, rule, procedure, memoranda that does not exist. Written guidance and training are linked, therefore make sure competency-based training occurs about the authorized and unauthorized uses of AI by municipal employees, and in some cases, vendors.

AI Generated Body-Worn Camera Reports: As previously mentioned, several AI tools will generate body-worn camera public safety reports, which can pose several risk management concerns. For example, is the report from the *officer's perspective*? Per *Graham v. Connor,*[19] the force used by an officer is from his or her perspective, not that of a body-worn camera AI-generated report. What if AI *hallucinates* and misses valuable information or created people or items that were not present?

Another potential issue with body-worn camera AI-generated Incident Reports is that the camera cannot feel muscle flexing that may indicate a suspect is about to flee an officer's grasp or control. The body-worn camera will not detect smells and other important environmental concerns that may affect the actions of officers. Finally, the body-worn camera's "vision" may be better than the vision of the officer. The field of vision of the camera may exceed that of the human eye. The camera may be equipped with high definition that may also exceed that of the human eye.

One reasonable approach is to permit body-worn camera AI-generated "draft" reports that must be thoroughly reviewed by the officer, correcting them, if necessary, before submitting them to a supervisor for approval. Guardrails must be in place through policy and training, to minimize an AI generated report being accepted as accurate without review and possible revision by the officer submitting it.

Robotics: Robotics include drones, electric cars (think Tesla), and robotic dogs. Like robotic dogs that are often used in building searches by public safety, *drones* can be greatly beneficial and go places where humans have difficulty navigating safely or where time is critical in locating a person, an accident, or a fire. The City of Chula Vista (CA) has a highly effective and progressive drone as a first responder program that has met community approval.

The positives of drones can be offset by a rogue officer who flies a drone near an apartment building and uses it to peer inside, looking for couples in compromising positions, nude occupants, or simply to leer. The same can be said for hovering drones over swimming pools, backyards, and similar settings. This is another reason to have an AI policy and AI training that addresses drones and officer behavior.

Lack of Training, Lesson Plans, and Competency-Based Assessments: Plaintiffs often request training lesson plans to show what was taught during training. They may also request assessments to prove employee competency. Experience has shown that too often these documents do not exist, which can expose the municipality and/or its policy makers to liability. Lesson plans and competency-based assessments can both be developed in a matter of seconds using AI, thereby eliminating any response that the municipality and/or agency trainers do not have them. Plaintiff lawyers who have no knowledge about the subject area can ask AI to create a detailed lesson plan—with references—as well as a competency-based assessment to demonstrate employees learned the information.

Biased Data and Metrics: Using AI to analyze large data sets (think burglaries over the past five years or repairing sidewalks throughout the City) can be very productive, particularly if predicting future criminal activity or analyzing potential areas for sidewalk repair. However, if the data is biased, the results will be skewed and may impact people of color or certain communities within the municipality or provide inaccurate information.

This is a major concern. It is therefore important to make sure the data are not inherently biased. Similarly, using AI to assist in analyzing candidate resumes can produce unintended result bias. When training the AI tool on what to look for in resumes (think key words and phrases), unintentional bias may have crept in because of coding certain words, which may automatically eliminate qualified applicants.

Collective Bargaining: Surveys, coupled with anecdotal evidence, strongly confirm that most people who do not understand AI are fearful of it. The 2024 IPICD survey found that employees are fearful that AI will make discipline decisions, and other impactful career decisions. Be prepared to discuss issues and concerns about AI in the next round of contract negotiations.

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INSIDE CANADA

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Deferral Denied, Housing By-Law Upheld, Trails Protected, and More

Reopening v. Unreasonable Delay: A Municipal Perspective on *Jordan* and s.11(b)
Toronto (City) v. Agrippa, 2025 ONCJ 46 https://canlii.ca/t/k92p7

The Applicant was charged with three offences and was served roadside provincial offence notices, which included the option to request a trial within 15 days. The Applicant failed to file within the required timeframe and was convicted. Subsequently, the Applicant filed an application to reopen the matter, which was granted, and a new trial was ordered. The Applicant then brought an application against the City of Toronto (City) for a stay of proceedings, arguing that the total delay of 22 months and 16 days exceeded the 18-month ceiling established in *R. v. Jordan*, 2016 SCC 27. The Applicant attributed the delay to the City's actions, while the City argued that a significant portion of the delay should be deducted as defence delay or neutral time.

HELD: Application dismissed.

DISCUSSION: The central issue before the Court was the calculation of delay under section 11(b) of the *Canadian Charter of Rights and Freedoms* in light of the Supreme Court's decisions in *R. v. Jordan* and *R. v. Cody*, 2017 SCC 31. The Applicant contended that the time taken to reopen the case and proceed to trial should count towards the total delay. In contrast, the City maintained that the reopening process was analogous to an appeal and should not be included in the net delay calculation. The Court relied on *R. v. Potvin*, [1993] 2 SCR 880, which established that section 11(b) does not apply to individuals who have been convicted, as they are no longer considered "persons charged." The Court found no distinction between a party to an appeal and a party to a reopening application, as both mechanisms serve to correct a prior conviction and restore the individual's ability to defend against the charges. Therefore, the period in which the Applicant was a convicted person, rather than a charged person, was not considered delay attributable to the Crown.

While section 11(b) protections apply from the date of the offence, the Court emphasized that time must be assessed based on its nature. In this case, after deducting five months and three weeks of neutral and defence delay, the net delay was calculated at just under 17 months—below the 18-month threshold established in Jordan. The Court dismissed the Applicant's request for a stay of proceedings, concluding that the net delay did not exceed the presumptive ceiling. The ruling reaffirms that reopening applications, like appeals, do not reset the section 11(b) clock in a way that counts toward unreasonable delay. As a result, the application was dismissed, and the matter will proceed to trial.

Human Rights and Municipal Licensing: No Code Violation Without Clear Nexus
Hyka v. Toronto (City), 2025 HRTO 211 https://canlii.ca/t/k9849

The Applicant filed an application alleging discrimination based on place of origin and reprisal under the *Human Rights Code, R.S.O. 1990, c. H.19 (Code)*. The Applicant asserted that the City of Toronto (City) denied his short-term rental license application due to his place of origin and in retaliation for engaging legal representation.

HELD: Application dismissed.

DISCUSSION: The Human Rights Tribunal of Ontario (Tribunal) reinforced that its jurisdiction is strictly limited to enforcing the *Code*, meaning it cannot adjudicate general claims of unfairness unless directly linked to an enumerated ground. Simply experiencing adverse treatment does not amount to discrimination under the *Code*. The Tribunal found that the Applicant's submissions failed to provide more than a bald assertion, lacking specific facts that would establish a discriminatory motive behind the City's decision. The Tribunal also addressed the claim of reprisal, noting that under section 8 of the *Code*, protection against reprisal applies only when an individual is penalized for enforcing their rights, initiating or participating in *Code*-related proceedings, or refusing to infringe another person's rights. The Applicant argued that the City's refusal to provide specific reasons for the short-term license denial constituted reprisal. However, the Tribunal found no connection between the City's actions and any attempt by the claimant to exercise or enforce a right under the *Code*. Without this link, the Tribunal held that the reprisal claim could not succeed.

Finally, the Tribunal examined the Applicant's assertion that the City's inspector had inquired about his place of origin during a property inspection. While the Applicant suggested that this question influenced the license denial, the Tribunal determined that it was asked in a conversational manner, likely in connection with reviewing the Applicant's identification, rather than as a discriminatory act. Since the Applicant did not present further evidence showing how this inquiry led to an adverse decision, the claim of discrimination based on place of origin was dismissed. The Tribunal held that the Applicant did not provide substantive evidence supporting either discrimination or reprisal, and therefore the application fell outside its jurisdiction. Application dismissed.

Deferral Under the Human Rights Code: Tribunal's Analysis of Parallel Proceedings
Kosiner v. City of Toronto, 2025 HRTO 241 https://canlii.ca/t/k9859

The Applicant filed an application against the City of Toronto (City) alleging discrimination based on disability concerning goods, services, and facilities, as well as contracts, contrary to the *Human Rights Code,* R.S.O. 1990, c. H.19 (*Code*). The application stemmed from the issuance of a parking violation notice for failing to display an original accessible parking permit, despite the Applicant presenting a certified true copy. The Applicant argued that the City failed to accommodate his disability by not accepting the certified copy as valid. In response to the application, the City submitted an application requesting that the Human Rights Tribunal of Ontario (Tribunal) defer the case, citing an ongoing proceeding before the Administrative Penalty Tribunal (APT) related to the same set of facts. The City did not provide substantive submissions regarding the Applicant's allegations of discrimination.

HELD: Request to defer is denied.

DISCUSSION: The Tribunal examined whether to defer the application under section 45 of the Code, which permits deferral when another legal proceeding is dealing with the same issues. The Applicant acknowledged that he had challenged the parking violation before the APT but argued that significant delay in scheduling a hearing had essentially rendered his case statute-barred under *R. v. Jordan*, 2016 SCC 27, which establishes presumptive time limits for legal proceedings. As of the Tribunal's review, no hearing had been scheduled at the APT. The Tribunal had concerns about whether the APT matter was truly "ongoing" as suggested by the City or even capable of resolving the dispute. The City, who requested deferral, provided minimal information in response and failed to address the Applicant's arguments regarding Jordan. Despite the Tribunal's directive to submit additional details, including the status of the APT matter and any scheduled hearing dates, the City failed to do so. The Tribunal, therefore, lacked sufficient evidence to determine whether the APT process was a legitimate parallel proceeding warranting deferral under section 45. Relying on previous case law, including *Baghdasserians v. 674469 Ontario* 2008 HRTO 404, the Tribunal emphasized that deferral is not automatic and must be assessed in context. A mere risk of inconsistent findings is insufficient. Based on the City's failure to substantiate its request, the Tribunal denied the deferral.

Unsuccessful Challenge to the City of Windsor's Residential Licensing By-law
Windsor Housing Providers Inc. v. Windsor (City), 2025 ONCA 78 https://canlii.ca/t/k98hn

The City of Windsor (City) enacted a Residential Licensing By-law (By-law) as a two-year pilot project to regulate rental housing in Wards 1 and 2. The By-law aimed to protect tenant health and safety, with City Council set to decide after the pilot whether to expand or rescind it. The Appellants, a coalition of Windsor landlords, challenged the By-law, arguing it was enacted in bad faith, was arbitrary, and exceeded the City's authority. The Appellants claimed it violated sections 2, 6, 8, 11, and 15 of the *Canadian Charter of Rights and Freedoms* and conflicted with provincial laws. The application judge dismissed their challenge, and the Appellants appealed.

HELD: Appeal dismissed.

DISCUSSION: The Court found no errors in the application judge's decision. The Court rejected the Appellants' claims that the By-

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AI *cont'd from page 21*

Deepfakes: Criminals are using AI to commit a variety of crimes from imitation of a person's voice to producing child pornography. Awareness of these criminal activities is necessary for municipal counsel because criminal investigators will be investigating such crimes.

Improved Efficiency does not Equate to Having More Time

There is a myth associated with AI and its hype that it will greatly improve efficiency, thereby providing the AI user with more *free* time. This is inaccurate. While AI can perform tasks in seconds or minutes that might take humans hours, the so-called *free* time is now available for additional tasks. In short, one can perform more tasks in the same amount of time, but getting more *free* time is a myth.

Some people may use this as an excuse for prohibiting AI's use in municipal operations. This is a mistake because AI is a personnel multiplier and can perform complex calculations, generate information, images, or videos in far less time than it takes employees. In large data set analysis, AI may be the only option available to perform such analyses.

AI and Municipal Lawyering

Using AI as an assistive tool in municipal legal practice is helpful to the lawyer and the municipality. For example, AI can be used in the following legal areas:

- Legal research
- Draft documents such as contracts, pleadings
- Motion practice
- Compare and analyze documents (e.g., expert reports, contracts, depositions)
- Develop questions for depositions
- Summarize depositions, highlighting inconsistencies
- Create and counter arguments
- Public Information Officer assistance to get ahead of the narrative

As previously mentioned, artificial intelligence (AI) has rapidly evolved from a futuristic concept into a powerful tool with practical applications across various industries, including the legal profession. Municipal legal practice stands to benefit immensely from the integration of AI technologies. By leveraging AI, lawyers and municipalities can improve efficiency, reduce costs, and enhance the quality of their legal services. This section explores some practical areas in which AI can assist municipal legal professionals, focusing on its role in legal research, document drafting, motion practice, document comparison and analysis, deposition management, and public information efforts.

1. Legal Research

Attorneys spend considerable time reviewing statutes, case law, administrative regulations, and legal commentaries to support their arguments and ensure compliance. Traditional methods of legal research involve manually searching legal databases and libraries, which can be time-consuming and costly. AI tools, such as natural language processing (NLP) and machine learning algorithms, significantly expedite this process.

AI-based legal research tools like *Westlaw Edge, Lexis+* with the "*Lexis AI*" feature, and *ROSS Intelligence* use AI algorithms to analyze large data sets and provide more relevant and precise legal research results. These tools use NLP to understand the context and nuances of a legal query, allowing them to retrieve case law and other legal materials that are directly applicable to a given issue.

In municipal law, where the issues at hand can range from zoning regulations to labor law disputes, AI can identify precedents from other jurisdictions with similar legal questions, helping municipalities anticipate potential legal challenges and develop informed strategies. For example, AI tools could help a city attorney researching the validity of an ordinance or zoning change identify legal trends or potential challenges from similar municipal cases in other states. This reduces the time spent manually searching and helps ensure that the municipality is well prepared.

It is critically important to remember that the information from AI is the start, not the end. The information must be double checked to confirm that the cases, statutes, and respective citations are accurate.

2. Drafting Documents: Contracts, Pleadings, and Other Legal Documents

AI is also making a significant impact on document drafting, particularly in the preparation of contracts, pleadings, and other legal documents. AI-based tools like *Kira Systems, LawGeex*, and *ContractPodAi* use machine learning algorithms to analyze documents and identify key provisions, clauses, and potential risks. These tools not only help with drafting but also in reviewing and revising documents, ensuring that they are comprehensive, compliant, and free from errors.

In the context of municipal legal practice, AI can be employed to automate the drafting of routine legal documents such as vendor contracts, intergovernmental agreements, and employee handbooks. For example, a municipal legal department could use AI tools to draft a standard contract for the construction of public works projects. By inputting the relevant terms and conditions, the AI system can generate a draft contract that includes the necessary provisions tailored to the specific legal requirements of the municipality.

Moreover, AI can assist in the preparation of pleadings and litigation documents by analyzing prior motions and identifying the most persuasive arguments based on legal principles, case law, and historical data.

The city of San Francisco, in collaboration with various tech firms, explored AI tools to streamline the creation of legal contracts related to public-private partnerships (PPPs). This initiative aimed to ensure that contracts were drafted more efficiently, with fewer errors, and at a lower cost to the municipality. The city also implemented machine learning tools to review these contracts for compliance with local regulations (FinTech Futures, 2019).

3. Motion Practice

AI can also improve motion practice by providing municipal lawyers with tools to draft, review, and optimize motions. AI-based systems can analyze historical motion decisions and predict how a court is likely to rule on a specific legal issue. Additionally, AI can help in the drafting of motions by suggesting language and legal citations based on past successful motions.

In municipal litigation, where a municipality may be facing lawsuits ranging from environmental issues to employment disputes, AI tools can help attorneys develop compelling motions, including motions to dismiss, motions for summary judgment, and motions for temporary restraining orders. These tools can suggest effective legal arguments based on an analysis of similar cases and precedents.

In the 2018 case *AIG v. Cantor Fitzgerald*, AI was used to assist in preparing motion papers by evaluating a large set of legal documents to help identify key legal arguments for both parties. Municipalities involved in complex litigation could benefit similarly by using AI tools to improve the quality and efficiency of their motions (Kirkland & Ellis, 2018).

4. Document Comparison and Analysis: Expert Reports, Contracts, and Depositions

AI's ability to compare and analyze large volumes of data is another key benefit for municipal lawyers. Legal professionals often need to review expert reports, contracts, and depositions to identify inconsistencies, discrepancies, and key points of dispute. Traditional manual review is time-consuming and prone to human error. AI tools like *Relativity*, *eBrevia*, and *Contract Analytics* use machine learning to automatically compare documents and highlight differences, inconsistencies, and critical legal issues.

For example, when reviewing expert reports in a case involving municipal liability for police misconduct, AI can compare the opinions of different experts, flag contradictions, and suggest follow-up questions for depositions or further expert testimony. Similarly, in contract review, AI can identify risks such as ambiguous language, missing clauses, or non-compliance with municipal regulations.

In 2020, the city of Chicago utilized AI-powered contract analytics to review its large portfolio of contracts with private vendors. The AI tool helped identify inconsistencies, potential compliance issues, and opportunities for renegotiation, ultimately saving the city time and legal costs (Chicago Tribune, 2020).

5. Deposition Management: Developing Questions and Summarizing Depositions

AI can assist in developing questions for depositions, an essential part of municipal litigation. AI tools can analyze case files and identify areas where additional information is needed. By using NLP algorithms, these tools can develop targeted questions that focus on key legal issues, helping lawyers gather the most relevant information from witnesses.

Moreover, AI can be used to summarize depositions, highlighting inconsistencies, contradictions, and significant admissions. This helps lawyers quickly identify crucial information and formulate legal strategies. AI tools like *TranscriptPad* and CaseText's "*Compose*" function enable legal professionals to quickly summarize and analyze deposition transcripts, ensuring that no vital details are overlooked.

In municipal cases involving allegations of police misconduct or civil rights violations, AI tools have been used to analyze deposition transcripts and highlight key inconsistencies in witness testimony. This has been especially useful in cases involving multiple witnesses or complex factual scenarios (CaseText, 2021).

6. Creating and Countering Arguments

AI can also be used to create and counter legal arguments by analyzing case law, statutes, and legal briefs. Tools like *ROSS Intelligence* and *LegalMation* can analyze the opposing party's arguments, identify weaknesses, and suggest counterarguments based on legal precedents and statutes. In municipal litigation, this is especially useful when dealing with constitutional challenges, administrative appeals, or claims of statutory violations.

AI systems can also assist in identifying legal issues that may have been overlooked in the initial phases of litigation, ensuring that the municipality's legal team is prepared for all aspects of the case. In some instances, AI tools can even simulate potential arguments and predict the likely outcome of various legal strategies.

In the case of *City of Oakland v. AIG*, AI was used to analyze the opposing party's legal arguments and suggest counterarguments based on case law and regulatory precedents. The city's legal team was able to use the AI-generated insights to strengthen their case and ultimately win the motion for summary judgment (Oakland City Attorney's Office, 2018).

7. Public Information Officer Assistance

Finally, AI can assist Public Information Officers (PIOs) by helping to craft messages, press releases, and social media posts. Advocacy groups promote their narrative very effectively and often get ahead of municipal responses about high-profile events. Through the effective use of AI, Public Information Officers (PIO) can quickly and effectively tell their story, often getting in front of partial and/or incomplete information. PIOs using AI can develop social media posts in seconds and continue to get updates in front of people, including countering inaccurate information. Many municipalities have created a Social Media position to engage in social media dialogue and discourse to

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DAY IN THE LIFE

AVERY MORRIS,
IMLA Editorial Staff

From BigLaw to MediumLaw to Fulfillment in Local Government Law

An interview with Sofia Hernandez, Deputy City Attorney, Durham, North Carolina

Hi Sofia! Let's start with where you were born and raised.
I was born in Honduras. My family and I immigrated here when I was about six years old. We first spent a lot of our years in New Orleans--I was there from ages six to fifteen. At fifteen we moved to Seattle, which is where I finished high school and did undergrad. High school is also where I met the love of my life, my husband. We've been married for twenty years.

How did you get to Durham?
Law school. I'd always known I wanted to go to law school. When it came time to apply, I cast a pretty wide net across the country. Once I narrowed my choices down to three, Duke was the farthest from home (Seattle, at the time). When I visited for admitted students' weekend, I just remember walking around the campus and feeling like, "Oh, my gosh! This place is magical and makes me feel like I'm part of something." I grew up in a tough, low-income neighborhood in New Orleans and here I was in a campus that looked like a fairy tale. On top of that, meeting some of the other law students, especially the Hispanic Latino Law Student Association folks that hosted me, made it feel like a place that I could belong, even though it was new and intimidating. There were a lot of things that felt comforting at the time that helped me make the decision to attend. I'm very glad I did.

Awesome. You teach there now, right?
On and off, yes. For the past few years, I've been invited to teach a variety of courses there, including legal writing. Last semester I taught an externship practicum course. It's been really neat to go back as a professor. I still have the imposter syndrome trying to teach these brilliant young minds. There's a part of me that's still like, "I don't know if I should be up here." But it's great to be there, part of the legal institution that helped shape me. And while it's sometimes difficult managing a full-time job as a municipal attorney and teaching... I love working with students. It's an incredible honor to be part of their growth. As a professor I share a lot about my journey, hoping that it shows my students that there's no one path to a satisfying legal career.

How did you end up working for the City?
After law school, I went into big law. That was a common path for students at Duke. And frankly, as a daughter of immigrants, I think it felt like it was the right thing to do to honor my parents' sacrifice--you know, having a prestigious well-paying job. So yes, I went straight into big law. I soon found out that I t was not for me. It didn't allow me to be the sort of family-oriented, friend-oriented person I am. I just felt like I was getting tugged in a lot of different directions and kind of failing at every facet.

It was also the height of the Great Recession when law firm life was additionally tense. Firms were consolidating and demanding more from their attorneys. So I transitioned to other opportunities. I worked at a regional law firm and then a boutique firm. I kept thinking size was going to fix it. In the nine years before I started my municipal career, I tried different legal employers and settings and even got to a point where I thought, "Maybe the law is not for me." I printed out a PhD application for cultural anthropology, because why not take out more loans? I was really struggling, thinking practicing law would always mean long hours, pressure from partners, and making every six minutes count.

I'd always wanted to be an attorney because when we came to this country my parents gave up so much. As an immigrant you get told at six or seven years old, "We moved here so you could have a good life. You can be anything you want to be: a doctor, a lawyer, or an engineer." Funny how it's always those three paths. I'm not great at math, and I don't love the sight of blood, so at some point at a very young age, I decided I guess I want to be a lawyer, and that's what I was working towards all my life. So, it was hard to get to a point nine years after graduation, thinking maybe this isn't the right path for me.

Luckily, I have a really supportive partner, and we were trying to figure it out. Right around the same time, we also found out that I was pregnant, which gives you a different kind of clarity. I remember wondering, "What is my kid going to think I do? What is 'bring your child to work day' going to look like?" So, I reflected on what I thought was missing or unsatisfying,

and during that period I sought out folks in my network that I had met along the way. That led me to reaching out to Patrick Baker, who was the then City Attorney in Durham. He talked to me about the wonderful world of municipal law, where the work is challenging and interesting, the work/life balance is good, and the benefits are great. I'd never heard of the field. When his office had a job opening a few months later, I applied. They hadn't hired anyone in eight years. It was a pretty tight knit office--people got there and stayed forever. I didn't really think I had a shot. I'd never done municipal law before. Luckily, they were looking for a generalist, someone who could do a little bit of litigation, someone who had a lot of experience with contracts. So, my bouncing around worked for me, not against me; the stars and planets aligned, and I got the job. I am so grateful. It is the best job I've ever had. Now, my kid goes to City Hall with me once in a while. Everyone in the office knows him. He thinks it's pretty cool that his mom knows the Mayor and the Fire Chief.

So you've worked for Durham almost seven years. What makes the office so tight-knit? Is there a certain aspect of the office that makes it such a great place to work?

It is an awesome office. No one really left before I started working there but in the six-plus years since I've come on board, we've hired six or seven new attorneys. There was a lot of turnover

from retirement, and Patrick left to head the Charlotte Law Department. We've had a lot of new blood in the office, but Kim Rehberg has done an amazing job of keeping a really good culture as City Attorney. In our office we have a book club, ice-cream outings, and after-work get-togethers. But most of all, I think the folks are smart, and they care about the City and the work, which makes mutual respect easy and natural. Mostly everyone works with their door open, and there are a lot of "Hey, can I run this by you?" kind of conversations. Also, a lot of people are in the same stage of life that I'm in, so it's very family friendly. People send each other Christmas cards, pictures of their kids, dogs, vacations. We are our own little community. And I think that is a huge part of why I love it.

How many attorneys are in the office?

We have ten attorneys total, so it's not a huge office. There are 26 or 27 departments in the city, and each attorney has a portfolio of departments. Obviously, Kim, our boss, deals mostly with the city council, and she has Finance, Budget, the City Manager's and Clerk's offices. The rest of us carry a handful of departments and serve as general counsel to them. Whether it's litigation or transactional matters, we are expected to handle it. We do have one dedicated litigator who handles the bigger litigation cases, like police chases, wrongful convictions, things

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that can get kind of gnarly and take years. My portfolio has changed over the six and a half years that I've been with the city. Right now, I carry a lot of the Public Safety and Code Enforcement departments. It's a varied portfolio but I really enjoy it. All of the departments I work for have direct resident contact, which I love being able to support.

What books have you all read?
We try to read books that give us insight on how we can better serve our diverse community. Durham is so diverse and resilient. The latest book Kim Rehberg just picked out. It's called *After the Last Border,* and is about two refugee families, one from Syria and one from Myanmar and their struggles back in their home countries, as well as their struggles once they were able to get in the US. It's a hard read, especially right now in this political climate-- it can be difficult, but I think part of the goal of the book club is trying to get us to focus on difficult things and discuss them respectfully. It helps build our own resilience as individuals and as an office.

What are your interests outside of work?
Well, I have a seven-year old. His social schedule is mine, basically. So right now, we are really into basketball, soccer, and drums. Being a parent is consuming and wonderful. Arts and crafts with him, or whatever it is, is a big part of the joy that I have on a daily basis. I also love food. I'm very fortunate that my husband is an amazing cook, so we enjoy trying new foods, making new recipes, or going to restaurants together. I love being out in the community in Durham, whether at the farmers' market or a Latino supermarket, just being in the community feels good. We also have a great neighborhood. Connecting with the neighbors is something that I really enjoy. I like reading, and I'm not above binge-watching a good series on a screen.

Are you watching anything currently?
I'm watching a bunch of different things all the time. My husband and I watch political dramas. We like *The Diplomat*, *The Americans*, or *The Night Agent*, those kinds of shows. My guilty pleasure is Korean soap operas. They are fantastic, and if you grew up like I did with Spanish telenovelas in your life all the time, they're very similar. If I can manage it, my greatest pleasure is watching Korean drama dubbed in Spanish. When I get to practice my Spanish, it brings back memories from home.

What's one memorable experience you've had in your position, either good or bad?
Oh, my gosh, there are so many. I started out fairly new, trying to get my feet wet. Patrick was really great about telling me, "Hey, for your first few months just spend a lot of time learning." So, I thought my workload was going to be relatively light. But six months after I started, we experienced an explosion in downtown Durham. A telecommunications company was drilling into the sidewalk to install fiberoptic cable, and they hit a gas line, causing gas to fill the building above it. Folks called 911 and the fire department responded, but they didn't know where the gas was coming from at that point. So in the morning, after all the students had already gone into the high school about half a block away, thank goodness, the building exploded. It basically took down the whole block. There were two deaths and a lot of injuries. There I am, the attorney for the fire department and emergency communications. It's a huge tragedy, but at this point I don't know what my role is: I'm not going to get into gear and go help them, but I have this intense urge to serve somehow.

On day three of the response, a search is still ongoing for one of the bodies because of all the rubble. I get a call from the Chief asking me to come down to incident command. I am five foot-nothing, and I dress how I dress, so on this lovely spring day, I am in pink linen pants and shoes with little bows on them. The Chief comes and picks me up in his fire department vehicle and takes me down to the site. There are hundreds of folks there, from state agencies, emergency management, fire, police, EMS, and off-duty responders, all working together to address this unprecedented incident for Durham. And then there's also the presence of private insurance companies because of all the damages. Actually, the primary building that exploded was next to a garage that housed one of the largest private Porsche collections, and no one knew about it. You're talking about twenty-some Porsches that were just decimated. There was also a building where one of the floors was a psychiatry practice, and they were very adamant that they needed to go in and get their patients' records. So everyone's pushing, "Can we get in? Who can we talk to? Who's responsible? Can the City do this?"

The first responders are handling the incident scene and don't have time to talk to everyone or calm them down, so I get asked to help hold the line. So here I am, again in pink linen pants, six months after starting, and luckily some of my instincts from all my years of practice kick in, along with the motivation to help the responders dealing with the explosion. So, I hold the line in front of the lot of insurance adjusters and eager property and business owners, and I'm fielding calls from persistent lawyers across several states insisting that I let their people onto the scene. It was surreal but also a really big moment of pride. Of course, the explosion led to years of work. I was the primary attorney handling the matter. It was not at all what I

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Charles Thompson Jr. Local Government Law Scholarships – 2025 Recipients

Inaugurated in 2023, the Charles Thompson Local Government Law Scholarships are competitive awards intended to recognize rising 2Ls and 3Ls with demonstrated interest and accomplishment in the study of municipal law. All candidates submit written expressions of interest, law school transcripts, and letters of recommendation. In addition, those seeking the larger $5,000 scholarship were required to submit an original work relating to local government law.

We were fortunate to receive a significant number of outstanding applications from law students who evidence a clear interest in serving their communities as local government lawyers. The IMLA Scholarship Committee, consisting of Kimberly Rehberg, City Attorney, Durham, North Carolina; Alan Bojorquez, City Attorney, Buda, Texas; Thomas Powers, Senior Assistant City Attorney, Charlotte, North Carolina; Lori Bluhm, City Attorney, Troy, Michigan; and Erich Eiselt, IMLA Deputy General Counsel and Director of Legal Advocacy, is pleased to announce the **winners of the 2025 IMLA Charles Thompson Local Government Law Scholarships:**

$5,000 award winner: **Colby Wicker**, University of Indiana Maurer School of Law

$2,500 award winner:**Anne Koontz**, University of Oregon School of Law

$2,500 award winner: **Madeline Masaryk**, Lewis & Clark School of Law

Day in the life *cont'd from page 28*

expected when I signed up for municipal law, but it was such a unique, hard, and important experience.

That's amazing. Wow, you really got thrown into it.

Yes I did. A couple years ago, my colleague Don O'Toole (since retired) and I gave a presentation about the explosion to the North Carolina Public Risk Management Association and most of the risk managers were astounded that through all this, the City didn't get sued. There were a lot of lawsuits of course between injured individuals, estates, the gas company, the drillers, and the architects who hired the drillers, but the City did not get sued. I'm still surprised, but I'd like to think that it's because we were transparent. The staff did everything that they could leading up to this incident and afterwards. I'm proud of how the City responded and how our office protected the City's interests. It was a good legal outcome for the City, even though it was such a tragedy. This work has exposed me to harder things than I expected, and I continue to feel motivated to help the staff and community that see it from a much closer vantage point.

Going back to your time teaching at Duke–A lot of law students don't even know what municipal law is. Do you try to "talk up" municipal law to them?

Oh, yeah! So much, so much. For about three and a half years I coordinated our internship and externship program for the City. Like I said, I love working with students. So through those efforts as well as when I'm in the classroom with students, I'm all about municipal law because of the career trajectory I've had. I can speak from experience that this is the best job I've ever had. When I retire, I want to retire from municipal law. This field is not something I knew about when I was in law school, and I think Duke has come a long way in exposing more students to the public sector. But still, when we talk about the public sector in a lot of law schools we talk about the ACLU, Legal Aid, or federal agencies.

There's not a lot of focus on local government, and there really should be, so I try to teach students about it. I often ask my students if they want to come into City Hall or have lunch with me at my work. My teaching style brings a lot of my practical experience into the classroom, so I'm often telling stories about "Oh, and this week I was negotiating for an emotional support animal at one of our fire stations." We have two emotional support animals, Blaze and Cosmo, at different fire stations, because we recognize the obvious mental health challenges for first responders. So for my students, I just try to show glimpses of how varied this work is, and how good it can feel to do it--whether you are at an explosion site or negotiating who is going to take Cosmo and Blaze to the vet.

That's such a great testimonial about the merits of local government law, Sofia! Thanks so much for your time and your story. ML

Immigration *cont'd from page 11*

> held that, after *Arizona v. United States*, 567 U.S. 387, 410 (2012), state and local law enforcement officers violate the Fourth Amendment when they detain someone on the basis of a civil immigration warrant absent ICE's express authorization or direction, reasoning that civil immigration offenses are not crimes and therefore cannot by themselves give an officer probable cause to believe that an individual is engaged in criminal activity. *See Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 465–68 (4th Cir. 2013).

Jimenez, 2024 WL 1551149, at *2. There are some factual distinctions in these cases and local government attorneys in these jurisdictions should review them carefully.
27.Galarza v. Szalczyk, 745 F.3d 634, 640 (3d Cir. 2014).
28. *Id.* at 645. The County conceded at oral argument that its policies were unconstitutional and its sole defense was that it was required under federal law to comply with ICE detainer requests. *Id.* at 639.
29. Morales v. Chadbourne, 793 F.3d 208, 213 (1st Cir. 2015).
30. *Id.* at 217.
31. Castenada v. Cnty. of Suffolk, 17-CV-4267 (E.D.N.Y. Jan. 2, 2025). Part of the court's reasoning rested on New York state law that did not provide authority to make arrests in these circumstances. It is therefore important to understand both the state and federal law in your jurisdiction.
32. *See* Chantee Lans, *Federal Government Says Suffolk County Owes $60 Million in Damages, Fees While Assisting ICE*, ABC Eyewitness News (Jan. 8, 2025), available at: https://abc7ny.com/post/suffolk-county-fights-back-federal-government-says-owe-60-million-assisting-ice-detain-650-people/15779438/
33. *See* U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, available at: https://www.ice.gov/identify-and-arrest/287g
34. For example, the middle district of Tennessee explained:

> the "seizure" of aliens for known or suspected immigration violations can violate the Fourth Amendment when conducted under color of state law, because the predicate for a seizure is probable cause that the arrestee is committing or has committed a crime, and it is not a crime for a removable alien to remain present in the United States. *Lopez–Aguilar*, 296 F.Supp.3d at 974-75, 2017 WL 5634965, at *11.[6] Only when acting under color of federal authority—that is, as directed, supervised, trained, certified, and authorized by the federal government—may state officers effect constitutionally reasonable seizures for civil immigration violations. *Id.* at 977-98, 2017 WL 5634965, at *13. Detainers, standing alone, do not supply the necessary direction and supervision. *Id.* "[K]nowledge that an individual has committed a civil immigration violation does not constitute reasonable suspicion or probable cause of a criminal infraction" and therefore cannot justify a Fourth Amendment seizure…
>
> If Metro had been acting pursuant to an agreement with ICE, it **may** have had authority to take custody of Plaintiff, but Plaintiff alleges that Metro had no such agreement in April 2017.

Abriq v. Hall, 295 F. Supp. 3d 874, 880–81 (M.D. Tenn. 2018) (emphasis added).
35. For a comprehensive discussion of this issue, *see Amicus Corner: Betting on Sanctuary Jurisdictions,* Municipal Lawyer, July/August 2018, Vol. 59, No. 4.
36. Memorandum for All Department Employees from the Acting Attorney General re: Interim Policy Changes Regarding Charging, Sentencing, and Immigration Enforcement (January 21, 2025), available at: https://static.politico.com/66/35/5a5563a1441faa1680058a5a3d1b/memorandum-from-the-acting-deputy-attorney-general-01-21-2025.pdf
37. That position was reiterated in the Bondi Memo.
38. *See supra* note 17.
39. *See U.S Immigration attacks Oakland Mayor for Warning of Raid that Arrested 150*, The Guardian, (Feb. 28, 2018), available at: https://www.theguardian.com/us-news/2018/feb/28/ice-immigration-raid-northern-california-oakland-mayor-warning
40. Armando Garcia, ABC News, *Trump Border Czar Tom Homan Say He's Willing to Jail Denver Mayor Over Mass Deportation Protest* (Nov. 26, 2024), available at: https://abcnews.go.com/US/trump-border-czar-tom-homan-jail-denver-mayor/story?id=116235385
41. *Id.*

PRACTICE TIPS

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Effective Communication: Pointers for Consulting with a Local Government Client

INTRODUCTION

When perusing attorney disciplinary notices, two consistent themes emerge, regardless of state or jurisdiction. These are (1) an an attorney's violation of a fiduciary duty or some other type of theft from the client, and (2) the failure of an attorney to adequately communicate with the client. And while both topics could fill an entire ethics book, I hope this article will provide some helpful hints to your practice for effective communication with a local government client.

Tip #1: Know Who Your Client Really Is

Sometimes it can be easy to forget that providing legal representation to a large corporate entity can lead to ethical and practical concerns regarding who the client is, how to effectively communicate with the client, and how to coordinate and seek direction from the client. This can be doubly true when the corporation is a local government entity. The simplicity of representing a natural person and meeting that person at the office or speaking on the phone can seem easy by comparison. How many municipal lawyers know the stress of waiting while a special meeting is called, and a public meeting agenda is posted, and all the time the facts on the ground or the stories on the street continue to change and evolve?

It can be tempting to communicate only with your chief executive, your directors, or even officials or officers directly impacted by an incident or project. This is essential for acquiring information and is a good practice pointer in and of itself. But finding out what happened, whether it be a high-profile matter or a routine item of concern, is only the first step. While collaboration can be productive, you cannot let it color your review of possible options. For example, a city employee or official may only want to discuss a specific option or pursue a particular path. It may be necessary to remind them that your client is the "City" as a whole, not one department, one director, one police officer, or anyone else. Sometimes it's a difficult conversation, especially when as an attorney, you begin to suspect potential conflicts could occur depending on the route the decision-makers choose to take.

Tip #2: Knowledge is Power

How many times are attorneys asked questions in a vacuum? It can be beyond frustrating to answer a question without knowing the whole story. "Don't bury the lead" is a journalism phrase, but it is just as true in our profession. Don't pose a question to an attorney as a hypothetical if it's a real thing happening right now.

The same goes for relaying information. It can be so tempting to answer a question or relate information to one department or one councilmember and forget that its likely that other councilmembers or other departments might be impacted by the same complaint or issue. When possible, relaying the same level of information at the same time is advisable, and will probably save you serious consternation in the future. A simple memo with some basic information and the promise of future updates can save an attorney from complaints by policymakers upset that they were "the last to know."

Tip #3: Don't Forget the Background

As an attorney it is extremely easy to get too close to the subject matter you wish to discuss with your client. Maybe you are explaining a potential settlement agreement for pending litigation. You have lived the case for years. You know the details backwards and forwards. But it's easy to forget that it might not even be on your council's radar. Unless it's a particularly newsworthy event (and has stayed so for months and years), it is probably not something your client thinks about regularly. So, before you start explaining why there is merit to settling a case or not, remember to give the background. Before you can plan to go anywhere, you need to remind the decisionmakers where you have been and how you got here.

Tip #4: Show, Don't Tell

Humans learn information both verbally and visually. Attorneys can get so used to dealing with words, either on the written page or spoken aloud to an audience, that we can sometimes forget the power of images, symbols, and other visual aids. Some of us are old enough to remember when computers first started making their way into courtrooms and council chambers. It is virtual malpractice to go to court without a laptop or a tablet these days, and the same can probably be said for giving presentations without using some basic graphics to help convey a message or create a lasting impression.

If you have it, use it. Sometimes a short video clip can convey so much more than a verbal description of events. An aerial photograph or drone footage can provide a perspective that makes something much easier to explain to an audience. Sometimes it's just highlighting a key sentence or paragraph in a contract. The use of a thick red circle on a slide showing a wall of text can direct attention exactly where it needs to be. Visuals combined with movement can point eyes to where you need them.

Tip #5: Confidence is Key

No amount of preparation and diligence can carry a presenter who does not demonstrate confidence. Consulting with a governing body requires patience and thoroughness, but also zeal and assertiveness. That is not to mean that a presenter has all the answers, and indeed, it is useful sometimes to admit that there are unknowns that still need to be researched. But a failure to display confidence when addressing a governing body can distort reality and cause an otherwise thorough presentation to seem disjointed or incomplete if the speaker falls victim to self-doubt.

The goal of any consultation with a government client should be three-fold. First, the conveyance of information and ideas. Second, the discussion of options, ranging from one or two to a spectrum of alternatives. And finally, feedback and direction. Questions from a governing body are not a bad thing if they represent engagement and further discussion. Perhaps something is unclear, but often a question can be a prompt for a reassurance. A confident speaker can provide that reassurance by restating a known position or restressing an important point. This restatement can further the feedback process by ensuring a consensus opinion is reached by the governing body. Especially when working with a large body, a consensus is vital to obtaining direction and taking future actions.

Tip #6: Decision Makers are People, Too

It can be easy to forget sometimes that individuals that sit on city councils, zoning commissions, and other deliberative bodies are people. And just like everyone else, their time is limited, and their interests can vary. Making sure they are fully engaged is imperative to effective communication. Your client discussion could be fifteen minutes out of a meeting scheduled for five hours. For the speaker, it's probably the most important fifteen minutes of their day. But for the audience, it is just one out of a series of presentations they need to get through their schedule. As a speaker, you want your presentation to be engaging, factual, transparent, and impactful. If feedback consists of blank stares, it's likely that both the attorney and the governing body will be frustrated by the results.

To consistently keep an audience engaged, it's helpful to remember your tour guide hat. Establish a road map for your audience and keep them on the path you have outlined. The road map for your discussion is best if it is visual and spells out the individual steps that you intend to go through in your presentation. For example, a common roadmap is a time continuum. Begin with the past and explain how we got here. Continue with the present and outline what options are available. Finish with feedback and a discussion about where you go in the future. By telling your client upfront where you are going to take them, they are much more likely to stay engaged and go on the journey with you.

Essentially, people need to know what they are being told, but also why they are being told. Switching from a passive presentation to an active discussion is much easier if the audience knows what to expect and that their direction is required at the end of the presentation.

Tip #7: A Menu of Options

If you have several options, or even if you just have a couple, it's never a bad idea to use easy labels and refer to them throughout the discussion. Do not be afraid to leave up a presentation slide that lists the options out concisely on the screen. Think of your options slide like a menu at a restaurant. It reminds your decisionmakers that they get to choose. They may not want to be in this restaurant, but they do have options. Do they select Option One, Settle? Do they choose Option Two, Litigate? It is useful to anticipate as many options as possible and go through them with the client. Sometimes options are dead on arrival. Sometimes it's clear that your choice has been made already by circumstances beyond you or your client's control. But it helps to have the options listed and easy to follow. Remember,

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Galen Gatten began his municipal legal career with the City of Midland, Texas, where he was introduced to planning and zoning law. After four years, he left to enter the private sector, but continued his interest in land use by serving six years on the Midland Planning & Zoning Commission. A native of Mesquite, Texas, Mr. Gatten returned to DFW and reentered public service as an assistant city attorney handling open records for the City of Fort Worth. In May 2015, Mr. Gatten became the land use attorney for the City of Arlington. He serves as legal liaison to the Arlington Planning & Zoning Commission and the Zoning Board of Adjustment. In 2022, Mr. Gatten became head of the municipal law section of the Arlington City Attorney's Office. He provides legal advice on planning, zoning, permitting, fair housing, stormwater, and code compliance matters. Mr. Gatten received his JD degree from Texas Tech University School of Law and his BA degree from the University of North Texas. He resides in Grand Prairie with his wife, Stacey, their son Aiden, and their four cats.

MUNICIPAL FINANCE

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Bond Basics

INTRODUCTION

If you work for a municipal government, your employer has likely issued municipal bonds. This article will provide an overview of municipal bonds, why cities issue them, the various types of municipal bonds, the persons who work on the issuance of the bonds, and some of the common documents utilized in their issuance. Along the way, there will be practical pointers that municipal attorneys should be aware of regardless of whether or not their own practice directly involves working with municipal bonds.

Bonds in General

First, what is a municipal bond? Basically, a bond is an obligation of a municipality promising to pay the original value loaned to the municipality to the holder of the bond at a date fixed in the future, with interest payments made to the holder periodically. It is an I.O.U., with interest payments. Using bonds allows a government to finance various projects, and in most cases, to finance the projects at a cost below current interest rates for similar borrowing. In addition, by issuing bonds, a city can avoid repeatedly going to a bank for loans of tens or hundreds of thousands of dollars to finance stadiums, airports, roads, bridges, buildings, parks, and other municipal projects—and in some states, financing court judgments. As may sometimes occur, not all items that a city intends to fund with bond funds actually come to fruition. New projects may be substituted for projects that had been originally intended, but the new projects must fit within what was delineated in the city's legislation authorizing the bonds, and must be of at least a useful life that fits within the calculation of average useful lives for the issue by bond counsel.

Members of a Bond Working Group

Most bond issuances involve a number of individuals working together over a period of months. Although your employer will have hired a nationally-recognized bond counsel, you should be aware that bond counsel's allegiance is to the bondholders first, and although the bondholders' and the municipality's interests are usually aligned, it is advisable to have a representative to advocate on the part of the municipality, keeping bond counsel apprised of specific laws of the municipality of which they may not be aware since they perform bond counsel services for many other issuers.

Besides bond counsel, other members of the group working on bond issuance may include: municipal finance personnel, underwriters to sell the bonds, underwriters' counsel, the city's financial advisor, the bond trustee to hold the bond funds and to enforce promises made by the city to the bondholders, disclosure counsel to advise and to prepare public communication regarding the bonds, engineers to provide feasibility reports in some cases, and an escrow agent in the case of bond refundings, discussed below. With the exception of in-house municipal staff, all other working group members are paid, usually from bond proceeds, so a potential bond issuer should evaluate whether the bond deal is large enough to justify paying the bond professionals or whether the cost of the projects should be paid out of other revenue sources instead.

Common Types of Municipal Bonds

1. General Obligation Bonds. The General Obligation Bond (also known as "a G.O. bond") is usually issued to pay the costs of permanent improvements. G.O. bonds are the most secure type of municipal bond because the government's full faith and credit is pledged to pay the interest and principal on the bonds. In the context of bonds, pledging the full faith and credit means that the government is promising to use its full taxing power to support the bonds, as well as any other revenues available to it, to pay the principal and interest on the G.O. bonds. State law typically puts a cap on the amount of general obligation debt that a municipality can legally pledge, so as not to encumber too large a percentage of tax funds. The pledge of full faith and credit leads to lower interest rates to be paid by the municipality since G.O. bonds are considered very secure.

2. **Revenue Bonds.** Revenue bonds are secured by a net revenue stream from ownership or operation of an enterprise or from a specific project. Unlike G.O. bonds, revenue bonds are not secured by taxes. Examples of revenue bonds include bonds for airport improvements, which may be secured by landing fees; bonds for a utility, such as a water department or electric department, secured by revenue generated from the sale of water or electricity, respectively; bonds for parking facilities, secured by parking fees; and the like. To issue revenue bonds, a municipality may be required to pledge to charge rates that will bring in enough funds to pay off debt service (which is defined as principal and interest) on the bonds. Frequently, the municipality will hire an expert to perform a rate study to assure the working group (and later, the bondholders) that rates charged will be sufficient to pay debt service on the bonds.

3. **Mortgage Revenue Bonds**. These bonds are exactly like the Revenue Bonds described above, with a lien placed on the enterprise or project to further secure payment of debt service on the bonds.

4. **Tax-Exempt Bonds**. Each of the bonds listed above may be issued on a tax-exempt basis. This means that the interest the bondholder receives periodically from the municipality will not be taxed by the federal government. Because there is no money owed on the interest by the bondholder, tax-exempt bonds are sold at a lower interest rate, making them less costly for a city to issue. There are some constraints, however, on use of assets constructed with tax-exempt bonds that include restrictions on use by private parties either through leasing, sale, or managing the asset. Running afoul of the Internal Revenue Service's restriction on use of and payments for tax-exempt bond-financed property by private persons could cause the bonds to lose their tax-exempt status retroactively to the day they were issued. For this reason, contracts involving the use of such assets must be monitored.

5. **Taxable Bonds**. Each of the bonds listed in Numbers 1 through 3 above may also be issued on a taxable basis. Despite having to pay higher interest for taxable bonds, a city might prefer to issue taxable bonds if it intends to have the bond-financed property used by private parties through either lease, sale, or management. Taxable bonds are also used for financing economic development projects since the ultimate goal of those types of projects is to benefit private businesses.

6. **Certificates of Participation.** A Certificate of Participation (COP) is a bond substitute where an investor purchases a fractional interest in a lease of real property, and investors are paid lease revenues instead of interest. The COP is secured by the property being financed, and if the holders are not paid, then their only recourse is for the trustee to foreclose on the asset being financed. In the case of COP's, the municipality will appropriate the funds to pay the debt service annually, so the largest amount of money that investors could recover in a default is the current annual appropriation of debt service. A COP arrangement may be preferable to issuing bonds when a city has reached its state-mandated limits on general obligation bonds but still needs to construct a project, such as a building or a stadium, although the cost of issuing COP's is higher than the cost of issuing bonds given that investors will need to be paid a higher rate of return because this method of financing leaves them less secure. COP's can be issued on a tax-exempt or taxable basis.

7. **Bond Anticipation Notes**. If financing is needed on a short-term basis, and bonds are anticipated to be issued during the next year or two, then a city can issue short-term notes that will be paid off when the bonds are issued. Notes are subject to the same rules and follow the same procedures as actual bonds, with the difference being the length of time the notes are outstanding. Bond anticipation notes can be secured by tax dollars as a general obligation of the City or by a revenue stream, depending upon the type of bond that will replace the notes.

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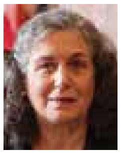

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8. Refunding Bonds. Any of the bonds listed in Numbers 1 through 3 may be refinanced to achieve savings on interest rates. In a refunding, an escrow agent holds the proceeds of the new refunding bonds (which have been issued at a lower interest rate); when the original bonds become due, the proceeds of the new refunding bonds are used to pay off the original bonds. The refunding bonds are considered a new bond issuance, and a working group convenes to perform the same functions as in any other bond issuance. Because of the costs involving bond professionals for the new refunding bonds, interest rates on the refunding bonds should render sufficient interest payment savings to justify the time and expense involved in a new bond issuance.

Bond Documents

The first official document in any bond deal is the legislation authorizing the bond issuance. The legislation will state the parameters under which the bonds will be issued and specify the types of projects to be financed. It will be prepared by bond counsel, who will ascertain whether the proposed projects are bond-eligible. As part of the official bond documents, the City clerk will opine that the legislation is valid and in effect at the time of the bond issuance.

Necessary bond documents will include a trust indenture setting forth the terms under which the bond trustee will hold the bonds and by which the city will make certain promises or pledges that the bond trustee will be charged with enforcing, if necessary. Oftentimes, the bond trustee is also the bond registrar and paying agent, so those duties may be delineated in the trust indenture as well. If a separate entity is the registrar and paying agent, then there will be a separate registrar and paying agent agreement to ensure that bondholders receive interest at the appropriate times. If there is a mortgage taken in the case of revenue bonds, the terms and conditions of the mortgage will also be set forth in the trust agreement.

The bonds are sold through distribution of a preliminary offering statement that is prepared and vetted by the working group, and signed by the city, and distributed by the underwriter. The official statement provides, among other things, information on the city itself, its finances, the plan of finance for the bonds in question, the security for the bonds and the sources of payment of debt service, information about the proposed projects to be funded, a list of other material city financial undertakings, risk factors, litigation matters, tax matters, and any other matters that are considered relevant to discuss in connection with the sale of the bonds. Upon the sale of the bonds, the preliminary offering statement is updated and released as an official statement.

The bond professionals also provide official opinions concerning the validity of the sale of the bonds. Opinions are typically issued by the municipality's chief legal officer, bond counsel, underwriter's counsel and disclosure counsel. In addition, various certificates are issued by the parties attesting to certain facts relevant to the bond issuance. If there was an expert report, it will be included in the bond documents as well.

In addition, the city will execute an agreement containing a duty to disclose material adverse events that arise while the bonds are outstanding. The Securities and Exchange Commission has specified what types of events must be disclosed, and at a minimum the disclosure agreement must require the listed events to be disclosed if they occur. In addition, the disclosure agreement will provide for disclosure of routine financial information about the city on an annual basis as set forth in the disclosure agreement. The required disclosure will be made on a website set up by the Municipal Securities Rulemaking Board and will be available for public viewing.

CONCLUSION

This article has summarized some basic concepts involving municipal bonds. Bonds are an important source of obtaining funds for financing municipal projects, but to use bonds effectively, a city must balance the costs of the bonds and restrictions on spending proceeds of bonds when using this source of funds.

NOTES

1. For each of the types of bonds and other financings listed in this article, interest payments may be either fixed rate or a variable rate.
2. Typically, one underwriting firm will take the role as "lead underwriter" for a group of underwriters and will be the sole underwriter to participate in the working group.
3. In some working groups, the underwriter's counsel or bond counsel perform the job of disclosure counsel in addition to their customary duties.
4. Pledging tax money means that pledged tax revenues received by the municipality must first be used to pay interest and dividends on bonds before paying for any other municipal expenses.
5. Proposals to eliminate tax-exempt bonds are regularly floated. Even if tax-exempt bonds were eliminated going forward, already-issued tax-exempt bonds would continue to be outstanding for years to come, and the rules relating to use of tax-exempt bonds would presumably continue to apply to those outstanding bonds.

Practice Tips *cont'd from page 33*

you are more likely to be disappointed if your client orders something that is not on the menu.

Tip #8: Inject a Reasonable Amount of Emotion

Discussing a legal issue with a client can sometimes lead an attorney to being too objective about a matter. As a counselor, attorneys can sometimes try to be above the emotional turmoil a particular issue presents. It is true this can be very helpful, especially when trying to "read the room" composed of a governing body. But sometimes a little emotion, be it humor or frustration, or even disappointment, can be helpful to show this legal issue has a real impact on officials, employees, vendors, or residents. This is certainly dependent on the matter at hand, the background, the body itself, or the attorney. It needs to be based on real emotion. Faking a feeling is counterproductive and will probably land flat. But suppressing a real feeling may cause others to think they should, too. And nothing engages a client more than feelings of anger, frustration, gratitude, or disbelief. If the emotion is reasonable, it is okay to validate it.

CONCLUSION

Effective communication is not always easy, but it rewards those who persevere. It requires adequate preparation, a predisposition toward teaching others, a willingness to engage on an intellectual and emotional level, and a degree of social intuition. It can seem frustrating when compared to consulting with a single decisionmaker, but often the varied experiences and backgrounds that a collective governing body brings to a meeting with its attorney contributes to a more robust and thorough discussion. And if that is the ultimate result of the consultation, then the government attorney has truly served the city well. ML

Inside Canada *cont'd from page 23*

law was arbitrary or discriminatory, reaffirming that the City has broad legislative authority to regulate local matters. The Court was satisfied that the judge had properly assessed whether the By-law was passed in good faith and concluded that it served a legitimate public interest. The Appellants argued the By-law was *ultra vires* and unconstitutional, claiming it conflicted with provincial and federal law.

The Court disagreed, emphasizing that municipal by-laws should be interpreted as consistent with senior legislation unless a direct conflict exists *Croplife Canada v. Toronto*, 2005 ON CA 15709. The Appellants failed to demonstrate that any provision of the By-law contravened or contradicted the Charter or other provincial statutes. Further, the Court noted that municipalities have broad discretion in how they implement policies, including phased rollouts such as pilot projects. The By-law's selective application to certain wards did not render it invalid. As the application judge found, there was no evidence to support the Appellants' suggestion that the pilot project improperly targeted student housing. Since the Appellants did not establish any legal basis for quashing the By-law, the appeal was dismissed.

Court Upholds City's Right to Protect Public Trails
Melson v. Kawartha Lakes (City), 2025 ONSC 752 https://canlii.ca/t/k98gw

The Applicant owned property adjacent to the Victoria Rail Trail (Trail), a recreational corridor maintained by the City of Kawartha Lakes (City). The Applicant operated a peat extraction business that required industrial trucks to cross the Trail. However, the entrance he used was unauthorized by the City, creating safety risks for pedestrians, cyclists, and snowmobilers using the Trail. The Applicant continued to use the unauthorized entrance, despite multiple demands from the City to cease. In response, the City commissioned a land survey in 2019 to confirm property boundaries and, in 2020, installed concrete bollards to block access. The City maintained that the Applicant had a lawful access point via Superior Road but was not using it. In 2021, the Applicant filed an application seeking a declaration that the bollards trespassed on his property and an injunction for their removal. However, the Applicant failed to properly file or serve his application materials, leaving the Court to proceed based on the City's evidence.

HELD: Application dismissed.

DISCUSSION: The City's land survey confirmed that the bollards were placed entirely on public land. The Applicant provided no survey evidence to support his trespass claim and later shifted his argument, asserting a prescriptive easement over the Trail. To establish a prescriptive easement, an Applicant must show continuous, uninterrupted, open, and peaceful use for at least 20 years without permission. However, aerial photographs demonstrated that the entrance point used by the Applicant did not exist before 2013, failing to meet the 20-year requirement. Additionally, the City had issued Trespass Notices in 2018 and blocked access in 2020, further breaking any claim of uninterrupted use. The Court held that while it dealt with this application on its merits, but was also satisfied that the application was moot, as the Applicant had lost possession of the property due to a mortgage default, and the mortgagee had consented to the bollards remaining in place. Application dismissed. ML

AI *cont'd from page 25*

promote accurate information and build community trust.

AI tools like OpenAI's GPT-based models can generate drafts for press releases and public statements, allowing municipalities to get ahead of the narrative, respond to public concerns, and ensure consistency in messaging. AI can analyze public sentiment and media coverage, helping PIOs craft more effective communication strategies.

In response to civil unrest, the city of Seattle used AI-powered analytics to assess social media conversations, identifying key concerns and shaping their public statements accordingly. AI-enabled tools helped the PIO's office craft timely responses, ensuring that the municipality-maintained control over its public messaging (Seattle.gov, 2020).

CONCLUSION

Artificial intelligence presents numerous opportunities for municipal legal professionals to enhance the efficiency and effectiveness of their work. From legal research to document drafting, motion practice, and deposition management, AI offers practical solutions that streamline processes, reduce costs, and improve outcomes. As municipalities continue to embrace AI technologies, legal departments can expect to see substantial improvements in their ability to manage legal risks, improve compliance, and serve the public interest more effectively.

However, it is critically important to remember that a human must always remain in the analytical loop when using AI. All information obtained using AI must be checked to ensure the accuracy of the information. Do not make the error of simply relying on the information provided by AI. As stated above, information from AI is the starting point, not the end. By incorporating AI into municipal legal practice, attorneys and public officials can harness the power of technology to better navigate the complexities of modern legal challenges. As AI continues to evolve, it is likely that its role in municipal legal practice will expand, offering even more advanced tools to support the work of municipal legal teams and improve service delivery to communities. ML

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John G. Peters, Jr., Ph.D. a principal in John

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REFERENCES

1. Edem Gold, *The History of Artificial Intelligence from the 1950s to Today*, FREECODEAMP.org, Apr. 10, 2023, https:www.freecodecamp.org/news/the-history-of-ai/
2. Retrieved from https://www.unf.edu/ofe/ai/definitions.html#:~:text=Artificial%20Intelligence%20(AI),learning%20and%20natural%20language%20processing.
315 U.S. Code §9401(3).
4. Cal. Government Code §11546.45.5; Generative artificial intelligence: training data (https://legiscan.com/CA/text/AB2013/id/3023192 transparency.)
5. City of Riverside. (2024, July). Artificial Intelligence (AI) Policy. Riverside, CA: https://riversideca.legistar.com/View.ashx?M=F&ID=13570074&GUID=30A6F6F0-22D2-420D-9FF4-D23EBE58E0EE
6. National Institute of Standards and Technology. Artificial Intelligence. https://www.nist.gov/artificial-intelligence.
7. NAIIA 2020
8. American Civil Liberties Union (www.aclu.org).
9. "FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence". *The White House*. 2023-10-30. Retrieved 2023-11-12.
10. Little Hoover Commission. (2024, December). Artificial Intelligence and California State Government Report #284. Sacramento: State of California.
11. Farley, R. H. (2024). Artificial intelligence-Deepfakes and Child Abusers. Retrieved from Artificial%20Intelligence/2024--MIT%20AI%20Course/2024--Artificial%20Intelligence--Deepfakes%20and%20Child%20Abusers.pdf
12. AI Glossary for Executives. Retrieved from Artificial%20Intelligence/2024--MIT%20AI%20Course/Module%204/AI%20glossary%20for%20executives.pdf
13. Sahoda, N. (2023, March 17). Generative AI: Bridging Human Imagination & Digital Reality. Retrieved from https://www.neilsahota.com/generative-ai-bridging-human-imagination-digital-reality/
14. Retrieved from https://www.ibm.com/topics/machine-learning.
15. R Retrieved from https://www.ibm.com/topics/neural-network.
16. GreekWire, September 26, 2024.
17. Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978).
18. City of Canton, Ohio v. Harris, 489 U.S. 378 (1989).

Housing *cont'd from page 17*

Milwaukee (2024), https://www.hud.gov/sites/dfiles/CPD/documents/PRO-HousingProfiles_Milwaukee_WI.pdf.
36. Evan Casey, *Milwaukee Receives $2.1M from HUD for Affordable Housing*, Wis. Pub. Radio (June 27, 2024, 5:45 AM), https://www.wpr.org/news/milwaukee-receives-2-1m-from-hud-for-affordable-housing.
37. *Growing MKE*, City Milwaukee (last visited Feb. 12, 2024), https://city.milwaukee.gov/DCD/Planning/PlansStudies/Comprehensiveplanning/CitywidePolicyPlan/Growing-MKE.
38. City Milwaukee, Growing MKE: Housing & Neighborhoods Element of the Citywide Policy Plan 11 (2024), https://hdp-us-prod-app-comil-engagemke-files.s3.us-west-2.amazonaws.com/4817/2107/6034/2024-07-15_Proposed_Growing_MKE_Final_Draft_Plan.pdf.
39. *Id.* pgs. 44-53.
40. Nick Rommel, *Milwaukee's Proposed Zoning Overhaul Continues Public Feedback Process*, Wis. Pub. Radio (Nov. 27, 2024, 9:53 AM), https://www.wpr.org/news/milwaukee-proposed-zoning-overhaul-public-feedback.
41. U.S. Dept. Hous. & Urban Dev., PRO Housing Profile: Denver (2024), https://www.hud.gov/sites/dfiles/CPD/documents/PROHousingProfiles_Denver_CO.pdf.
42. Aldo Svaldi, *Denver Receives $4.5 Million from HUD to Expedite New Housing Supply*, Denver Post (July 12, 2024, 6:03 AM), https://www.denverpost.com/2024/07/12/denver-grant-hud-housing-construction-regulations/.
43. U.S. Dept. Hous. & Urban Dev, *supra* note 43.
44. Zvi Gutierrez et al., *Mayor Mike Johnston Delivers State of the City Address*, 9News (last updated July 22, 2024, 6:10 PM), https://www.9news.com/article/news/local/local-politics/denver-state-of-the-city-address-2024/73-ca7e1caa-852f-4451-b77f-c674e84058ac.
45. U.S. Dept. Hous. & Urban Dev., PRO Housing Awards Fact Sheet 5 (2025), https://www.hud.gov/sites/dfiles/PA/documents/FY24-PRO-Housing-Overview.pdf.
46. *Id.* at 7.
47. *Id.* at 4.
48. U.S. Dept. Hous. & Urban Dev, PRO Housing FAQs 2 (2023), https://www.hud.gov/sites/dfiles/CPD/documents/PRO-Housing-FAQs-07262023.pdf; U.S. Dept. Hous. & Urban Dev, FY24 PRO Housing FAQs 4 (2024), https://www.hud.gov/sites/dfiles/CPD/documents/FY24_PRO_Housing_FAQs.pdf.
49. *Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis*, White House (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/delivering-emergency-price-relief-for-american-families-and-defeating-the-cost-of-living-crisis/.
50. *Id.*
51. NPR Staff, *All the Executive Orders Trump has Signed after 1 Week in Office*, NPR (Jan. 28, 2025, 8:27 AM), https://www.npr.org/2025/01/28/nx-s1-5276293/trump-executive-orders.
52. *Protecting the Meaning and Value of American Citizenship*, White House (Jan. 20, 2025) https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/.
53. *Protecting the American People Against Invasion*, White House (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/./
54. Nina Lakhani, *No Rebuilding Without Them: Trump's Immigration Crackdown Will Affect Disaster Recovery*, Guardian (Jan. 29, 2025), https://www.theguardian.com/us-news/2025/jan/29/trump-immigration-disaster-recovery.
55. *See* David Alire Garcia, et al., *Trump Pauses Tariffs on Mexico and Canada, but not China*, Reuters (Feb. 3, 2025, 7:27 PM), https://www.reuters.com/world/us/trump-says-americans-may-feel-pain-trade-war-with-mexico-canada-china-2025-02-03/. As of the date this Article was drafted, tariffs against Mexico and Canada have been delayed roughly one month, while tariffs levied against China persist. *Id.*
56. Erica York, *Trump Tariffs: Tracking the Economic Impact of the Trump Trade War*, Tax Found. (Feb. 11, 2025), https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/.
57. Letter from Carl Harris, Nat'l Assoc. of Home Builders, Chair, on Tariffs on Building Materials from Canada and Mexico to President Trump (Jan. 31, 2025), https://www.nahb.org/-/media/NAHB/advocacy/docs/letter-to-president-potential-tariffs-013125.pdf?rev=4f33c6137e9846b1866e4692241d2a1d&hash=C2AEFB98FFB519145B3C4DF50296B2B8.
58. H. Blair Kincer and Mark O'Meara, *A Look at the LIHTC: Past Pricing Trends, the Current Market and Future Concerns*, Novogradac (March 3, 2020), https://www.novoco.com/periodicals/articles/look-lihtc-past-pricing-trends-current-market-and-future-concerns.
59. *LIHTC Equity Pricing Trends*, Novogradac (last visited Feb. 12, 2025), https://www.novoco.com/resource-centers/affordable-housing-tax-credits/lihtc-equity-pricing-trends.
60. *Read: Draft Options for G.O.P. Cost Cuts for Tax Bill*, N.Y. Times (Jan. 23, 2025), https://www.nytimes.com/interactive/2025/01/23/us/politics/republican-tax-spending-cuts-options.html?searchResultPosition=3.

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