



SCCE's 7th Annual
Compliance & Ethics Institute

September 14–17, 2008

Sheraton Chicago Hotel & Towers
Chicago, IL

**Why Cities, States and Municipalities Need
Compliance Programs**

Society of Corporate Compliance and Ethics
7th Annual Compliance & Ethics Institute
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Objectives

- Basic elements of a compliance program in the city/state/municipality structure
- Impact of Federal Sentencing Guidelines
- Barriers, challenges and opportunities for compliance officer
- Implementation
- Discussion



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What is a Compliance Program?

- A Compliance Program is a systematic process aimed at ensuring that the organization, its employees and contractors (and to a certain extent its business partners) comply with applicable laws, regulations, and standards
 - In the context of city, county and state governments, it usually includes a comprehensive strategy to ensure transparency and compliance with laws and regulations in bidding processes, contracting, paying for services using tax dollars, etc.
 - It should also contain a strategy to ensure compliance with other regulations related to the EPA, OSHA, ADA, etc.



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Compliance Programs...

- ...are a vital source of **protection** for organizations against federal and law enforcement investigations and resulting public relations and civil/criminal liability
- ...provide the **framework** for all personnel to clearly understand their responsibilities as employees of the organization
- ...provide a means for **resolving issues** in a systematic, timely and continuous manner



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Compliance Program Structure vs. Substance

Structure – framework

1. Compliance Officer / Committee
2. Policies and Procedures/ Code of Conduct
3. Education and Training
4. Anonymous Reporting
5. Disciplinary Action
6. Auditing and Monitoring
7. Remediation of Problems

Substance - areas of concern specific to your organization

- ADA
- EPA
- HIPAA
- Theft
- Embezzlement
- Ethics
- Wire fraud



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Structure: 7 Basic Elements of a Compliance Program

1. Compliance Officer / Committee
2. Policies & Procedures / Code of Conduct
3. Education & Training
4. Anonymous Reporting
5. Auditing & Monitoring
6. Investigations of Reports of Violations
7. Disciplinary Action for Illegal/Improper Activities



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1: Compliance Officer

- **Purpose:** To have a leader of compliance efforts who is knowledgeable of compliance issues and who coordinates compliance activities

** The Compliance Officer is charged with operating and monitoring the Compliance Program



1(a): Compliance Committee

- **Purpose:** To support the compliance officer and to represent various departments and areas of expertise

** Should include select "champions" to help gain buy-in



2: Code of Conduct

- **Purpose:** To guide general business processes and to hold employees, elected officials, etc. responsible for abiding by a set of standards (detailed in the compliance program) and applicable laws and regulations
- **Not** intended to replace specific policies and procedures related to business operations or compliance



2: Policies & Procedures

- **Purpose:** Promote a commitment to compliance and that address specific requirements of compliance and specific areas of potential fraud



3: Education

- **Purpose:** To communicate the structure and substance of a compliance program to employees, customers and other stakeholders and to define these individuals' responsibilities under the compliance program



4: Anonymous Reporting

- **Purpose:** To give employees and the public a method of reporting concerns without feeling that their jobs or situation may be compromised, especially since they are *expected* and *obligated* under the compliance program to report suspicions of suspected violations



5: Auditing and Monitoring

- **Purpose:** To proactively monitor specific processes and documents for compliance and to assist in the reduction of identified problem areas
 - ** Ongoing Monitoring
 - ** Audit Plan & Schedule



6: Disciplinary Action

- **Purpose:** To respond to allegations of improper/illegal activities and to enforce appropriate disciplinary action against employees who violate internal compliance policies, applicable laws, statutes, regulations or requirements of federal, state, county or local governments



7: Remediation of Problems

- **Purpose:** To investigate and remediate problems that are identified through audits, monitoring or reporting



Compliance Program

- All 7 elements of a compliance program rely on each other for effectiveness
 - Systematic implementation of all 7 elements
 - Enforcement of all 7 elements



Federal Sentencing Guidelines

- Determine sentencing for federal crimes
 - Individuals
 - Organizations (“any person other than an individual”)
- Leniency when organizations have acted as good citizens
 - Implemented the elements of an “effective compliance and ethics program” (www.ussc.gov)
 - Prevent, detect, and correct wrongdoing



Federal Sentencing Guidelines

- FSG recommends increased penalties when:
 - High-level management was involved in the crime
 - The organization:
 - is very large (leading to greater harm to the community)
 - has a history of prior similar violations
 - attempts to prevent testimony or retaliates against whistleblowers



Why the Corporate Compliance Model is applicable to City, County and State Governments

- **Structure = Best Practice:** A compliance program's structure provides a proven process or "best practice" for enforcing the program's substance
- **Substance:** The program's substance defines the content of an organization's compliance program
- **Relationships:** All relationships in organizations and government are defined by some type of agreement, which can hold the power to bind all individuals and entities to the program



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Substance: Laws & Regulatory Requirements

- Environmental Protection Agency (EPA)
 - Clean Water Act
 - Clean Air Act
- Drug-Free Workplace Act of 1988
- Omnibus Transportation Employee Testing Act of 1991
- Federal Equal Employment Opportunity Laws
- Davis-Bacon and Related Acts
- States' "Sunshine" Laws
 - Freedom of Information Acts
 - Open Meetings Acts



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Barriers, Challenges and Opportunities for the Compliance Officer

- **Cite Potential Consequences**

- (of not having an Ethics and Compliance program)
- Bad Press
- Jail Terms
- Fine\$\$ and Penalties

- **Describe the Benefits**

- Prevent, detect and remediate fraudulent and/or abusive practices, and false or inaccurate claims
- Could save money!



Barriers, Challenges and Opportunities for the Compliance Officer

Leland Wong convicted on 14 felony corruption counts

The former L.A. City Hall power broker was tried on 21 counts

By Garrett Therolf, Los Angeles Times Staff Writer
July 25, 2008

A jury found former Los Angeles city commissioner Leland Wong guilty of public corruption Thursday, ending a criminal investigation that figured in former Mayor James K. Hahn's 2005 election defeat.



Barriers, Challenges and Opportunities for the Compliance Officer

SPECIAL REPORT

Ohio agency sinks millions into rare coins

State gives investment business to prominent local Republican

By [MIKE WILKINSON](#)
and [JAMES DREW](#)
BLADE STAFF WRITERS

Since 1998, Ohio has invested millions of dollars in the unregulated world of rare coins, buying nickels, dimes, and pennies.

Controlling the money for the state? Prominent local Republican and coin dealer Tom Noe, whose firm made more than \$1 million off the deal last year alone.



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Barriers, Challenges and Opportunities for the Compliance Officer

'03 audit stalls; city told probe is deficient

Firm says complete inquiry needed before it can proceed

By Philip J. LaVelle
UNION-TRIBUNE STAFF WRITER

October 28, 2004

A widely anticipated audit of San Diego's 2003 books cannot be completed until city officials fully investigate whether "likely illegal acts" related to the pension system and City Hall's financial-reporting practices have occurred, according to the city's independent auditor.

In letters from KPMG to top city officials, the company says it has warned for months of deficiencies in a city-financed investigation of City Hall's financial-reporting practices.



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Barriers, Challenges and Opportunities for the Compliance Officer

Report included 66 restatements totaling nearly \$1.8 billion

San Diego's pursuit of a clean annual audit for 2003 ended yesterday with applause from a roomful of city officials and employees whose enthusiasm seemed only slightly tempered by the awareness that three more annual audits are still overdue.

By Matthew T. Hall
UNION-TRIBUNE STAFF WRITER
LAURA EMBRY / Union-Tribune

March 17, 2007

City officials were all smiles yesterday as Mayor Jerry Sanders, flanked by (from left) City Attorney Michael Aguirre, Councilmen Jim Madaffer (obscured), Kevin Faulconer and Scott Peters and CFO Jay Goldstone, announced that San Diego's 2003 audit was complete. What began as a seemingly routine task for accounting giant KPMG three years ago on a \$250,000 retainer turned into a \$6.6 million scouring of the city's wildly inaccurate books from fiscal 2003.



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Barriers, Challenges and Opportunities for the Compliance Officer

There's no disputing that the feds are going after a lot of state and local officeholders these days.

Since 2002, both the number of public corruption cases and the number of FBI agents devoted to such cases has increased by more than 50 percent.

BY ALAN GREENBLATT, *Governing Magazine*
July, 2008

What's clear is that we are dealing with a national phenomenon.

In the past three years, the FBI's long-running undercover operation in *Tennessee* (code named "Tennessee Waltz") has led to the conviction of a dozen officials, including several state senators and a state representative, the most recent of them in April.

In *New Jersey*, U.S. Attorney Christopher Christie has prosecuted more than 125 state and local officials, without a single acquittal.

In *North Carolina*, U.S. Attorney George Holding successfully prosecuted House Speaker Jim Black in a corruption scandal, followed this spring by the conviction and expulsion of one of Black's top lieutenants — the first expulsion of a legislator in that state since 1880.

And in *Alaska*, a major bribery scandal involving an oil services company has already led to seven convictions, including that of former state House Speaker Pete Kott.



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Benefits

Financial:

- Avoid or reduce fines in case of regulatory violations
- Potential savings in organizational costs



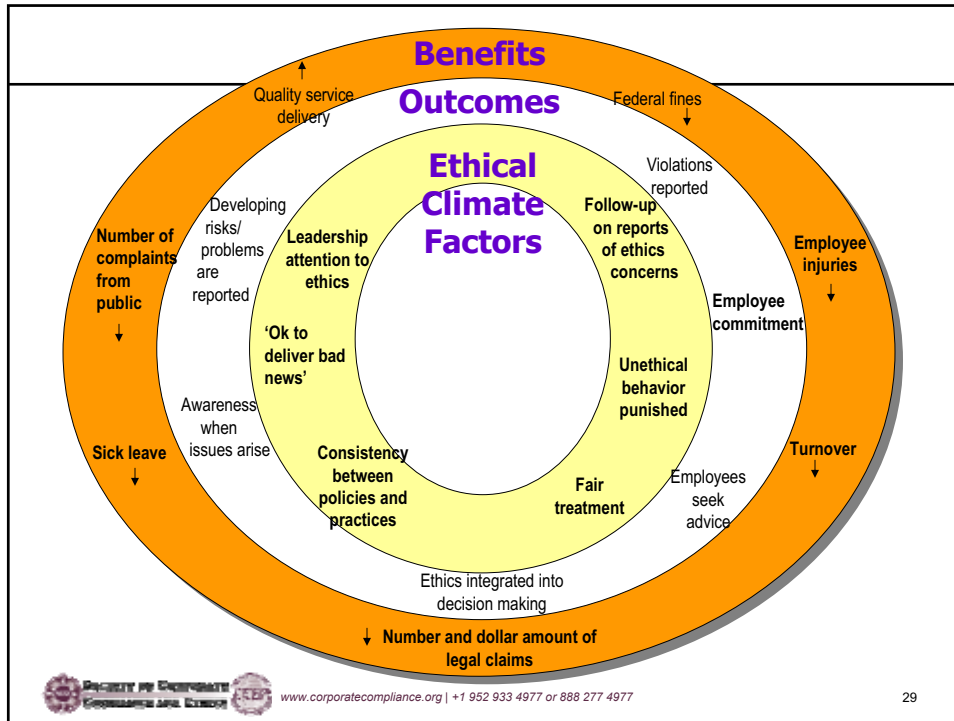
Organizational Cost Savings

2001 City of Austin Audit

Objectives

- Determine relationship between ethical climate and organizational costs.
- Assess the degree of variance among City departments' ethical climate.
- Compare City policies to standard ethics management program.





**Ethical Climate Benefits:
Reduced...**

- # of damage claims and \$ paid
- Lost-time worker injuries
- Complaints from the public
- Sick leave usage
- Employee turnover

Compliance Program Implementation

- Implement the structure (7 elements) of the compliance program
- Perform a risk assessment
- Prioritize the risks identified (by severity of problem, cost of remediation, systemic vs. isolated nature of risk, etc.)
- Deal with the highest risk “substantive issues”
- Continue address all the identified and newly discovered risk areas
- Evaluate the effectiveness of the program



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Tools

- SCCE Resources
 - www.corporatecompliance.org
 - Products
 - Conferences
- Ethics Resource Center
 - Ethics Toolkit
 - www.ethics.org
- UN/TI Urban Government Tool Kit
 - Municipal Checklist
 - Urban Corruption Survey
 - Municipal Vulnerability Assessment
 - www.transparency.org/tools



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Tools

- **National Conference of State Legislatures**
 - Center for Ethics in Government
 - <http://www.ncsl.org/programs/ethics/index.htm>
- **International City/County Management Association (ICMA) Ethics Section**
 - icma.org
- **Independent Commission Against Corruption**
 - New South Wales, Australia



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Subscriptions

- **Public Integrity (quarterly)**
 - American Society of Public Administration
 - <http://aspanet.org>



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Discussion



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