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WEARABLE TECHNOLOGY IN THE WORKPLACE

MODEL GUIDELINES FOR THE USE OF ARTIFICIAL INTELLIGENCE

CROSSING THE RUBICON

What the Proposed Rewrite of Uniform Guidance Means



LETTER FROM THE PRESIDENT

By Susana Alcala Wood
City Attorney
San Jose, California

Dear Colleagues,

I hope these summer months bring you the opportunity to unwind a little, perhaps get away for a few days, spending time away from the office in pursuit of whatever fuels your soul. Even if you only get a few days (or a weekend) off, give yourselves permission to step back a little and recharge. Our high-pressure, challenging jobs require us to be at our best, and just like you can't pour from an empty pot, we also can't provide sound advice from an overtaxed brain.

Taking a break from our desks or computer screens can also provide an opportunity to reflect on other aspects of "the job" that we handle as the crisis arises, but for which many of us have not planned a course of action in advance. In that vein, I recently had the opportunity to serve on an interview panel for a neighboring city recruiting a new city attorney. As usual, we were given a set of questions prepared by the recruitment firm, and each of us was assigned specific questions to ask. One of the questions was on ethics – specifically asking the candidates whether they had ever faced a situation that challenged their ethical and professional responsibilities, and, if so, how they had handled it. I found myself envying the sole candidate who responded they had never been put in that situation – and completely empathizing with the candidates who shared their real-life experiences with the panel. It was a good opportunity for me to reflect and plan for such a situation and understand my professional obligations both to my client and my own licensing requirements.

Public agency attorneys operate in a completely different legal realm than other attorneys. For attorneys representing cities, counties, school districts, and other public entities, the ultimate client is the public entity itself, and by extension, the community it serves. This is the ethical framework that anchors our clear rule of professional conduct because while individual elected officials, city managers, county executives, and department heads can come and go, the public agency attorney serves as a permanent anchor of stability and legality, ensuring the entity acts within the boundaries of local, state, and federal law.

While infrequent, one of the most challenging matters we can confront as public agency attorneys arises when an official or employee makes a request or takes an action that violates the law, breaches an ethical duty, or threatens substantial harm to the public agency. Our professional obligation to the public entity does not allow us to simply stay silent or accommodate the request to protect our jobs. ABA Model rules make it clear that if a public attorney knows that an officer or employee is engaged in action, intends to act, or refuses to act in a matter that would violate a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. Knowing the rules that apply to us is the easy part. What we do next, how we go about it, and in what order– that is the hardest part, and why thinking it through and preparing your approach ahead of time is something that is worth the time to plan. It's like knowing where the fire exits are. You hope you never need to use them – but when the alarm goes off, you know where to go.

What we do first usually depends on whether an employee, department head, or chief executive is involved, because our obligations to the client require us to refer the matter to a higher authority within the organization. Ultimately, for us, we may need to bring it to the attention of the elected body itself. If that becomes necessary, planning your comments and materials is important

to fulfill your professional obligation without becoming part of the issue and potentially losing credibility. And in the unlikely scenario where the elected body does not take action to prevent a situation likely to result in substantial injury to the organization, we must determine whether our ethical and professional responsibilities require us to take further action to protect our clients' interests. While the ABA Model rules authorize attorneys in some instances to report information to outside agencies, various states could have different requirements. For example, those of us practicing in California are required by state law to maintain inviolate the confidences of the client "at every peril to himself or herself" and prohibit reporting to outside authorities except to prevent a crime likely to result in death or substantial bodily harm. So, not many options. But you can do things like encourage and urge compliance. Ultimately, we also need to plan to refuse to take action that violates the law or our professional ethical requirements, and, if necessary, withdraw from representation or resign from our positions. Having a plan allows you to navigate a very difficult situation in the most straightforward manner possible.

Part of your planning is to leverage colleagues' expertise and recommendations on this topic. Every year at IMLA's annual conference, one of the most well-attended standing-room-only sessions is the "Councilmembers Gone Wild" session, where colleagues share real "war stories" about situations they encountered and how they navigated them. It is often hilarious, frequently mind-blowing, always relatable, and, at the end of the session, the best hour of therapy you will receive.

I hope to see as many of you as possible in Salt Lake in September, where we can learn and share with each other and receive some bonus group therapy in the process.

Take care of yourselves,
Susana

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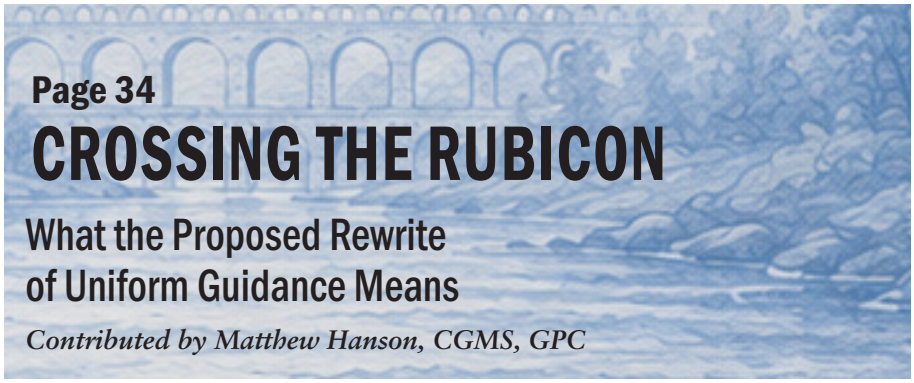
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LETTER FROM THE EXECUTIVE EDITOR

By Amanda Karras
IMLA Executive Director
Rockville, Maryland

A SUMMER OF CELEBRATIONS

As this issue of *Municipal Lawyer* goes to press, we are in the height of summer. That means celebrations of Canada Day and Independence Day (including the very exciting Semiquincentennial in the United States, which I still can't quite pronounce), backyard barbecues, community gatherings, neighborhood parades, and, yes, fireworks displays (with the accompanying noise complaints, I'm sure).

We are also being treated to an exciting FIFA World Cup spanning across North America. There are sixteen host cities, eleven of which are in the U.S., two in Canada, and three in Mexico. To pull off these spectacular events, our members in these cities, as well as neighboring communities, have been working tirelessly for years alongside community partners, host committees, state and federal partners, and other local governments to ensure safe and memorable events.

As we watched 5,000 members of the Scottish "Tartan Army" march down Lansdowne Street in Boston toward Fenway Park after their victory wearing their kilts, playing their bagpipes, and drinking more beer than even Red Sox fans drink after beating the Yankees, I can't help but think about all of the hard work that goes on behind the scenes at all of these cities and surrounding communities to pull off these successful events. Whether it's the police ensuring public safety, the public works department cleaning up messes left behind, and, of course, you, the local government attorneys, who are needed to review contracts, secure federal funding (sometimes through litigation), help with permits, and support the public safety aspects of these events. So much of the local government attorneys' work is behind the scenes and underappreciated, but I wanted to let you know that here at IMLA we see and appreciate you!

IMLA has supported our members through this work with regular working group calls for World Cup host cities, as well as our federal funding calls. One of the most beneficial aspects of IMLA membership is the ability to collaborate with others across local governments facing similar challenges. We provide those opportunities regularly through our working groups, webinars, and in-person conferences and meetings. Our next opportunity to meet and learn from each other in person will be at IMLA's annual conference in Salt Lake City from September 23rd to 27th. This conference will be memorable, and you won't want to miss it. We are putting together an excellent program and accompanying networking opportunities. I hope you'll join us! We will also host a comparative law program in Montreal from November 4-6th, bringing together our U.S. and Canadian members for an outstanding event to review how our laws are similar and how they differ, and to seek innovative solutions to complex problems through this collaboration. You can learn more about either program on our website and register there.

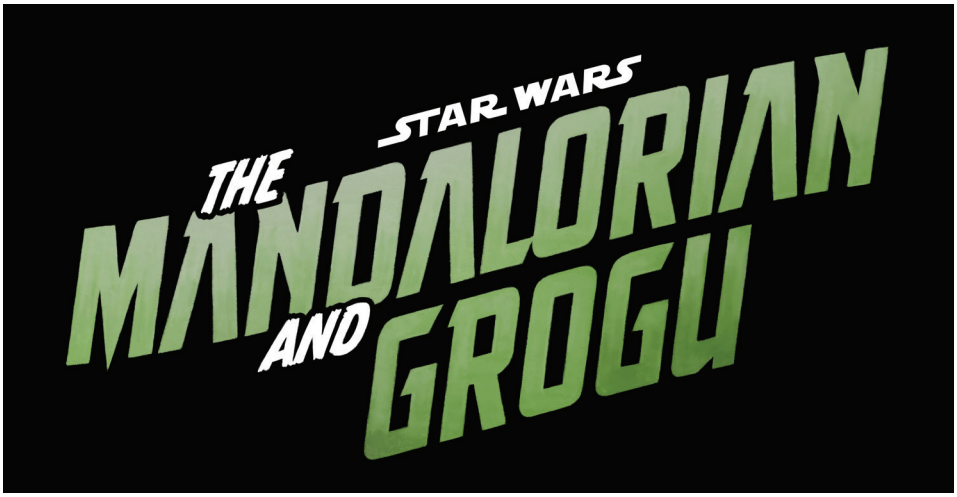
I look forward to continuing to provide our members with opportunities to collaborate, celebrate success, learn from each other, and find "their people" through our large network of local government attorneys. In the meantime, I hope you all enjoy a wonderful summer, whether it's catching a World Cup game or enjoying a neighborhood parade (with or without bagpipes).

Warm regards,
Amanda

MOVIE REVIEW

Is That Legal?

Contributed by
Darren Shulman
City Attorney
Upper Arlington, OH





Still from Lucasfilm's THE MANDALORIAN & GROGU. Photo courtesy of Lucasfilm. © 2025 Lucasfilm Ltd™

The *Mandalorian and Grogu* is Disney's latest Star Wars movie. After the *Solo: A Star Wars Story* misfired and people raged about the sequel trilogy, Disney dialed back its Star Wars releases and focused on shows for its Disney+ streaming platform with varying degrees of success. As a result, *The Mandalorian and Grogu* is a theatrical release based on characters from a show you need a subscription to watch. Thankfully,



...where the bounty hunter statute "operates to provide(s)... a shield from criminal or civil liability for ... trespass. It does not... negate the bounty hunter's status as a trespasser or licensee... one cannot assert a privilege as both a shield and a sword.

you can enjoy this movie without having seen the show or keeping up with the increasingly complicated Star Wars timeline, which is full of prequels, sequels, and projects jammed in between everything else. What you need to know: the Mandalorian (Pedro Pascal) is a bounty hunter (who looks a lot like classic character Boba Fett), and Grogu is a baby Yoda with some force powers.[1]

The Mandalorian and Grogu don't bring anything revolutionary to Star Wars, but it effectively incorporates easter eggs and characters from other Star Wars projects. This makes it feel like an authentic part of the universe without requiring you to have seen anything to understand what is going on. For example, having grown up on *The Return of the Jedi* (1983), seeing more of the Hutts was awesome, but you don't need to know who Jabba is to enjoy the movie.

There isn't much to the plot, but the movie is fun. There are some neat set pieces and action sequences that make this worth seeing on a big screen. With one notable exception, I had less CGI overload than prior Star Wars movies. Grogu appears to be more animatronic than CGI, and he's adorable. Babu Frik and his crew of mini mechanic dudes were also scene stealers. Aside from those characters, the creatures in this movie tend to be more menacing than cute, so take that into account if you are watching with younger children.

If you like the original Star Wars movies but haven't been into the new stuff, there's a good chance you will enjoy *The Mandalorian and Grogu*. In between fight scenes, I found myself pondering the legalities of bounty hunting, so I researched tips for the Mandalorian (also known as Mando) if he relocates to America from a galaxy far, far away.

Is The Mandalorian technically bounty hunting?

Bounty hunting is typically defined as the practice of tracking down someone who failed to appear in court.[2] Mando may need to shift his business model if he comes to America, because his bounties - former members of The Empire – are not related to court appearances. They are just bad guys the New Republic[3] wants to question.

Can The Mandalorian pursue his targets across state lines?

In the movie, Mando travels to different planets to track down his targets. Way back in 1872,[4] the Supreme Court found that bounty hunters may pursue bail jumpers across state lines.[5] With that said, Mando must adhere to state licensing requirements. For example, people "seeking to conduct the business of bounty hunting in [New Jersey] must be licensed by the Superintendent of [the New Jersey State Police]"[6] In Virginia, it is a Class 1 misdemeanor to engage in bail bonding for profit without a valid license.[7] In contrast, Montana does not require a license to engage in bounty hunting, so the Mandalorian would be free to ply his trade there.[8]

Is the Mandalorian allowed to break the law to get his target?

Many of Mando's missions get "messy" – stuff ends up blown up, and people end up dead. In addition to complying with licensing requirements, Mando must comply with the laws of the state in which he operates.[9] Put another way, there is no shield for bondsmen for violations

of the law they commit while apprehending bail jumpers, so Mando will want to keep the destruction to a minimum.

California has an additional requirement for foreign bondsmen. Prior to removing someone from the state, a bondsman must appear before a magistrate and get an arrest warrant. Then, after the arrests, there is an additional evidentiary hearing before the magistrate with the fugitive present.[10]

Can the Mandalorian sue a property owner if he gets bitten by their dog?

Bounty hunting can be dangerous, and (minor spoiler) Mando gets bitten by one of the creatures he tangles with. Many states have a strict liability dog bite statute.[11] Unfortunately for Mando, a strict liability argument would not work in Ohio, where the bounty hunter statute[12] "operates to provide a privilege to a bounty hunter as a shield from criminal or civil liability for a criminal or civil trespass. It does not, however, operate to negate the bounty hunter's status as a trespasser or licensee as a means to give the bounty hunter an advantage in the pursuit of recovering money damages. Such an allowance would be contrary to well-established Ohio law—one cannot assert a privilege as both a shield and a sword.[13] As a result, at least in Ohio, the Mandalorian could not recover if he is bitten by a dog (or other creature) while bounty hunting.

Would evidence be admissible?

If the Mandalorian finds contraband when he catches someone, would that be admissible evidence? In *Commonwealth v. Elmobdy*, bail bondsmen recovered drugs when they apprehended their target.[14] The court held that "bondsmen acting to retrieve a suspect who has violated bail are not public officials or state agents" and as such, declined to suppress the evidence they uncovered.[15] With that said, this may depend on who hires the Mandalorian. In Elmobdy the bounty hunters were acting to avoid losing the bail bond that was posted on the person's behalf. As such, the apprehension was undertaken on their own initiative and for their own purposes, and therefore was not state action. The fact that The New Republic[16] hires Mando to catch people could change this analysis.

Ultimately, Mando would need to change how he operates to relocate his business to America. While taking on different jobs, working on getting licensed, and reducing the carnage he leaves in his wake would improve legal compliance, it would make for a less entertaining movie.

Score:

A- for exceeding expectations. ML

Darren Shulman is the city attorney for Upper Arlington, Ohio. A graduate of Northwestern University and Harvard Law School, Darren previously served as the City Attorney for Delaware Ohio, Associate Legal Counsel for the Ohio Department of Administrative Services, and as an Assistant Prosecuting Attorney for the Montgomery County Prosecutor's Office. When Darren was the Delaware City Attorney, he co-hosted a movie review show called *Through the Lens* on local radio, which is now a podcast. Writing movie reviews through a legal lens allows Darren to combine his love of movies with his profession.

Notes:

1. Before we learned his name, everyone just called Grogu "Baby Yoda."
2. *See* N.J. Admin. Code § 13:55B-1.3; Ohio Rev. Code Ann. § 2713.22; La. Admin. Code tit. 37, pt. XIII, § 4903.
3. Mando gets his missions from a character played by Sigourney Weaver, adding *Star Wars* to the list of epic franchises she has appeared in, including but not limited to, *Alien*, *Avatar*, and *Ghostbusters*. She also appeared in Marvel's Netflix series *The Defenders*.
4. This is fitting given the classic *Star Wars* introduction: "A long time ago ...." *Star Wars: Episode IV—A New Hope* (Lucasfilm Ltd. 1977).
5. *Taylor v. Taintor*, 16 Wall. 366, 83 U.S. 366, 371, 21 L.Ed. 287 (1872) (explaining that a bounty hunter may pursue a principal into another state and break into his home in order to apprehend the principal).
6. *Said v. N.J. State Police*, No. A-1620-23, 2026 WL 1205590, at *5 (N.J. Super. Ct. App. Div. May 4, 2026). *See also* Fla. Stat. §648.30.
7. Va. Code Ann. §9.1-185.18.
8. *Mitchell v. First Call Bail & Sur., Inc.*, 412 F. Supp. 3d 1208, 1214 (D. Mont. 2019)("Montana law allows commercial bond sureties to arrest and surrender those who have failed to appear in court. Mont. Code Ann. § 46–9–510. Montana otherwise does not impose a license requirement or regulate the practice of bounty hunting.").
9. *Lund v. Seneca Cnty. Sheriff's Dep't*, 230 F.3d 196, 198 (6th Cir. 2000)("The bondsman may be authorized under the law of the state where a bond is made to retrieve bail jumpers, but he must abide by the law of the state he enters to pursue his fugitive. Federal constitutional law does not preempt state law or immunize bondsmen from violations of local law. Plaintiffs' argument that "the bondsman is basically permitted to break the [local] law to rearrest his fugitive" is simply wrong.)
10. Cal. Penal § 847.5.
11. *See e.g.*, Ohio Rev. Code Ann. § 955.38(B); Ind. Code § 15-20-1-3; Wash. Rev. Code § 16.08.040, N.J. Stat. Ann. § 4:19-16.
12. Ohio Rev. Code Ann. § 2713.22
13. *Mota v. Gruszczynski*, 2012-Ohio-275, ¶ 18, 197 Ohio App. 3d 750, 756, 968 N.E.2d 631, 636.
14. *Commonwealth v. Elmobdy*, 823 A.2d 180, 183 (Pa. Super. Ct. 2003).
15. *Id.* at 186.
16. Basically the government that the rebels set up after defeating the empire. Not to be confused with *The New Republic Magazine*, which, to the best of my knowledge, does not hire intergalactic bounty hunters.

2026 IMLA 91ST ANNUAL CONFERENCE

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WEDNESDAY, SEPTEMBER 23-SUNDAY, SEPTEMBER 27, 2026

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https://imla.org/annual-conference/

IMLA Nominating Committee for 2026 Elections

Service Opportunities: 2026 Elections

Pursuant to the IMLA By-Laws, IMLA is announcing the 2026 Nominating Committee. The Committee encourages people interested in being nominated for Vacant Positions on the IMLA Board of Directors and for IMLA Regional Vice Presidents to make their interest known to the Committee.

In addition to filling vacancies, the Committee is charged with nominating the Board's officers: including, Treasurer and President-elect. Some members of the Board will be term limited and cannot seek reelection. As a result, there will be a vacancy or vacancies open. It is IMLA's goal to have a Board that represents the organization's diversity of region, gender, race, age and ethnicity and the Board welcomes all who wish to serve. Unlike many nonprofit boards, IMLA does not require Board members to make financial contributions. Instead, it seeks individuals who are committed to advancing its mission and helping to grow its membership and participation in its programs.

Nominating Committee

Dawn McIntosh, Chair
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Long Beach, California

Patrick Baker
Patrick W. Baker Law, PLLC
North Carolina

Tyrone Cooper
Retired City Attorney
Texas

Christian Rinehart
General Counsel
Oklahoma Municipal League

Jennifer Schneier
General Counsel
North Carolina League of Municipalities

Vacant Positions This Year Include:

1 open position on the IMLA Board of Directors

3rd Circuit
Regional Vice President

8th Circuit (North)
Regional Vice President

9th Circuit (North)
Regional Vice President

9th Circuit (South)
Regional Vice President

10th Circuit (South)
Regional Vice President

A current copy of IMLA's By-Laws, which describe the duties and qualifications for service on IMLA's Board of Directors and IMLA's Regional Vice Presidents, can be found at https://imla.org/imla-by-laws/.

This year, the nominating process will be similar to last year's. The Nominating Committee will be conducting Zoom interviews prior to the Annual Conference and will introduce its slate of nominees at its meeting during the Annual Conference. It is important to hear of your interest as soon as possible to allow for the Zoom interviews to be set up. Our hope is to reduce the amount of time members must spend away from our educational programming and to thoroughly consider each applicant. In applying, the Committee hopes that you can offer the Committee an explanation about how you can advance the mission of IMLA and increase its membership and attendance as well as innovative ideas for advancing the interests of our membership. Applications can be found online at https://imla.org/nominating-committee/. M.

HELPING LOCAL GOVERNMENT NAVIGATE SHIFTING FEDERAL LANDSCAPES

In a time of extraordinary change at the federal level — including the issuance of 142 Executive Orders in just the first 100 days of the current administration — local governments are facing new and often complex legal challenges. From dramatic changes to federal funding frameworks, to shifts in immigration enforcement and evolving standards for diversity programs, local government lawyers are on the front lines of interpreting and responding to legal uncertainty that directly affects their communities. As the oldest and largest organization devoted to local government lawyers, the International Municipal Lawyers Association has stepped up to meet the moment.

IMLA is here to help.

IMLA

INSIDE CANADA

The Golden Rule, Land Use, Easement Damage, Abnormal Disturbances, and One Bite at the Cherry

Contributed by
MCM Consulting and Legal Services
Kamloops, BC



REGULATORY CASES ARE NOT EXEMPT FROM THE "GOLDEN RULE" APPLIED IN CRIMINAL CASES.

R v. Eau Claire Distillery Ltd, 2025 ABCA 331

https://canlii.ca/t/kfn3d

The Deputy Fire Chief and Safety Codes Officer ("SCO") for the Town of Turner Valley served Eau Claire Distillery Ltd. ("Eau Claire") with an order directing them to provide an assessment indicating the extent of hazards in their building and their processes to allow the SCO to determine Eau Claire's compliance with the Fire Code. Eau Claire did not comply with the order by the deadline of January 31, 2021. On March 1, 2021, Eau Claire was served with an Information charging that on or about February 1, 2021, it had contravened the *Safety Codes Act*, RSA 2000, c S-1 ("Act") by failing to carry out the actions required by the order. Eau Claire was convicted on February 24, 2023. Relying on s. 67(5) of the Act, which states that a person who is guilty of an offence

Conley appealed the City's decision to grant the development permit to the SDAB arguing, among other things, that this was an eight-unit apartment building disguised as a townhouse.

is liable on conviction for each day or part of a day on which the offence occurs or continues, the Crown argued that Eau Claire should be fined for each day from February 1, 2021 up to and including the date of conviction on February 24, 2023. Relying on the "golden rule" from *The Queen v Côté*, 1977 CanLII 1 (SCC), at 13 ("*Côté*"), that an accused must be provided with enough information to be reasonably informed of the transaction alleged against them, the trial judge refused the Crown's request. Because the Information stated that Eau Claire failed to comply with the order from February 1, 2021, Eau Claire had only been convicted with an offence related to the period of time from February 1, 2021 to March 1, 2021, when the Information was laid. The Crown appealed the sentence to the Court of King's Bench and further argued that Eau Claire should be liable for daily fines until the date the SCO confirmed that Eau Claire had come into compliance on November 7, 2023. The reviewing judge suggested that the "golden rule" from *Côté* did not apply to strict liability offences, and fined Eau Claire for each day as suggested by the Crown. Eau Claire appealed the sentence.

Held:

Appeal allowed and original sentence restored.

Discussion:

The Court held that strict liability offences are not exempt from the "golden rule" in *Côté*. The Crown commenced proceedings against Eau Claire by laying an Information using the procedure set out for summary conviction offences in the *Criminal Code*, RSC 1985, c C-46 ("CC"). Sections 581(3) and 795 of the CC require an Information to contain sufficient detail of the circumstances of the offence alleged to give the accused reasonable information with respect to the act or omission to be proved against them and to identify the transaction referred to. The Information laid in this case charged Eau Claire with failing to carry out the actions specified in the order on or about the 1st day of February, 2021. The Court held that based on this wording, the trial judge reasonably concluded the non-compliance for which Eau Claire had been given notice was restricted to the period between the February 1 date specified in the information and the date when the Information was laid on March 1, 2021.



Self-represented citizens not expected to articulate issues before boards as clearly as lawyers.

Conley v Calgary (City), 2026 ABCA 105

https://canlii.ca/t/kk775

Several neighbours ("Conley") sought leave to appeal the City of Calgary's ("City") Subdivision Development Appeal Board's ("SDAB") decision approving a development permit granted by the City for a single townhouse building, four secondary suites, and two detached garages. Pursuant to the City's *Land Use Bylaw* IP2007, ("Bylaw"), the neighbourhood was designated as a "Residential - Grade-Oriented

...while no easement may grant exclusive and unrestricted use of the subject land, as this would amount to a transfer of underlying title, the owners of a dominant tenement are entitled to every reasonable use of an easement for its granted purpose.

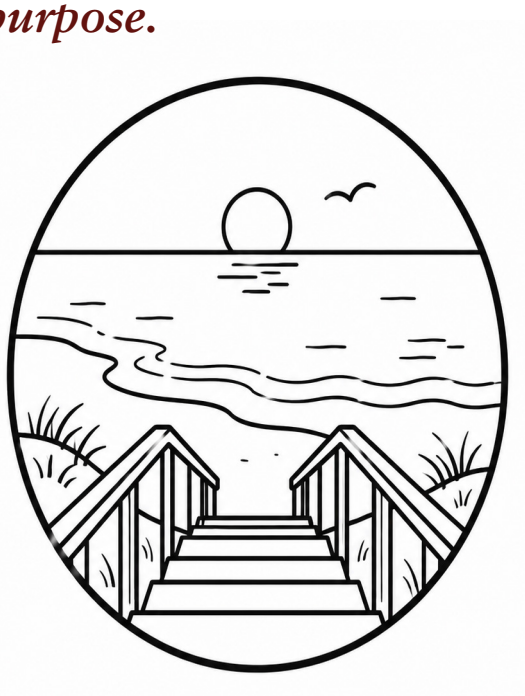
Infill" (R-CG) land use district. The proposed development was approved as a "discretionary use" and included a building with four above-grade units and four below-grade units, each of which would have its own at-grade entrance, and two detached garages. Conley appealed the City's decision to grant the development permit to the SDAB arguing, among other things, that this was an eight-unit apartment building disguised as a townhouse. The SDAB did not vary the use approved by the City. Conley sought leave to appeal on the grounds that the SDAB erred in law or jurisdiction by misinterpreting the definitions of "townhouse" and "secondary suite" in the Bylaw, by approving a development that is not allowed under the Bylaw, and by failing to provide adequate reasons for its decision. The developers argued that Conley did not raise the issue of the misclassification of the approved development before the SDAB, and that adequacy of reasons is not a standalone ground of appeal.

Held:

Permission to appeal granted on both grounds.

Discussion:

The Court held that before evaluating whether it is appropriate to make an exception to permit appellate consideration of a new issue, the Court must determine whether the issue is genuinely new in the sense of being legally and factually distinct from the issues raised at first instance. The Court accepted that it is not unusual for parties to an appeal to take a different approach on an existing point or to make additional submissions relating to the existing issue on appeal. The Court observed that this is particularly so on review of board decisions, given that many people are self-represented before a board but may be represented on the appeal. The Court agreed with the developers that Conley's specific theory of statutory interpretation regarding the definition of "townhouse" was not clearly articulated before the SDAB, but the broader issue of the applicable use under the Bylaw was. The Court went on to hold that while a challenge to sufficiency of reasons will rarely be considered a question of law of sufficient importance to warrant appellate review, conclusory reasons that fail to disclose a reasonable basis for a board's conclusion may ground appellate intervention. Where, as here, the sufficiency of reasons argument is intertwined with the interpretation issue upon which permission to appeal was being granted, there was no harm in granting permission to appeal on the sufficiency of reasons issue as well.



Possibility of damage from reasonable use of easement not unreasonable interference with landowner's rights.

Armstrong v North Saanich (District), 2025 BCCA 277; leave to SCC refused, 2026 CanLII 44898

https://canlii.ca/t/kdp4f

Armstrong purchased their property ("Lot B", the servient tenement) in 2018. At the time of the purchase, there was an easement registered on title over a 25-metre-long strip of land along the lot's western property line. This easement connects Lot A (the dominant tenement) to the beach below and is Lot A's only way to access the beach owned by the Crown. Lot A is owned by Grier and Alger ("Grier"). Grier built some stairs down to the beach on the easement without obtaining the appropriate permits from North Saanich District ("District") and

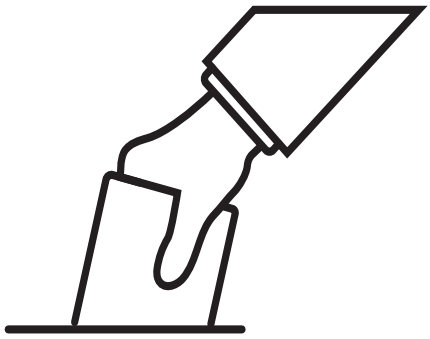
without Armstrong's permission. Following communications with both landowners, the District granted the relevant permits, subject to conditions and pending a decision from the Court as to the parties' respective property rights. The express terms of the easement grant the owners of Lot A the right to travel over the relevant portion of Lot B to and from the beach. Grier brought a petition seeking a declaration that the easement entitled them to build the staircase as a necessary ancillary right to the use and enjoyment of the easement. Armstrong brought a petition for judicial review of the District's decision to process and issue permits for the stairs and applied for an order that the stairs be removed. The petitions were heard together, and the chambers judge granted Grier's petition, dismissed Armstrong's petition, and dismissed the request for the stairs' removal. Armstrong appealed.

Held:

Appeal dismissed.

Discussion:

The Court held that while no easement may grant exclusive and unrestricted use of the subject land, as this would amount to a transfer of underlying title, the owners of a dominant tenement are entitled to every reasonable use of an easement for its granted purpose. Accordingly, the grant of an easement *prima facie* implies a grant of any ancillary rights that are necessary for the comfortable use and enjoyment of the easement in accord with its purpose. The purpose of the easement was to facilitate access to and from the waterfront on foot. The chambers judge found that the slope is quite steep in some places and did not consider it reasonable to expect the owners of the dominant tenement to risk their safety in using the easement to access the waterfront. The Court agreed and considered a right to build stairs upon the subject land was reasonably necessary for the comfortable use and enjoyment of the easement in accord with its purpose. The construction of the stairs did not offend the principle that the scope and use of an easement by the owner of the dominant tenement ought not to interfere unreasonably with the servient owner's use and enjoyment of their land. The possibility that some damage may result (or *may* have resulted) from the stairs is not, without more, sufficient to establish an unreasonable interference with the Armstrong's rights in respect of their land, since the use of many common easements carries a theoretical risk of damage. In any event, there was no evidence that any damage had occurred.



Judging the wisdom of political decisions should be left to voters, not the courts.

City of Brossard v Belmamoun, 2025 QCCA 1011

https://canlii.ca/t/kdtcc

The City of Brossard ("City") was founded in 1958 and began significant development spanning several decades. Located within the ring road close to the City of Montréal, the City focused on strengthening its commercial centres and consolidating its urban development. Belmamoun was a representative plaintiff in a class action brought by citizens residing in a section of the City. Once a peaceful rural area, this section gradually transformed to become, in effect, a transit road linking busy boulevards, one of which adjoined a shopping complex. The development and growth of the areas surrounding the section led to a significant increase in vehicle traffic, generating an increase in noise, dust, and vibration that led to the class action. The Superior Court found the City liable without fault pursuant to article 976 of the *Civil Code of Quebec* ("CCQ"), which sets out a positive obligation to tolerate normal annoyances between neighbours and to compensate for abnormal inconveniences. The City was ordered to pay damages after the Superior Court determined that the City could not rely on the common law doctrine of qualified immunity. The City appealed.

Held:

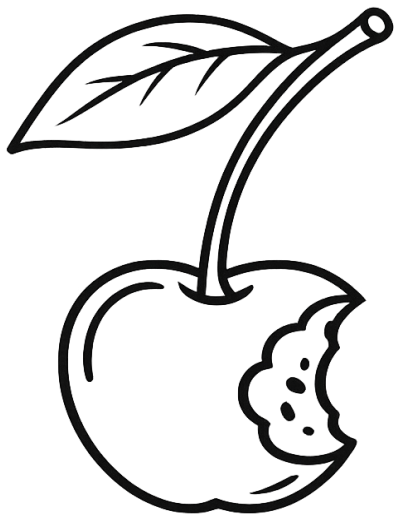
Appeal allowed and the class action dismissed.

Discussion:

The Quebec Court of Appeal determined that article 976 of the CCQ applies only to "neighbours", which requires physical proximity between the properties, and a legal link with them. That is, "both the person who suffers the abnormal disturbance and the person responsible for it must be owners or tenants of a property, or otherwise holders of a right of enjoyment or use over it," resulting in the creation of a no-fault

...the facts were clear, the narrative of events was not complicated, the evidence was not technical, and Smith's repeated lack of compliance with his legal obligation to make the building habitable in a timely way was undisputed.

liability regime [at paras 30-31]. The Court found that the increase in traffic on the section and its effects on the lives and peace of mind of its inhabitants resulted from a succession of political and regulatory decisions made by the City over several decades. These decisions were found to relate to the development, planning, and urbanization of the City's territory and did not fall within the scope of the exercise of the right of ownership required for article 976 of the CCQ to apply. The Court went on to find that even if the City's decisions could be considered related to the exercise of the right of ownership, the City could rely on the common law doctrine of qualified immunity. Qualified immunity applies to fundamental policy decisions based on public policy considerations such as economic, social, or political factors, provided they are not irrational or made in bad faith, even if the decisions are contested or detrimental to some people. An elected body must have all the latitude necessary to make and implement political decisions that affect its citizens. The balancing of conflicting interests involved in political decision-making should be left to voters, not the courts. Because the City's actions clearly fell within the political sphere, qualified immunity would apply.



Litigants entitled to only "one bite at the cherry" and cannot allege corruption when cases fail on their merits.

Smith v City of Winnipeg, 2024 MBKB 78; 2025 MBCA 15; leave to SCC refused: 2026 CanLII 41511

https://canlii.ca/t/k51r6, https://canlii.ca/t/k9n5w

Smith purchased a derelict multi-residential property in the City of Winnipeg ("City") with the intention of making it a home and office. A dispute arose between Smith and the City over the renovation of the building, culminating in 2011 when Smith refused the City access to the building to inspect the ongoing renovations. A Notice of Inspection was served on Smith, and an inspection was ultimately conducted. The City took enforcement action against Smith due to the poor condition of the building and Smith's refusal to bring it to a habitable standard. Smith contested the violation notices but was eventually convicted of them. Appeals of the convictions were unsuccessful. Smith commenced an action against the City relating to the enforcement of its by-laws but was similarly unsuccessful, and subsequent appeals were dismissed. Smith commenced applications to challenge the tax sale of the property and the City's attempt to inspect the property to enforce its by-laws, which were also dismissed. In 2019, Smith commenced two tort actions, which were consolidated in 2023 with another outstanding action, all of which alleged a series of abuses of authority and corruption by municipal officials in relation to the renovation dispute. The City moved for summary judgment, seeking dismissal of the consolidated claims.

Held:

Motion for summary judgment granted and claims dismissed.

Discussion:

Court of King's Bench Justice Lanchbery J. reviewed each of the legal actions brought by Smith

against the City and how each was concluded. Lanchbery J. also noted several occasions when Smith could have challenged the City's actions but did not. Lanchbery J. determined that Smith had provided no evidence to support his allegations of abuses of authority and corruption by the various municipal officials, effectively finding them to be conspiracy theories advanced against the officials because Smith's previous legal actions and applications were unsuccessful on their merits. In Lanchbery J.'s view, the facts were clear, the narrative of events was not complicated, the evidence was not technical, and Smith's repeated lack of compliance with his legal obligation to make the building habitable in a timely way was undisputed. Smith appealed Lanchbery J.'s decision to the Manitoba Court of Appeal, which found that much of Smith's appeal and submissions were an attempt to re-litigate issues that had been decided against him in other cases that had been concluded. The Court of Appeal found Smith's activities to be inappropriate because a litigant is entitled to only "one bite at the cherry" [at para 6]. ML

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Hyatt Regency Salt Lake City
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Hyatt Regency Denver Convention Ctr
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Hyatt Regency Chicago
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2026 International Comparative Law Program
November 4-6, 2026- Montréal, Québec

IMLA

CASE STUDY

End Street Homelessness Action Plan

Contributed by
M. Lucille Anderson
Senior Assistant City Attorney III
Houston, Texas
and
Michael C. Nichols
Director, City of Houston
Housing and Community
Development Department
Houston, Texas

Interview with the City of Houston



Courtesy of Carlos Delgado

Please give us a brief overview of the program.

At the direction of Mayor John Whitmire and under the leadership of Michael C. Nichols, Director of City of Houston Housing and Community Development Department, Houston has launched and implemented an unprecedented collaboration to reach equilibrium and End Street Homelessness.

How long did it take to get the program up and running, from planning to completion?

The original homelessness response program called "The Way Home" was formed in 2012 and focused on providing permanent housing with wraparound services to individuals who were chronically homeless. More than 30,000 individuals who were experiencing homelessness were housed with that program. In 2024, newly elected Mayor John Whitmire launched the "End Street Homelessness Action Plan." This

Key Takeaways



Legal Strategy is Public Policy

Municipal attorneys are essential partners in designing and implementing lawful, effective homelessness interventions.



Ending Street Homelessness is Only One Step in Addressing the Larger Poverty Issues

- More than 40% of residents of Harris County do NOT have $400 available for an emergency
- Texas Refuses to Expand Medicaid
- Harris County Leads the Nation in Evictions



Cross-Sector Collaboration is Essential

City/County Housing Departments, Law Enforcement, Mental Health Providers, Philanthropy, and Nonprofits must work in lockstep to achieve lasting results.



Federal Policy Shapes Local Reality

The future of HUD funding, proposed federal legislation, and evolving regulatory frameworks will directly impact what cities can do, and how fast they can do it.

BOOT CAMP

ANATOMY OF A SHOOTING TRIAL: TRIAL PRACTICE 101

ETHICS 101

LAND USE 101

MUNICIPAL FINANCE 101

NEGOTIATIONS 101

ORDINANCE DRAFTING BEST PRACTICES: LAND USE

PERSONNEL 101

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program focuses on helping people, especially those individuals with mental health and substance use disorders, who were living on the street, and established a facility where these individuals would be assessed, triaged, and obtain personalized treatment so that they can have independent and sustainable lives.

What obstacles did you run into along the way?

Houston faced three primary challenges:

(1) We never had a good answer for what to do with unsheltered people while they wait for housing placement, so they remain on the streets.

(2) We never had sufficient local, sustainable, flexible funding and have relied primarily on federal grants with pre-determined uses, some of them temporary, to fund the work.

(3) We didn't have good solutions for the severely mentally ill and those suffering from substance use disorders.

What solutions were you able to come to?

In meeting Challenge #1, we identified a need for expanded easy entry/ low barrier transitional/ temporary housing and recently purchased a building suitable for such purpose. We identified an operator with extensive service and housing capabilities for those suffering with mental health issues and substance use disorders to operate the facility.

How did you fund the project?

We met Challenge #2 by thinking more broadly about available funding sources and leveraging our existing relationships with a variety of partners. The initial operating funds for the Triage, Treatment and Transformation facility are from HUD Disaster Recovery funding and our partnership with our public transportation authority.

Do you have specific funding source targets?

The project to End Street Homelessness is funded with federal disaster funding, federal entitlement funds, partnerships with our public transit authority, our public hospital authority, our management districts and our tax increment district reinvestments zones. Our partners in ending street homelessness have invested in the process. Future investment will include new federal and state funding, and philanthropic and corporate funding.

The currently available funding sources are as follows:

- City of Houston
- Public Transit Authority
- Housing and Urban Development (HUD)
- TIRZ
- Management Districts
- Houston First

Future Funding is anticipated from the following sources:

- Harris County
- Philanthropy
- Non-HUD Federal Funds (DOJ, DOL, HHS, etc.)
- New State Funds
- Opioid recovery Fund

What do you wish you knew when you started the project?

We wish we had known the timeline for approval to secure funds from our partners. Implementation has relied on the availability of reliable funding sources. ML

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Wearable Technology in the Workplace

By: Katherine Read, Attorney - Richards, Watson & Gershon



In 2026, we drive alongside driverless cars, have food delivered to us by robots, and can use eyeglasses to record audio and video. As the uses for technology grow, employers, regulators, and policymakers struggle to keep up. "Wearable technology" is a recent trend, with users able to wear technology as watches, eyeglasses, trackers, rings, and other tech, sometimes without the knowledge of co-workers or supervisors. Certain wearable technologies are embedded with sensors and worn on the body to track bodily movements and/or location, or to collect biometric information. Moreover, rapidly evolving technology enables users to surreptitiously

record audio or video using eyeglasses, smartphones, smartwatches, and smart rings. Privacy advocacy groups recently issued a letter to Mark Zuckerberg saying that wearable technology represents a "dystopian privacy invasion" that is "a serious threat to privacy and civil liberties for every member of our society."[1] Regulators and policymakers are getting involved as well.

The Equal Employment Opportunity Commission ("EEOC") and the National Labor Relations Board ("NLRB") have issued warnings to employers and legislators about the risks of allowing wearable technology in the workplace without first adopting appropriate policies to protect employees. The EEOC warned that any wearable technology that collects information about an employee's medical status (such as blood pressure monitors) and provides that information to the employer may violate the Americans with Disabilities Act ("ADA"). The EEOC opined that employer-issued wearable technology of this type could be classified as conducting "medical examinations" or making "disability-related inquiries" in violation of federal law.[2] Moreover, the NLRB expressed concerns about employers recording employees engaging in "protected activity," thereby eliminating an employee's ability to keep that information confidential from the employer.[3]

Additionally, there are privacy concerns regarding the continuous or intermittent audio and visual recording of employees without consent when the wearable technology records areas where employees and members of the public have a reasonable expectation of privacy. Agencies should also consider that when employees record interactions with the public, they are creating public records because these recordings contain information relating to the conduct of the public's business. One additional consideration is that municipalities may be required to meet and confer with employee associations regarding the effects of such a policy prior to adoption. The employee associations will likely want to negotiate issues regarding how this use or policy will impact discipline, when information cannot be recorded, and how the recorded information will be retained by the municipality, among other potential employee concerns.

This article discusses these concerns and suggests ways to address the potential impacts of wearable technology in the workplace. Although simply prohibiting the use of such technology in the workplace may seem intuitive, the proliferation and rapid development of wearable technology may make that impractical.

Title VII and the ADA

Title VII of the Civil Rights Act of 1964 as amended by the Pregnancy Discrimination Act, prohibits discrimination based on pregnancy, childbirth, or related medical conditions. The ADA prohibits discrimination against an applicant or employee based on a disability. These federal statutes provide a framework for federal agencies' evaluation of these issues.

The EEOC expressed concerns that wearable technology, provided by an employer or required to report to an employer, may collect data that constitutes a "medical examination" or a "disability-related inquiry." A "medical examination" under the ADA is a procedure or test that seeks information about an individual's physical or mental impairments or health. The EEOC's guidance on Pre-employment Questions and Medical Examinations lists the following factors that should be considered to determine whether a test (or procedure) is a medical examination: (1) whether the test is administered by a health care professional; (2) whether the test is interpreted by a health care professional; (3) whether the test is designed to reveal an impairment or physical or mental health; (4) whether the test is invasive; (5) whether the test measures an employee's performance of a task or measures his/her physiological responses to performing the task ; (6) whether the test normally is given in a medical setting; and, (7) whether medical equipment is used.[4] A "disability-related inquiry" is a question (or series of questions) that is likely to elicit information about a disability. "Disability-related inquiries" may include: (1) asking an employee if they have a disability, how they became disabled, or about the severity of the

The EEOC warned that any wearable technology that collects information about an employee's medical status (such as blood pressure monitors) and provides that information to the employer may violate the Americans with Disabilities Act

disability; (2) asking about an employee's genetic information; or (3) asking an employee whether they are currently taking or previously took any prescription drugs or medications, or monitoring an employee's taking of such drugs or medications.[5]

Practically speaking, the use of wearable technology to monitor an employee's surroundings could fall under either prohibition, depending on the technology's purpose and use. Obviously, any technology that reports medical data to the employer raises concerns. In addition, employees may inadvertently capture, through video or audio recording, another employee taking prescribed medication, taking a physical break, or looking at medical documents while at work. An employee's constant surveillance may expose another employee's physical or physiological ability to perform tasks. This would be impossible to monitor completely, and the retention of the data recorded would need to be closely monitored. Given the number of employees and their potential health conditions, the likelihood of concern being recorded on an employee's wearable technology is significant.

There are currently no cases on point related to disability discrimination against an employee based on data compiled from wearable technology. The technology is new, and its presence in the workplace is still rare. However, in *Nawara v. Cook County*,[6] the Seventh Circuit considered whether an employee–who never claimed he was disabled or perceived as disabled—was entitled to damages for being required to undergo a medical examination. The employee filed suit against his employer alleging that the medical examination violated the ADA because it was not job-related and consistent with business necessity. On appeal, the Seventh Circuit found that employees can establish a violation of the ADA even if they are not disabled or perceived as disabled. Having proven that the ADA was violated, the appeals court ruled that the employee was entitled to recover back pay.[7] This Seventh Circuit decision demonstrates the potential risks associated with the employer's use of data collected by wearable technology, if the data is used to determine whether a person has a disability or if recording is deemed a "medical examination" under federal or state law.

In *Doe v. Kohn Nast & Graf, P.C.*,[8] an attorney infected with a disease sued his employer for searching his office and discovering a letter containing information about his disease. The United States District Court of Pennsylvania, Eastern District, determined that there was a genuine issue as to the attorney's cause of action related to a medical inquiry, so that summary judgment was not entered against the attorney on that claim. The District Court emphasized that the ADA prohibits an "employer's inquiries of an employee as to whether such an individual with a disability or as to the nature or severity of the disability." This prohibition includes the alleged search of the attorney's office after the employer became suspicious of his illness.[9]

These cases demonstrate guiding principles suggesting that courts will likely view the surveillance of employees using wearable technology as a "medical examination" or a "disability related inquiry."

Protected Union Activity

Employees have a reasonable expectation of privacy in the workplace and, in many states, the right to engage in union activity. If wearable technology is permitted only in publicly accessible areas, or in an "open area," this will reduce an employee's reasonable expectation of privacy. However, the permitted use of wearable

While the use of wearable technology to record employees has not been fully litigated to a reported result, there are legitimate concerns that users may record employees while in areas where the employees have a reasonable expectation of privacy.

technology in the workplace likely is a meet and confer matter under the local laws governing public employee association relations because the recording of employees may affect working conditions of association members, including performance evaluations, potential discipline, privacy in locker rooms, privacy in personal conversations in break areas, discussions about union activity, and supervisor interactions, which are matters within the scope of representation.

While there is no NLRB decision on point, current court decisions suggest that agencies should notify employee associations before finalizing a policy allowing wearable technology.[10] The employer permitted surveillance of employees engaged in protected activities such as passing out bills of information and discussing union activity, which is an unfair labor practice.[11] One can easily see that wearable technology might be used in that context.

In *Snap-On Tools, Inc.*,[12] Snap-On Tools, Inc. violated the National Labor Relations Act by videotaping employees' hand billing at the plant gate, among other unfair labor practices. The manner in which the company recorded employees included altering the normal practice of panning the security camera to the parking area and manipulating it to point at the gate where employees were engaged in protected activity. Had the employer maintained its normal video practices and the video shots of protected activity been incidental to those practices, there likely would not have been a sustained unfair labor practice charge.[13] Thus, if protected activity occurs while employees are using permitted wearable technology and the activity is incidentally recorded, it might not be construed by a court as an unfair labor practice. However, the NLRB has not addressed the recording of protected activity through wearable technology, so there may be a cause of action if such recordings are used against employees engaging in protected activity.

Privacy Rights

The United States Supreme Court in *O'Connor v. Ortega* established that public employer intrusions on the privacy interests of government employees should be judged by the standard of reasonableness under all of the circumstances. To determine this reasonableness of searching a public employee, courts will use a two-part, multi-factor test articulated by the plurality opinion:

> "First, a reviewing court must consider "[t]he operational realities of the workplace" in order to determine "whether an employee has a reasonable expectation of privacy" there. Id. at 717, 107 S.Ct. 1492. Such determination is made on "a case-by-case basis." Id. at 718, 107 S.Ct. 1492. Next, where an employee has a legitimate privacy expectation, an employer's intrusion on that expectation "for noninvestigatory, workrelated [sic] purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances." Id. at 725–726, 107 S.Ct. 1492.
>
> The second test from O'Connor to determine whether a government employer has violated the Fourth Amendment rights of an employee is provided by Justice Scalia's concurrence. Under this test, the court asks if the government's search would be "regarded as reasonable and normal in the private-employer context." O'Connor, 480 U.S. at 732, 107 S.Ct. 1492 (Scalia, J., concurring)."[14]

While the use of wearable technology to record employees has not been fully litigated to a reported result, there are legitimate concerns that users may record employees while in areas where the employees have a reasonable expectation of privacy. For example, if an employee is using Meta Glasses, they may inadvertently - or intentionally - wear them into the restroom or locker rooms and record activities occurring in a normally private space without the knowledge of their co-workers. This would violate employees' privacy rights and expectations.

Crafting your Policies

A Public agency employer must consider whether it wants to allow these technologies in the workplace. One solution is to ban these items from the workplace, although it would be difficult to ban smartwatches and smartphones, as they are widely used. Banning devices like recording eyeglasses or other portable cameras and recording devices may be more practical. Conceivably, some employees may want to record interactions with members of the public or other employees; they might believe, to protect themselves. If the public agency decides to allow wearable technology in the workplace, these are some key considerations:

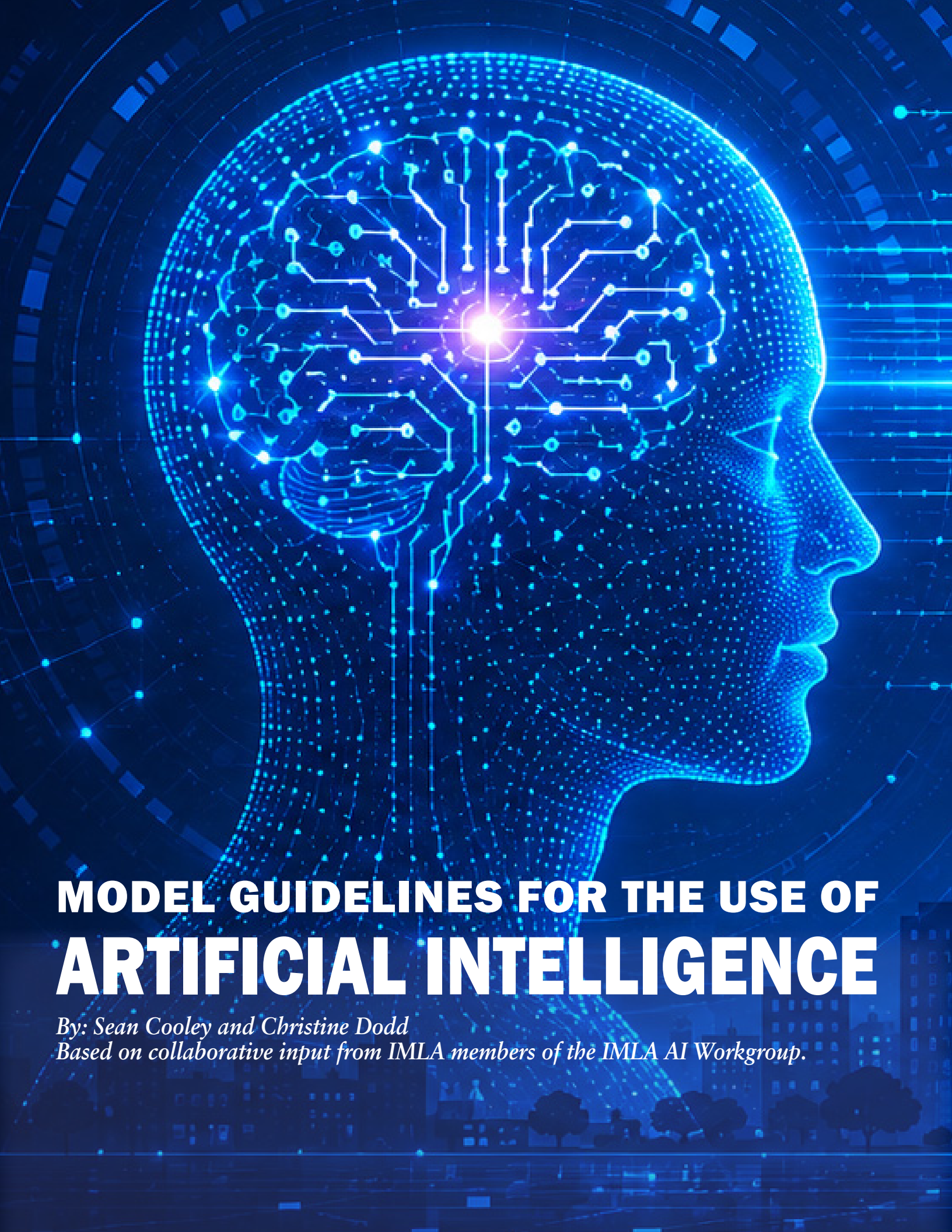
- Ban the use of the technology in specified locations such as restrooms, locker rooms, break rooms, lactation rooms, and areas where protected activity takes place.
- Advise employees that recordings from their personal devices may be subject to a public records request if those devices are used for public business.
- Work with the IT Department to screen these recordings in the event of a public records request to ensure private information is not disclosed.
- If the municipality provides wearable technology to employees, it should work with the IT Department to screen recorded and stored data in the system to delete private information, especially any medical information.
- Update your records retention schedule to delete this information at a scheduled period.

You should discuss these policy considerations with your agency's legal counsel to determine what protocols are best for your agency. This is a developing area of law that will likely change as fast as the technology evolves. Agencies will benefit from taking preventative measures now. ML

Katherine Read is a member of Richards, Watson & Gershon's Public Law Department. She advises local governments and other public agencies on a broad range of transactional, advisory, labor, and employment matters. Her practice encompasses land use, planning and zoning, the Ralph M. Brown Act, the California Public Records Act, the First Amendment, housing law, and other legal issues affecting public agencies. Ms. Read also drafts and reviews ordinances, resolutions, contracts, and staff reports; attends City Council and Planning Commission meetings; and advises clients on new and pending legislation. https://www.rwglaw.com/

Notes:

1. Coalition Letter to Meta Regarding Facial Recognition Feature, (Am. Civ. Liberties Union of Mass.) available at: https://www.aclum.org/publications/coalition-letter-to-meta-regarding-frt-feature/
2. U.S. Equal Emp. Opportunity Comm'n, *EEOC Highlights How Wearable Technologies May Implicate Employment Discrimination Laws*, 2024 WL 5234238 (E.E.O.C. 2024).
3. Jennifer A. Abruzzo, Gen. Couns., Nat'l Lab Rels. Bd., *Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section Rights*, Memorandum GC 23-02 (Oct. 31, 2022).
4. U.S. Equal Emp. Opportunity Comm'n, *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations Under the Americans with Disabilities Act of 1990*, 8 Fair Emp. Prac. Man. (BNA) 405:7191 (1995) [hereinafter *Preemployment Questions and Medical Examinations*]. https://www.eeoc.gov.
5. *Id.*
6. *Nawara v. Cook County*, 132 F.4th 1031 (7th Cir. 2025).
7. *Id.*
8. *Doe v. Kohn Nast & Graf, P.C.*, 866 F. Supp. 190, 3 AD Cas. (BNA) 1322 (E.D. Pa. 1994).
9. *Id.*
10. *Colgate-Palmolive Co.*, 323 N.L.R.B. 515 (1997); *Snap-On Tools, Inc.* 342 N.L.R.B. No. 2 (2004).
11. *Snap-On Tools, Inc.*, *supra*.
12. *Id.*
13. *Id.*
14. *O'Connor v. Ortega*, 480 U.S. 709 (1987).



MODEL GUIDELINES FOR THE USE OF ARTIFICIAL INTELLIGENCE

By: Sean Cooley and Christine Dodd
Based on collaborative input from IMLA members of the IMLA AI Workgroup.



Artificial intelligence (AI) has rapidly transitioned from an emerging technology to a practical tool used across both the public and private sectors. For local governments, AI offers opportunities to improve efficiency, enhance service delivery, support research and analysis, streamline administrative functions, and enable more informed decision-making. At the same time, these benefits bring important legal, ethical, operational, privacy, and governance considerations. The question facing municipalities is no longer whether AI will influence government operations, but how to adopt and govern these technologies responsibly while maintaining public trust and accountability.

DEFINITIONS For purposes of these guidelines:

- **Artificial Intelligence (AI)- A machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.[1]**
- **High-Risk AI Use- An AI application that may affect legal rights, access to public benefits or services, employment decisions, law enforcement activities, or other matters implicating due process, civil rights, or public safety.**
- **Human-in-the-Loop- A process in which a human decision-maker meaningfully reviews, validates, or overrides AI-generated outputs before they are acted upon.[2]**
- **Large Language Model (LLM)- A language model notable for its ability to achieve general-purpose language generation and other natural language processing tasks such as classification.**
- **Enterprise AI Tool- An artificial intelligence system that is licensed, deployed, or approved by an organization for use in connection with its operations, and that is subject to the organization's contractual, security, compliance, and governance controls.**
- **Non-Enterprise AI Tool- Any artificial intelligence system that is not specifically approved, licensed, or managed by an organization, and that is accessed by individuals through personal or publicly available accounts or interfaces, typically subject only to standard, non-negotiated terms of service.[3]**

Because municipalities vary significantly in size, resources, technological maturity, and risk tolerance, no single policy can address every circumstance. A successful AI governance framework should function as a set of guiding principles rather than a rigid mandate. Governance should promote innovation and continuous improvement while ensuring transparency, accountability, reliability, privacy protection, security, fairness, and appropriate oversight. Frameworks should remain flexible and be reviewed regularly.

Local government attorneys may be required to:

- Evaluate AI tools for compliance with ethical duties, including confidentiality, competence, and supervision;
- Ensure that AI-assisted legal work is reviewed for accuracy, bias, and legal sufficiency by a supervising attorney;
- Advise departments on public records, discovery, and retention implications of AI-generated content;
- Participate in procurement review of AI systems that implicate legal or regulatory risks.

The following guidelines are intentionally non-exhaustive. They are not intended to serve as a "one-size-fits-all" solution or to address every possible AI application, risk, or legal issue that may arise. These guidelines are intended to function as a framework to help local governments ask the right questions, identify potential risks, and develop governance structures that align with their legal duties and public responsibilities.

Guiding Principles

Human Accountability

AI systems should support, not replace, human judgment. Final decision-making authority and accountability remain with city/county officials or employees for every output.

Any information or prompt that is put into a web-based generative AI tool for work reasons is subject to a public records request. Never share non-public information in web-based Generative AI prompts.

AI functions should never be used to replace statutory or legally delegated duties of certain city officials. Rather, AI assistance for these duties may be appropriate in some cases but ultimate responsibility lies with the official themselves.

Lawfulness and Compliance

AI use must comply with all applicable federal, state, and local laws, including but not limited to public records laws, privacy laws, civil rights laws, procurement requirements, and ethical rules governing attorneys and public officials.



... a new study has emerged suggesting that large language models exhibit "AI-AI bias," tending to prefer content generated by other AI models rather than original human content.

Transparency and Explainability

Where feasible, the local government should be able to explain in plain language when and how AI systems are used in governmental functions, particularly in high-risk use contexts.

What this means in practice is that the city/county should disclose when an AI system is being used, provide a general description of the system's function and purpose, categorize whether the AI outputs are advisory or determinative, and identify the human decision maker(s) responsible for final actions.

Fairness and Non-Discrimination

AI systems shall be evaluated and used in a manner that seeks to avoid bias or discriminatory outcomes based on protected characteristics.

Studies have confirmed that AI models often possess biases at multiple stages in their development. There are ways these biases can be mitigated, which should be discussed both with city/county employees, as well as any technology purveyor that includes an AI component your city/county may be thinking about purchasing.[4]

Additionally, a new study has emerged suggesting that large language models exhibit "AI-AI bias," tending to prefer content generated by other AI models rather than original human content.[5] This is especially relevant because, as more AI-generated content enters the internet and is subsequently scraped to train current and future AI models, this problem could get significantly worse over the next 5-10 years. It is important to discuss with AI purveyors what kinds of content their models are trained on.

Data Privacy and Security

Local governments should ensure that AI systems will adequately protect sensitive, confidential, and personally identifiable information.



In practice, this means that local governments should work closely with their city/county attorney to include appropriate language in any contract or agreement with an AI system vendor to account for important data security, data classification, privacy and access laws and regulations.

Proportionality

The level of oversight, documentation, and review should be proportionate to the risk posed by the AI system and its intended use. Furthermore, local government should assess the public purpose of any given AI system to ensure that any paid AI system, platform, subscription or product is an investment integral to advancing efficiency or effectiveness of municipal operations or services.

In addition to establishing guidelines for using AI, local governments have an opportunity to consider in advance which tasks their staff will be permitted to perform using AI and which uses will be prohibited.

The following guidelines offer a starting point for these considerations:

Permitted Uses (illustrative, not exhaustive)

AI tools may be used for tasks such as:

- Drafting or summarizing internal documents, reports, or policies (with human review).
- Research assistance, including summarizing publicly available legal or technical information. At the time of drafting, there is currently no standard format for citing the usage of AI in work product. However, depending on the type of work product, this may be a good practice to adopt for city/county employees.
- Language translation and accessibility enhancements;
- Customer service enhancements such as AI chatbots and routine billing practices;
- Data analysis for planning, budgeting, or operational efficiency.

Keep in mind, all of these tasks should maintain a human-in-the-loop, even if the bulk of the work has been shifted to AI. Additionally, any document prepared in anticipation of litigation or regularly sought in discovery during litigation should disclose if it used AI and how AI was used to create the document. This includes police reports, body camera footage reviews and summaries, claims investigation files, etc.

Prohibited Uses. Unless expressly authorized by the city/county attorney/governing body, AI systems should not be used:

- As the sole basis for decisions affecting legal rights, benefits, enforcement actions, or disciplinary measures;
- To generate legal advice or final legal opinions;
- To conduct surveillance or biometric identification in violation of law;
- To input confidential, privileged, or protected information into public or non-approved AI tools;



- To solely draft any local regulations, enforceable material, or content that has the effect of law, such as local ordinances.

It is worth noting that there is a circuit split on whether AI-generated materials are protected by the attorney-client privilege or the work-product doctrine. Here are a few pointers for better AI generation:

- Be specific. The more context on your request, the better. Just remember that you should never input information into a non-enterprise Generative AI tool that is not public.[6]
- If there is an audience for your output, note it.
- If there is a format/length/style you want the AI to adhere to, note it.
- Allow AI multiple attempts. If you get an output that is on the right track but has some issues, let it know in a new prompt what the issues were and allow it to try again. AI typically gives better outputs given more attempts.

Responsible AI governance is not intended to slow innovation. Local governments that establish clear principles, maintain meaningful oversight, and proactively manage risk will be best positioned to leverage AI as a tool that enhances human work rather than substitutes for human judgment.

More information is available in the IMLA resource library: https://imla.org/model-ordinances-policies-and-guideline-documents/. ML

Notes:

1. Nat'l Inst. of Standards & Tech., *Artificial Intelligence,* NIST Computer Security Resource Center Glossary, https://csrc.nist.gov/glossary/term/artificial_intelligence

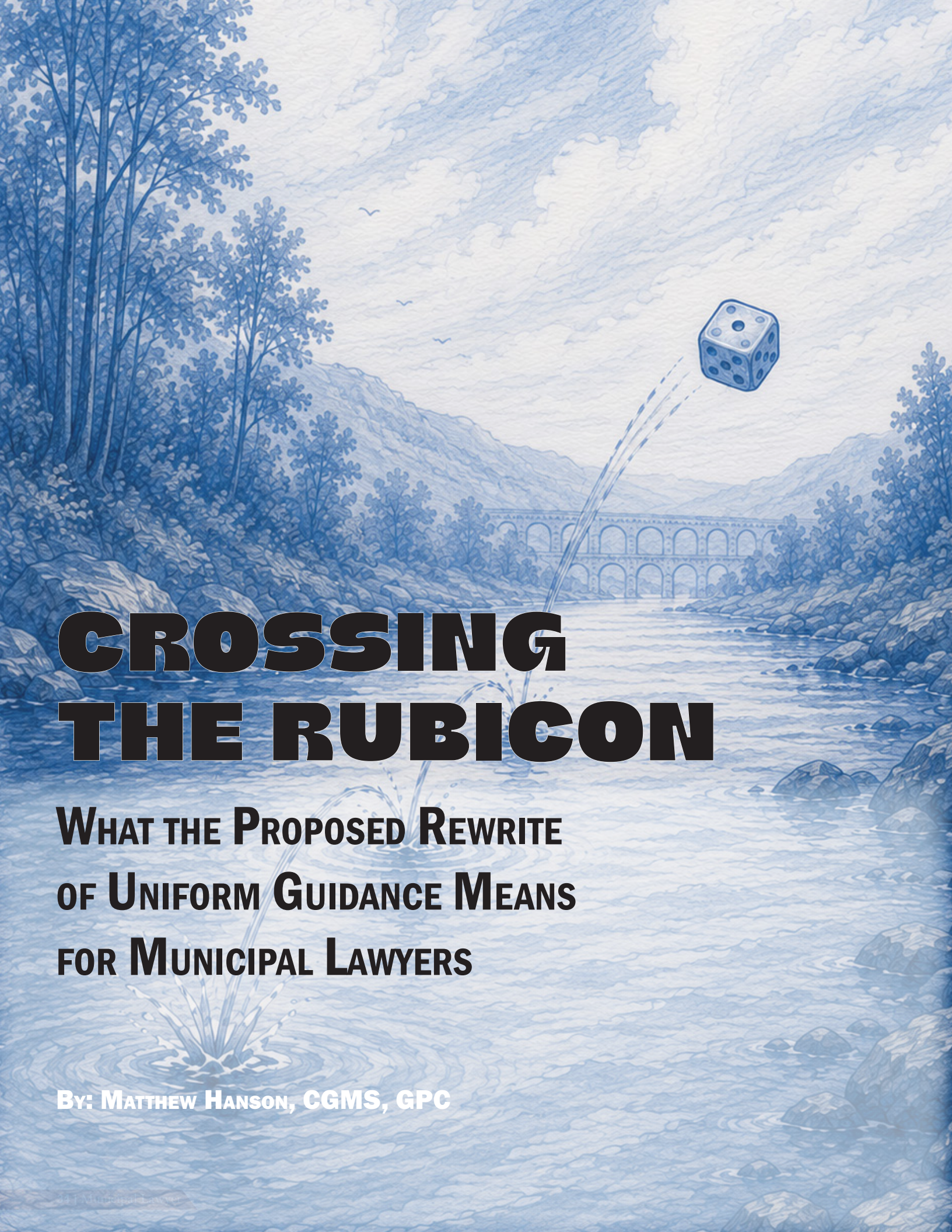
2. "Human-in-the-loop" means that AI tools may assist but not replace human judgment. A qualified individual must retain ultimate responsibility for reviewing, validating, and approving AI-generated outputs before they are relied upon or acted upon, regardless of what function AI is performing.

3. Many AI tools exist in a gray area between enterprise and non-enterprise capabilities, so it is important to understand each tool your government may be adopting. Additionally, many common AI tools, such as ChatGPT, CoPilot, Gemini, and Claude, offer both enterprise and non-enterprise versions, so it is important for local government employees to understand which versions they are using for various tasks.

4. *See* Chapman Univ., *Bias in AI*, https://www.chapman.edu/ai/bias-in-ai.aspx; Princeton Univ., *Biased Bots: Artificial Intelligence Systems Echo Human Prejudices*, https://www.princeton.edu/news/2017/04/18/biased-bots-artificial-intelligence-systems-echo-human-prejudices; "Human-in-the-loop" means that AI tools may assist but not replace human judgment. A qualified individual must retain ultimate responsibility for reviewing, validating, and approving AI-generated outputs before they are relied upon or acted upon, regardless of what function AI is performing.

5. *See AI-AI Bias: Large Language Models Favor Communications Generated by Large Language Models*, Proc. Nat'l Acad. Sci. U.S.A., https://www.pnas.org/doi/10.1073/pnas.2415697122

6. *United States v. Heppner*, No. 25 Cr. 503 (JSR), 2026 BL 52143, 2026 U.S. Dist. LEXIS 32697 (S.D.N.Y. Feb. 17, 2026). *But see Warner v. Gilbarco, Inc.*, No. 2:24-CV-12333, 2026 WL 373043 (E.D. Mich. Feb. 10, 2026). *Heppner* held that communications between a defendant and an AI platform were not protected by the attorney-client privilege or the work-product doctrine. By contrast, *Warner* held that AI-generated materials created by a former employee were protected by the work-product doctrine. These decisions illustrate a developing disagreement among district courts regarding the application of traditional privilege doctrines to AI-generated materials.



Crossing the Rubicon

What the Proposed Rewrite of Uniform Guidance Means for Municipal Lawyers

By: Matthew Hanson, CGMS, GPC

Every profession experiences moments that fundamentally alter the landscape in which it operates. Historians often describe Julius Caesar's crossing of the Rubicon River in 49 B.C. as one of those moments, a point beyond which there was no practical return to the old order. Once crossed, the political and legal realities of Rome were forever changed.

Federal financial assistance may now be approaching its own Rubicon moment.

On May 29, 2026, the Office of Management and Budget ("OMB") published a proposed rewrite of 2 C.F.R. Part 200, commonly known as the Uniform Guidance.[1] The proposal represents the most significant revision to federal grants administration since Uniform Guidance was first implemented in 2014 and potentially the most consequential shift in federal financial assistance policy in decades.

To many local government officials, the proposal appears to be just another technical grant-management update. To municipal attorneys, however, it should be viewed as something much more significant.

... federal grants are beginning to look more like regulated compliance agreements than traditional assistance instruments.

The proposed revisions suggest a future in which federal financial assistance is no longer simply a finance department responsibility or a grants office function. Instead, grant administration increasingly resembles a legal, governance, workforce compliance, procurement, and enterprise risk management function. Municipal attorneys who traditionally focused on contracts, labor law, governance, litigation, ethics, procurement, and regulatory compliance may soon find federal financial assistance occupying a similar place in their risk portfolios.

For many communities, the question is no longer whether federal grant administration is changing. The question is whether local governments are prepared for what comes next.

Understanding Uniform Guidance

Most municipal attorneys are familiar with federal grants but may not regularly work with the regulatory framework that governs them. Uniform Guidance serves as the federal government's central framework for administering federal financial assistance and establishes common requirements across federal agencies.[2]

Uniform Guidance governs:

- Financial management systems
- Internal controls
- Procurement
- Cost allowability
- Subrecipient monitoring
- Property management
- Reporting
- Audit requirements
- Closeout procedures

In practical terms, Uniform Guidance serves as the operating manual for how trillions of dollars move from Congress through federal agencies to states, counties, municipalities, school districts, public authorities, nonprofits, and other recipients.

Historically, municipal attorneys often became involved only when grants created legal disputes, procurement protests, labor issues, audit findings, or allegations of misuse. Day-to-day administration frequently remained the responsibility of finance departments, grant managers, or program staff.

That model may no longer be sufficient.

A Grant Is Not a Contract—Or Is It?

Throughout my career, I have argued that grants and contracts are fundamentally different instruments.

A procurement contract exists because a governmental entity seeks a specific good or service for its own use. The relationship is transactional. The contractor delivers a product or service and receives compensation.

A grant, by contrast, is a transfer of financial assistance from one entity to another for a public purpose

authorized by law. The relationship is programmatic. The recipient is not providing a service to the federal government. Rather, it is carrying out activities intended to achieve public policy objectives.

This distinction is deeply embedded throughout Uniform Guidance and federal assistance law.

Historically, grants focused on:

- Program performance
- Financial stewardship
- Allowable costs
- Compliance with federal requirements

Contracts focused on:

- Representations and warranties
- Deliverables
- Indemnification
- Default provisions
- Legal remedies
- Performance guarantees

The proposed rewrite begins to blur these distinctions.

Expanded certification requirements, workforce verification obligations, payment justifications, discretionary termination authority, reputational risk considerations, and enhanced monitoring expectations move grants closer to a compliance structure historically associated with sophisticated contractual relationships.

In other words, federal grants are beginning to look more like regulated compliance agreements than traditional assistance instruments.

For municipal attorneys, that should command attention.

The Shift from Stewardship to Verification

Historically, federal oversight focused on three fundamental questions:

1. Did the recipient achieve program objectives?
2. Were federal funds spent appropriately?
3. Did the recipient comply with applicable requirements?

The proposed rule introduces a fourth question:

Can the recipient continuously demonstrate compliance, eligibility, and alignment with federal priorities?

That distinction is subtle but profound.

Several provisions in the proposal suggest a shift from periodic oversight to continuous verification.

Examples include:

- Expanded risk reviews;
- Enhanced payment documentation requirements;
- E-Verify participation requirements;
- Expanded subrecipient reporting;
- Broader termination authority;
- Greater scrutiny of recipient affiliations and activities.

For municipal attorneys, this is a familiar model. It resembles the evolution of regulatory compliance, ethics, and contract compliance programs that many local governments have implemented over the past two decades.

The implication is clear:

Federal financial assistance is increasingly becoming an enterprise risk management issue.

Why Municipal Attorneys Must Lead

Many local governments continue to treat grants as an operational function.

That perception is becoming increasingly dangerous.

Several proposed provisions directly implicate legal functions and governance responsibilities.

Expanded Termination Authority

The proposed rule would expand federal agency authority to terminate discretionary awards under certain circumstances where projects no longer align with agency priorities or are determined to no longer be in the federal government's interest. [3]

Municipal attorneys should immediately begin asking:

- Which projects depend on discretionary federal funding?
- What contractual obligations rely on those awards?
- What happens if funding is terminated mid-project?
- Are contingency plans in place?

Consider a city undertaking a multi-year infrastructure project supported by a federal grant. Construction contracts may already be executed. Professional services agreements may already be in place. Debt obligations may already have been incurred.

The legal consequences of grant termination can quickly become contract disputes, claims, and fiscal crises.

The future appears to be one of increased verification, expanded compliance expectations, greater federal discretion, and heightened organizational accountability.

Workforce Compliance

The proposed rule includes E-Verify participation requirements and other workforce-related compliance provisions.

Historically, grant offices rarely coordinated extensively with human resources departments. Future compliance may require close collaboration among:

- Legal
- Human Resources
- Procurement
- Finance
- Grants Management
- Program Departments

Municipal attorneys often serve as the natural bridge between these functions.

Reputational Risk

Perhaps the most controversial aspect of the proposal involves references to reputational concerns.

The proposal raises significant questions:

- What constitutes reputational harm?
- How will it be measured?
- Who makes that determination?
- What due process protections exist?

These are not grant management questions.

They are legal questions.

The Federal Register Comment Period: Comments are due by July 13th

Municipal attorneys should not view the current comment period as merely an administrative exercise.

It is an opportunity to shape federal policy.

Too often, local governments assume national organizations will raise concerns on their behalf. While associations play an important role, federal agencies frequently place significant weight on operational comments submitted by practitioners who will actually implement the regulations.

The most effective comments are not political.

They are practical.

OMB needs to understand:

- Implementation costs
- Staffing impacts
- Technology requirements
- Operational burdens
- Unintended consequences

For example, if payment justifications are required for every reimbursement request, how many additional staff hours would that require annually?

If E-Verify requirements extend to contractors and subcontractors, how would municipalities monitor compliance?

If reputational risk becomes a compliance factor, how should agencies define it?

Municipal attorneys should lead interdisciplinary review teams and help translate operational concerns into constructive regulatory recommendations.

The Federal Register notice, which includes information on how to submit comments, can be found at: https://www.federalregister.gov/documents/2026/05/29/2026-10817/regulation-for-federal-financial-assistance

Preparing for October 1

Waiting for final guidance is not a strategy.

Several actions should begin immediately.

Build an Enterprise Grant Inventory

Many local governments cannot quickly identify:

- Total federal funding exposure;
- Active grants;
- Subrecipients;
- Renewal schedules;
- High-risk programs.

That visibility is essential.

Review Certifications

Every certification creates potential legal exposure.

Counsel should inventory:

- Grant assurances;
- Award certifications;
- Reporting certifications;
- Workforce certifications.

The question should be simple:

Can we substantiate every statement we make to the federal government?

Evaluate Governance Structures

Municipalities should assess whether current governance structures adequately address:

- Enterprise risk;
- Oversight;
- Documentation;
- Escalation procedures;
- Cross-functional coordination.

The Future Role of Municipal Attorneys

Many private-sector organizations maintain sophisticated contract compliance programs.

These programs ensure adherence to contractual obligations, monitor certifications, evaluate risks, and coordinate compliance across departments.

Federal financial assistance is increasingly moving in that direction.

Future municipal attorneys may find themselves serving as:

- Grant governance advisors;
- Compliance officers;
- Risk managers;
- Certification reviewers;
- Strategic advisors to elected officials.

In many organizations, that transformation has already begun.

Ten Questions Every Municipal Attorney Should Ask Before October 1

1. Do we know every active federal grant in our organization?

2. Which grants are potentially vulnerable to termination?

3. Can we substantiate every certification currently being made to the federal government?

4. Are our internal controls documented and consistently followed?

5. Do we understand our subrecipient relationships and monitoring responsibilities?

6. Are Human Resources, Procurement, Finance, and Grants personnel coordinating compliance activities?

7. How would we implement E-Verify-related requirements if finalized?

8. What policies govern documentation, payment approvals, and record retention?

9. Have we submitted comments on provisions that could materially impact our community?

10. Who within our organization owns enterprise-wide federal grant risk?

Conclusion

The proposed rewrite of Uniform Guidance is about much more than grant administration.

It reflects a broader transformation in how the federal government views financial assistance, accountability, and oversight.

The future appears to be one of increased verification, expanded compliance expectations, greater federal discretion, and heightened organizational accountability.

For municipal attorneys, this is not a development to observe from the sidelines.

It is a moment to lead.

Federal financial assistance is crossing its Rubicon.

The question is whether local governments will cross it prepared. M.

Matthew Hanson, CGMS, GPC, is Managing Director of Government Advisory Services for Witt O'Brien's. He has more than 30 years of experience in federal, state, and local grants management, compliance, financial oversight, and government transformation. He is a frequent speaker on federal financial assistance, Uniform Guidance, audit readiness, and grants governance.

Notes:

1. Regulation for Federal Financial Assistance, 91 Fed. Reg. 45,123 (May 29, 2026) (to be codified at 2 C.F.R. pt. 200).
2. 2 C.F.R. pt. 200 (2026).
3. *Regulation for Federal Financial Assistance*, *supra* note 1.
4. *Id.*

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