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BY MARTHA PEREGO, ICMA-CM

TAN, RESTED, AND RUNNING

Advice for navigating the campaign season

The 2012 presidential campaign season is sure to be competitive and combative given the partisan climate, battleground rhetoric, and tough issues facing the country. The race is off to an early start as committed candidates and those testing the waters toured Iowa and other key battlegrounds this summer.

Public servants at all levels have a keen personal as well as professional interest in the outcomes of the elections. For professionals managing our cities and counties, the challenge is to be well informed about the candidates' positions and the potential impact on issues while also remaining politically neutral. The combined effort of being engaged and well informed can make it difficult to stay above the fray.

Political neutrality is a foundational principle of the profession. To serve the public and members of the governing body equally, we remove ourselves from the larger democratic process of selecting elected leaders, and we limit our participation to voting. In reality, that means following the guideline of the ICMA Code of Ethics on elections:

Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state, or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Seems clear and direct—unless you consider all the nuances of the campaign process.

Issue Briefing or Party Fundraiser?

The local chapter of the dominant political party in town is hosting a presentation by a nationally known and hugely successful political consultant. Marketed as a briefing on national issues, the ticketed event is attracting lots of attention. The mayor and most of city council plan to attend and are encouraging the city manager to do so as well.

PUBLIC MANAGEMENT

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From the mayor's perspective, it is important for the manager to be well informed. Since all the elected officials are from this party, no one on council will take issue with the manager's attendance. The manager, who has presented on city issues at party meetings during the off-season, is hesitant about attending this event.

A ticketed event sponsored by a political party during a campaign season is probably a fundraiser designed to support the party's candidates and mission. It is wise to double check first, but, if confirmed, the manager must decline. Even attending if someone else pays for the ticket would not be appropriate because the event is supporting a slate of candidates.

The Debate

A private college in the city has been selected as the venue for one of the Republican Party debates between the president and his challengers. City police and staff will assist with the logistics. The mayor, a Republican, has been invited to open the event. The assistant city manager is tasked with coordinating the city's logistical efforts. She obviously will be granted access to the event and perhaps even offered a seat on the dais, if desired.

The assistant city manager, cognizant of her commitment to political neutrality, is concerned that her obligation to be on-site during the event creates an ethical issue. Would her attendance be misconstrued as supporting Republican Party candidates? Should she just stay in the parking lot during the debate?

Even though this debate is sponsored by and is solely between members of the same party, ICMA members are not precluded from attending (assuming it's a true debate and not a fundraiser). Debates are certainly part of the campaign process, but they also serve the purpose of informing voters.

But it's nuanced. Although simply attending a debate doesn't signal support for either the party or a candidate, sitting on the dais wearing a "vote for Joe" T-shirt does.

Again, the commitment to political neutrality is not intended to deprive professionals from gathering information and insight.

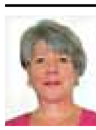
To Caucus or Not

The caucus process used in a number of states essentially requires individuals to publicly demonstrate their support for a candidate in order to register a vote in the primary. This manner of voting would appear at first consideration to violate the principle of political neutrality outlined in the ICMA Code of Ethics.

But the principle was never intended to either limit a member's right to vote or prevent it. Recall the opening principle of the guideline: "Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues."

ICMA members can participate in the caucus process for the purpose of registering a vote. Caucuses, probably more than any other campaign activity, raise concerns about the subtle distinction between voting and campaigning. To be clear, it is okay to voice your vote or stand for the candidate of your choice. It is crossing the line, though, to actively rally or seek support for the candidate of your choice.

If you are concerned that attending a debate or participating in a caucus would undermine your effectiveness or create the appearance that you are not politically neutral, then it is best not to participate. It was Supreme Court Justice Potter Stewart who reminded us that ethics is knowing the difference between what you have a right to do and what is right to do. PM



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WHAT MOTIVATED YOU TO CHOSE A LOCAL GOVERNMENT MANAGEMENT CAREER?

JUDITH GILLELAND, ICMA-CM
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I knew that I was "destined" to be in city government when I excelled in an undergrad public administration class that simulated a city named "Camelot" and its government. While the cities that we manage today are far from that pretend Camelot, they all have complex, diverse, and interesting issues to work through.

In addition, as a young intern in three cities, I gained considerable insight into city operations, and I developed a great respect and fondness for local government service and the opportunity a career in local government management provides to make a positive and immediate impact on many people and a community.

GEORGE "BUD" DUNHAM
Town Manager
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Something practical and something idealistic. Some 25 years ago, the economy for job seekers with a political science degree wasn't much better than it is today, so getting an MPA, which started me on this path, seemed prudent and realistic.

The much larger motivation was a long-standing commitment to public service. As naive as I was then, I still feel the same way today but with a better understanding of how challenging and demanding public service can be.

No other career provides the opportunity to impact the daily lives of people more than local government, and when the public supports important services and initiatives, few things are more rewarding and fulfilling.

DAVID CLYNE, ICMA-CM
City Manager
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As a survivor of the '60s (one whose memory is intact . . . more or less) from the San Francisco Bay area and with a Jewish mother (Holocaust survivor), I had a simple motivation . . . guilt. For those of us who lived through that period of time, the world was a dangerous and tragic place.

The choices were to tear it down, drop out, or do our part to make it a better place. My choice was the last one. Having avoided military service due to my opposition to the Vietnam War and seeing friends go, guilt and a sense that I could make a difference turned me to alternative public service.

One VISTA tour, one county, eight cities, a small law practice, two failed marriages later, and here I am . . . still pretty guilt ridden . . . nonetheless remarried, at peace, and happy.

JOYCE SHANAHAN, ICMA-CM
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When I was about 12 years of age, I never imagined managing a full-service city. My aspirations were more gender centric for the time period; I wanted to be a teacher.

However, in high school I had a history teacher who had a passion for democracy, and his inspiration was infectious. As I progressed through school, I changed my major to political science because, as hokey as it sounds, I truly wanted to make a difference in my community.

Government is/was/will be where you can best serve the entire population on a grassroots level and effectuate a change that is important and meaningful to a community. Being a city manager makes me a guardian of that precious inheritance and provides me with the opportunity to ensure active civic engagement on a neighbor-to-neighbor basis in my community. PM

1

COUNTY AND SCHOOL SYSTEM JOIN FORCES

Together, Stafford County, Virginia, and Stafford County Public Schools created a day school and transition center for children needing specialized services.

▸ icma.org/stafford_county_day_school

2

REBUILDING IN SPARTANBURG

Spartanburg, South Carolina, and the nonprofit organization Christmas In Action repair the houses of disadvantaged homeowners through a repair project known as Rebuilding Day.

▸ icma.org/Spartanburg

3

ICMA LATINO-AMÉRICA

ICMA's office in Mexico promotes professional management, good governance, and service delivery improvements in Latin America and the Caribbean.

▸ icma.org/latino

4

WATER MATTERS; FREE TREES DO, TOO

An important part of Broward County, Florida's effort to educate residents about water conservation is Water Matters Day, including a tree and plant giveaway.

▸ icma.org/water_matters_day


TRUSTWORTHY L
Why building a culture of trust will boost em

By John Hamm

Do your employees trust you? The brutal truth is: probably not. It may not be fair, and you may not want to hear it, but chances are that previous leaders or managers have poisoned the ground on which you're trying to build a successful organization. Make no mistake: unless you and all the leaders in your organization can gain the trust of employees, performance will suffer. And considering how tough it is to survive in today's economic environment, that's bad news for an organization.

Why is trust so pivotal? Because it's a matter of human nature. When employees don't trust their leaders, they don't feel safe. And when they don't feel safe, they don't take risks. And where there is no risk taken, there is less innovation, less "going the extra mile," and, therefore, very little unexpected upside.

Feeling safe is a primal human need. When that need isn't met, our natural response is to focus energy toward a showdown with the perceived threat. Our attention on whatever scares us increases until we either fight or run in the other direction, or until the threat diminishes on its own. Without trust, people respond with distraction, fear, and, at the extreme, paralysis. And that response is hidden inside organizational behaviors—sandbagging quotas, hedging on stretch goals, and avoiding accountability or commitment.

Trustworthiness is the most noble and powerful of all the attributes of leadership. Leaders become trustworthy by building a track record of honesty, fairness, and integrity. For me, cultivating this trust isn't just a moral issue; it's a practical one. Trust is the currency you will need when the time comes for you to make unreasonable performance demands on your teams. And when you're in that tight spot, it's quite possible that the level of willingness your employees have to meet those demands could make or break your team or organization.

TAKEAWAYS

› When employees don't trust leaders, their creative energy will be spent on protecting themselves rather than on the organization.

› Now is the time to build your employee "trust fund."

Most employees have been hurt or disappointed at some point in their careers by the hand of power in an organization. That's why nine times out of 10, leaders are in negative trust territory before they make their first request of an employee to do something. Before a team can reach its full potential, leaders must act in ways that transcend employees' fears of organizational power.

The first step starts with you, as manager. As a leader, you must go first—and model trustworthiness for everyone else. Being trustworthy creates trust, yes. But beyond that, there are specific things you can do to provide unusually excellent, trust-building leadership at your organization:

First, realize that being trustworthy doesn't mean you have to be a Boy Scout or Girl Scout. You don't even have to be a warm or kind person. On the contrary, history teaches us that some of the most trustworthy people can be harsh, tough, or socially awkward—but their promises must be inviolate and their decisions fair.

As anachronistic as it may sound in the twenty-first century, men and women whose word is their honor and who can be absolutely trusted to be fair, honest, and forthright are more likely to command the respect of others than, say, the nicest guy in the room. You can be tough. You can be demanding. You can be authentically whoever you really are. But as long as you are fair, as long as you do what you say consistently, you will still be trusted.

Look for chances to reveal some vulnerability. We trust people we believe are real and also human (imperfect and flawed)—just like us. And that usually means allowing others to get a glimpse of our personal vulnerability—some authentic (not fabricated) weakness or fear or raw emotion that allows others to see us as similar to themselves and, therefore, relate to us at the human level.

No matter how tempted you are, don't mess with your employees. Tell the truth, match your actions with your words, and match those words with the truth we all see in the world: no spin, no BS, no fancy justifications or revisionist history—just tell the truth.

Telling the truth when it is not convenient or popular, or when it will make you look bad, can be tough. Yet, it's essential to your reputation. Your task as a leader is to be as forthright and transparent as is realistically possible. Strive to disclose the maximum amount of information appropriate to the situation. When you feel yourself starting to bend what you know is the truth or withhold the bare facts, find a way to stop, reformat your communication, and tell the truth.

Never, ever make the "adulterer's guarantee." This happens when you say to an employee, in effect, "I just lied to (someone else), but you can trust me because I'd never lie to you." When an employee sees you committing any act of dishonesty or duplicity, they'll assume that you'll do the same to them. They'll start thinking back through all of their conversations with you, wondering what was real and what was disingenuous.

Don't punish "good failures." This is one of the stupidest things an organization can do—yet it happens all the time. A good failure is a term used in Silicon Valley to describe an initiative by a new business start-up or mature company

> **If your employees don't trust leaders, they won't feel safe.** And when they don't feel safe, they don't take risks. And where there is no risk taken, there is less innovation, less "going the extra mile," and, therefore, very little unexpected upside.

that, by most measures, is well planned, well run, and well organized—yet for reasons beyond the organization's control (an unexpected competitive product, a change in the market or economy) the initiative fails. In other words, good failures occur when you play well but still lose. When they're punished, you instill a fear of risk taking in your employees, and with that you stifle creativity and innovation. Instead, you should strive to create a digital-camera culture.

There is no expense—financial or otherwise—associated with an imperfect digital photograph. You just hit the delete button, and it disappears. No wasted film, slides, or prints. When we pick up the camera we are aware of this relationship between mistakes and the consequences—so we click away, taking many more photos digitally than we would have in a world of costly film. Because we know failure is free, we take chances, and in that effort we often get that one amazing picture that we wouldn't have if we were paying a price for all the mistakes.

Don't squelch the flow of bad news. Do you or others in your organization shoot the messenger when a person brings you bad news? If so, you can be certain that the messenger's priority is not bringing you the information you need; it's protecting his or her own hide. That's why in most organizations good news zooms to the top of the organization while bad news—data that reveal goals missed, problems lurking, or feedback that challenges or defeats your strategy—flows uphill like molasses in January.

We must install a confidence and a trust that leaders in the organization value the facts, the truth, and the speed of delivery, not the judgments or interpretations of good or bad, and that messengers are valued, not shot. Make it crystal clear to your employees that you expect the truth and nothing but the truth from them. And always, always hold up your end of that deal. Don't ever shoot the messenger and don't ever dole out some irrational consequence.

Unusually excellent leaders build a primary and insatiable demand for the unvarnished facts, the raw data, the actual measurements, the honest feedback, the real information. Few efforts will yield the payback associated with improving the speed and accuracy of the information you need most to make difficult or complex decisions.

Constantly tap into your fairness conscience. Precise agreements about what is fair are hard to negotiate because each of us has a personal sense of fairness. But at the level of general principle, there is seldom any confusion about what fair looks like. Just ask yourself: Would most people see this as fair or unfair? You'll know the answer (indeed, as a leader, you're paid to know it).

If you treat employees fairly, and you do so consistently, you will set a pattern of behavior for the entire organization. This sense of fairness, critical to the creation of a safe environment, can be reinforced not only by complimenting fair practices but also by privately speaking to—or, if necessary, censuring—subordinates who behave unfairly to others in the organization.

Don't take shortcuts. Every organization wants to succeed. That's why, inevitably, there is a constant pressure to let the end justify the means. This pressure becomes especially acute when either victory or failure is in immediate sight. That's when the usual ethical and moral constraints are sometimes abandoned—always for good reasons, and always "just this once"—in the name of expediency.

Sometimes this strategy even works. But it sets the precedent for repeatedly using these tactics at critical moments—not to mention a kind of "mission creep" by which corner cutting begins to invade operations even when they aren't at a critical crossroads.

Plus, when employees see you breaking the code of organizational honor and integrity to which your organization is supposed to adhere, they lose trust in you. Betray your organization's stated values when you're feeling desperate—by lying to clients or spinning the numbers to get out of trouble—and you devalue the importance of trust and honesty in their eyes. They see you breaking your own rules and suddenly they see you as less trustworthy.

Separate the bad apples from the apples that just need a little direction. The cost of untruths to an organization can be huge in terms of time, money, trust, and reputation. As a leader, you have to recognize that you are not going to be able to fix a thief, a pathological liar, or a professional con artist—all of them must go, immediately.

Trustworthiness is never entirely pure. Everyone fails to achieve perfection. So the goal for a leader is to make those wrong choices as rarely as possible; admit them quickly, completely, and with humility; fix them as quickly as you can; and make full recompense when you cannot. Trust is the most powerful, and most fragile, asset in an organization, and it is almost exclusively created, or hampered, by the actions of the senior leader on the team.

A working environment of trust is a place where teams stay focused, give their utmost effort, and in the end do their best work. It's a place where we can trust ourselves, trust others, trust our surroundings, or—best of all—trust all three. PM

JOHN HAMM, San Francisco, California, teaches leadership at the Leavey School of Business at Santa Clara University, and is the author of the book *Unusually Excellent: The Necessary Nine Skills Required for the Practice of Great Leadership* (San Francisco: Jossey-Bass, 2011), ISBN: 978-0-47092843-1, www.unusuallyexcellent.com).

By Christine Becker

MANAGING SUCCESSFULLY IN A COMPLEX BUILT ENVIRONMENT

Strategies local governments use to improve building services operations

TAKEAWAYS

› For local government managers, maximizing the building regulatory system as an economic development tool requires connecting the goals of both regulation and development and ensuring that staff acts on that connection.

› Success in today's complex built environment comes down to technical capacity, trust between public and private players, professionalism, and integrity.

Today's commitment to sustainability and energy efficiency in the built environment is placing increased demands on the local government departments that oversee new construction and renovation of existing buildings. Energy conservation codes, green building codes, stretch codes, smart rehab codes, and LEED rating systems, for example, require broad technical expertise to ensure code-compliant, safe, and energy-efficient construction that also meets economic development goals.

The development of the International Energy Conservation Code and the International Green Construction Code provide model language for state and local codes designed to ensure safe, energy-efficient, and sustainable construction. They also create a need for education and information as well as new approaches to local enforcement that link traditional building codes with the priorities of energy efficiency and green construction practices

Among the challenges local government managers face in the increasingly complex built environment are:

- Ensuring that the building regulatory system promotes, supports, and sustains economic development while incorporating sustainability and energy efficiency goals.
- Keeping policymakers informed about and engaged in emerging code options and requirements, including understanding the difference between legally binding codes and voluntary rating systems.
- Ensuring that staff know about all the technical dimensions of code enforcement, energy efficiency, building system performance, and building safety.
- Creating an organizational infrastructure that maximizes collaboration among the various departments involved in all phases of construction, from initial concept through certificate of occupancy.
- Training staff to be partners, problem solvers, and advisers to the public and the construction and development community while still ensuring compliance with all municipal codes.

The building boom of the early 2000s led many local governments to streamline their building and code enforcement operations to keep up with service demands. As goals and expectations for construction and renovation change, it is important for local government managers to assess the mission, philosophy, structure, and culture of the departments that support construction and renovation to ensure that they are ready for the challenges that lie ahead.

This article highlights strategies that local governments have used to improve building services operations and staff performance in recent years. These practices can be effective in dealing with today's changing environment.

Maximizing Building and Economic Development Success

In Carrollton, Texas, a reorganized division, Development Services, combines building inspection, planning, and transit-oriented development around the mission of managing the ebbs and flows of the building process has become one of the city's biggest challenges "Today, we are competing for every development so you need to set yourself apart from the competition in order to be successful," said Carrollton City Manager Leonard Martin. "You can't go out and recruit new development and then have them tied up for a year in a traditional siloed organization."

Carrollton's director of Development Services, Ravi Shah, believes that centralization of regulatory functions into a faster, friendlier, and flatter department is essential in today's tough economy "where governmental efficiency is measured by the ability of its regulatory departments to innovate and function cohesively as a single unit."

In addition to structural changes, Carrollton emphasized these new performance expectations:

- Making sure all staff members are aware of the city's economic development vision and plans.
- Assigning one point of contact—a project champion—to provide coordinated responses and ensure timely completion.
- Using checklists to define roles and responsibilities among departments and establish an institutional memory for every project even when various staff members are involved.
- Taking city hall to the client whenever possible, such as providing on-site plan reviews.
- Promoting an orchestrated permitting process that maximizes collaboration, consistency, and efficiency.

Carrollton advertises its permitting efficiency as one of the top five reasons to locate in the city. It guarantees a turnaround of 10 days or less on building permits, including review of all codes and ordinances related to private development and associated public infrastructure.

"Predictability and consistency are essential to producing safe and sustainable building projects," Martin added. "The building official's primary job is to promote development within the code, not hinder development."

Fast, Predictable

Bellevue, Washington, reorganized its building and development operations to keep up with a massive construction boom in the early 2000s. City Manager Steve Sarkozy said the effort was designed both to ensure that code compliance services supported economic development and to change the mind-set of building staff from regulators to partners with the development community.

The city used three guiding principles—quick response time, predictability, and seamless and collaborative processes that presented "one city"—to shape its new operation, and it established performance metrics for all departments involved in construction on the basis of these three principles. Those metrics emphasize that city staff work closely with developers in order to encourage, not squelch, successful development.

During Bellevue's construction boom, a 900,000-square-foot, $1 billion retail, residential, hotel, and office complex requested on-site inspection and approval within 20 minutes of request. "As long as the developer is willing to pay for that level of service, the city must be prepared to respond," Sarkozy said.

With a significant drop in new construction in recent years, Sarkozy said that managing the ebbs and flows of the building process has become one of the city's biggest challenges. Because building development services are designed to be self-supporting through fees, slow building periods create financial challenges in maintaining top-quality staff who understand and are committed to the city's development philosophy.

"It is important to put enough money aside during the boom times to retain the best building and development staff during the ebbs," Sarkozy said. "The economic climate will change, and the city has to be ready to deal with the next boom and changing development expectations."

Problem Solvers and Trusted Advisers

As the regulatory environment becomes more complex, building officials need to see themselves as problem solvers and trusted advisers more than enforcers. The new role of facilitator requires a different set of skills, a different mind-set, and constant reinforcement:

- Ensure that staff members are well schooled in all required codes, advisory standards, and energy rating systems.
- Provide training on how to work effectively with developers as partners and customers; focus particularly on listening and problem-solving skills.
- Work with builders and developers to incorporate codes into their plans from the outset to eliminate potential violations before they occur.
- Emphasize collaboration as the local government's approach to managing the built environment.
- Reward employees for solving problems rather than issuing citations.

"It requires a long-term philosophy that balances protecting the city from risk and liability while facilitating efficient development," said Ed Daley, city manager of Hopewell, Virginia. "Code enforcement can be both a public protector and a facilitator of economic development—but that is a cultural change for many building officials."

Technology Improves Operations

Technology and e-government services support efficiency and effectiveness in the built environment, particularly as new codes and rating systems broaden development requirements and expand the breadth of inspection and review processes. A pilot project in "smart permitting" in California's Silicon Valley in the late 1990s focused on linking technology, standardized regional processes, and well-trained employees.

Technology and e-government services support efficiency and effectiveness in the built environment, particularly as new codes and rating systems broaden development requirements and expand the breadth of inspection and review processes.

Launched on the front end of the e-government movement, the project emphasized "smart technologies, smart people, and smart process." It also predicted that regional collaboration—several local governments working together to achieve a common goal—would be the foundation of smart permitting and efficient building department operations in the future.[1]

Regional collaboration is an important component of the e-government alliance among 11 cities and one county in the Puget Sound region. The alliance provides a selection of portals for cross-jurisdictional service delivery, including MyBuildingPermit.com. Sarkozy said standardization of processes among the participating jurisdictions has produced a good business climate for contractors and suppliers.

"The alliance has helped the region attract and nurture a lot of really good contractors because they can get work done more efficiently here," Sarkozy said. "It has also helped a group of suburbs provide a sophisticated level of building services that they couldn't do on their own. And that is particularly important in today's environment."

Continued advancements in technology are essential to ensuring responsive and effective local building and development services. Technology-based field inspection tools, for example, accelerate development decisions, support problem solving, and promote consistency in carrying out inspections. The field inspection technology of the Institute for Building Technology and Safety makes use of a handheld tablet with a Windows-based inspection system to provide efficient data collection and management.

Forms on the tablet are pre-populated with applicant information, site data, and digital photos to eliminate guesswork. Objective questions, inspection guides, checklists, and decision trees facilitate on-site action and transmit inspection results in real time for immediate processing, eliminating the need for dual entry of inspection data or written follow-up reports.

Challenges Ahead

The commitment to sustainability and environmentally responsible building practices will continue to broaden the expectations of local departments responsible for supporting economic development and ensuring code compliance. Building officials play an important role in enhancing safety, welfare, and quality of life by enforcing sound building practices, and they are also part of a much larger context dealing with the community's long-term economic, social, and environmental health. Building services in today's environment cannot be viewed as a technical responsibility best handled entirely by technical staff.

Important components of a successful approach to development services include:

- An up-to-date and flexible organization structure that supports broad policy goals around economic development, green building practices, energy conservation, and sustainability.
- The most current technology solutions to support efficient day-to-day operations and data management.
- Standardization of processes and code requirements across jurisdictions whenever possible.
- Well-trained and committed staff who understand the technical requirements of the built environment, the organization's vision for sustainable development, and the important role they play as strategic partners with the development community. PM

1 Liza Lowery et al., *Smart Permit: A Blueprint for Success* (Alexandria, Va.: Public Technology, Inc.; San Jose, Calif.: Joint Venture: Silicon Valley Network, 2001), pp. 13–15, 77–80.

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By Tracy Brown and Scott Lazenby, ICMA-CM

MAIN STREET FACE-LIFT

Master-plan approach opens new downtown businesses

TAKEAWAYS

A key to revitalizing a downtown is improving the appearance of older or inappropriately remodeled buildings. Sandy, Oregon, using an innovative approach that resulted in dramatic improvements over a short period,

› Quickly prepared a master plan of storefront improvements.

› Prioritized the improvements based on visual impact.

› Negotiated easements with building owners, hired a single contractor, and paid for the building façade upgrades.

Local governments often use matching grants to encourage renovation of the facades of older downtown buildings. These programs are often passive, with the results driven by the owner of the private property. Although the city or county exercises some control over the improvements—often by paying an architect directly—the building owner must still come up with matching funds and deal with the red tape the locality imposes.

In many cases, the results are spotty at best. Even with a low private match requirement of 50 percent or less, the building owner may be reluctant to put money into aesthetic improvements. This is especially true for absentee building owners who are satisfied with the rents they earn from their business tenants.

Even when property owners take advantage of the incentive, the improvements may be scattered throughout a downtown area, with attractive, renovated buildings surrounded by less attractive ones. The challenge a local government faces is to get a bigger bang for the public buck.

Even in the midst of the recession, new businesses began opening in the downtown. One older building with several tenant spaces went from 100 percent vacancy to 100 percent occupancy, and the owner of the building, who was still on the waiting list for the facade program, immediately invested in upgrading the lighting and HVAC systems.

Case Study: Master-Plan Approach in the City of Sandy

Sandy, Oregon, is a city of 9,655 on the western foothills of Mt. Hood. The city is celebrating the centennial of its incorporation, and its historic downtown is on the route of the Oregon Trail. U.S. Highway 26 is the downtown's main street, and businesses benefit from the 30,000 to 60,000 cars per day that pass through.

Downtown buildings are a mix of historic wood and concrete structures; other historic buildings marred by 1960s and 1970s "improvements" using stucco, out-of-date mansard roofs, and cheap siding; unremarkable buildings built new in the 1960s and 1970s; and more modern buildings done in a variety of architectural styles.

In recent years, the city has adopted design standards for new commercial buildings in an attempt to tame the architectural chaos that was taking place. Rather than create an artificial theme, the design standards simply call for elements that are compatible with the "Cascadian" style that characterizes Mt. Hood's Timberline Lodge, built by Portland-area craftsmen employed by the Works Progress Administration during the Great Depression. Exceptions to the standards in the downtown core preserve the historic character of existing clusters of buildings by encouraging infill development to complement the appearance of those buildings.

These standards have helped with new development, but the planning commission and city council wanted a mechanism to spruce up the existing, older downtown buildings. The city operates an urban renewal agency using tax increment financing, and it participates in the Main Street Program developed by the National Trust for Historic Preservation.

During the past decade, $5 million has been invested in downtown public infrastructure including parking, sidewalks, streetlights, and burying utility wires. The time seemed right to direct some of the urban renewal funds to improving the storefronts of private buildings. City staff explored the matching grant programs offered by other communities and worked with the Main Street committee to tailor a program to meet local needs.

In the middle of this process, this article's coauthor, Tracy Brown, attended a national Main Street conference in Chicago. The recession had caused a sharp decrease in subdivision activity, so he had time to serve as Sandy's Main Street coordinator in addition to planning director. At the conference, Randy Wilson of Community Design Solutions described a program he had used in South Carolina to spruce up entire blocks of downtown buildings at the same time.

The innovation in this approach was to buy the cooperation of the building owners by paying 100 percent of the cost. At the same time, money was saved by having a single contractor do all the work, which reduced the overhead and mobilization cost of multiple individual contracts.

How the Program Works

This idea was shared with the city council and other main street leaders in Sandy. The consensus was: "Let's give this a try." Here are the elements of Sandy's Master Plan Facade Program:

COOL PRINTING
BEFORE AND AFTER

In cases where the property owner wanted more extensive structural improvements such as a new roof or additional square footage, the city provided matching grants on a sliding scale.

DOLLY'S
BEFORE AND AFTER

A total of $1.8 million in urban renewal funds was budgeted for the project over six years. This is a large investment in private buildings. But with only one-third of the funds spent so far, the impact on the appearance of the city has been more dramatic than the result of the $5 million spent to date on sidewalks, street lamps, and other public improvements.

City staff worked closely with an architect in designing the program. The architect, Ralph Tahran, had also helped establish the design standards for new construction. He was masterful in evaluating buildings, sketching improvements, and working with building owners and the contractor.

The architect and Sandy staff members first "triaged" all existing buildings, with a goal of maximizing the visual impact of the city's investment.

The team then met with the owners of the targeted buildings. The final design was arrived at by mutual consent, but because the city was picking up the full cost consensus was easily reached in most cases. A picture is worth a thousand words, and the architect was skilled at sketching concepts on tracing paper and using a digital display board to dress up the digital images of the buildings.

The out-of-town owner of a typical, boxlike 7-Eleven store, when seeing the Cascadian embellishment proposed for his building, said, "Tell me again: you're paying for all this?"

In the end, the city did require a 1 percent match, but even for the most expensive project—a $50,000 makeover of a concrete building at the gateway to the downtown—the owner quickly agreed to his $500 contribution.

Each property owner signed an easement allowing the city to perform the work on the building and agreeing to maintain the improvements for at least seven years.

A single contract was bid for the first batch of building improvements. The resulting economy of scale, in combination with the depressed construction prices caused by the recession, allowed the city to stretch its dollars. In the first phase, 11 buildings were improved for a total cost of about $310,000, not including architectural fees.

The program did not cover such major structural changes as new roofs or additional space, but it did cover—depending on the condition of the building—new windows, doors, awnings, siding, paint, stonework, and the heavy timbers characteristic of Cascadian architecture.

Results

The contractor worked from one end of the downtown to the other during the summer of 2010, and the results of this first phase of the project were dramatic. With the proximity of the Mt. Hood and central Oregon recreation areas, traffic through town peaks in the summer, and many visitors stopped to comment on how good the place was looking.

Other property owners then wanted to jump on the bandwagon. The owners of two buildings—a historic log structure and a former grocery store—decided to make major structural improvements, including new pitched roofs and expanded space. The city provided matching funds on a sliding scale (80 percent up to $5,000, 50 percent for the next $45,000, and 30 percent for more than $50,000), but the owners made investments in their buildings that exceeded the city's requirements.

One concern expressed by business members of the Main Street committee was that the building owners would have relatively little skin in the game. As it turned out, though, many of the owners or their tenants made concurrent investments in sprucing up the interiors of the building or redoing the outside landscaping.

Even in the midst of the recession, new businesses began opening in the downtown. One older building with several tenant spaces went from 100 percent vacancy to 100 percent occupancy, and the owner of the building, who was still on the waiting list for the facade program, immediately invested in upgrading the lighting and HVAC systems.

CONTINUED ON PAGE 17

Sandy, Oregon, paid 99 percent of the cost of improvements to the facades of selected buildings, allowing the city to exercise a high degree of control over the timing and design of improvements.

SANDY GLASS
BEFORE AND AFTER

The city's dollars leveraged building owners' investments in interior tenant improvements and exterior landscaping improvements, which are still in progress in the "after" photo.

CONTINUED FROM PAGE 16

With the excitement generated by the program, the Main Street committee launched an event series, First Fridays, that included wine tasting, music, art displays, and sidewalk sales throughout the downtown. In spite of rainy spring weather—not a big surprise in Oregon—the series of Fridays was a huge success, and the participation rate by businesses has skyrocketed. Other activities and events have followed.

Lessons Learned

The city approached this as a pilot program and an experiment and kept careful note of what was working and what wasn't. A few of the lessons learned so far:

As a practical matter, it might be necessary to place a cap on the owner's cost. Given the reality of older buildings, the city's contractor sometimes uncovered such structural problems as dry rot. Ideally, this would remain the building owner's financial responsibility. Without a cap, owners of old buildings might be reluctant to participate if they are afraid of what they'll find when the building skin is removed.

In one case, the building owner, who was the landlord, enthusiastically supported the proposed improvements but didn't communicate with the owner of the tenant business (a restaurant) who had other ideas about such improvements as paint color and deck material. Legally, the city could have proceeded without the business owner's buy-in, but in the interest of peace and harmony the project was put on hold for a year until a compromise could be reached.

Different circumstances may require different approaches. Working with a single contractor made it easier for the staff to manage the project. But, especially because many small, local contractors are out of work, we are considering a general contractor–construction manager approach for the next phase, when small local firms can bid for parts of the subcontract work.

The program needs to have built-in flexibility to deal with the unknowns inherent in working with old buildings. A new awning was a key component for one of the building makeovers, but the contractor soon discovered that the 80-year-old building couldn't hold the awning as originally designed. The project was set aside for the next phase to give the architect a chance to rethink the design.

Be prepared for problem negotiation along the way. The contractor wasn't given detailed engineering and architectural designs for each building but was instead given drawings and descriptions of the expected outcomes. The architect worked closely with the contractor when problems came up, and the city had to negotiate when the contractor asked for more money to address the unexpected problems. This is simply the reality of remodel work.

Community Support

A 99 percent grant program for private storefront improvements with no fixed limits is certainly more expensive than, say, 50 percent grants limited to $5,000 each. But Sandy's concept of much larger grants was the key to moving the city from its role as a passive spectator to an active participant in upgrading the appearance of an older downtown.

The city was in the driver's seat as it selected which buildings would be treated, and how. And sprucing up many buildings in a brief period of time suddenly created a critical mass that spurred other investments and downtown activities.

The business owners were enthusiastic about the project in spite of the temporary mess during construction, and the community has supported the program strongly. Even though public, tax increment funds were used, residents are proud of the way their city is looking. PM

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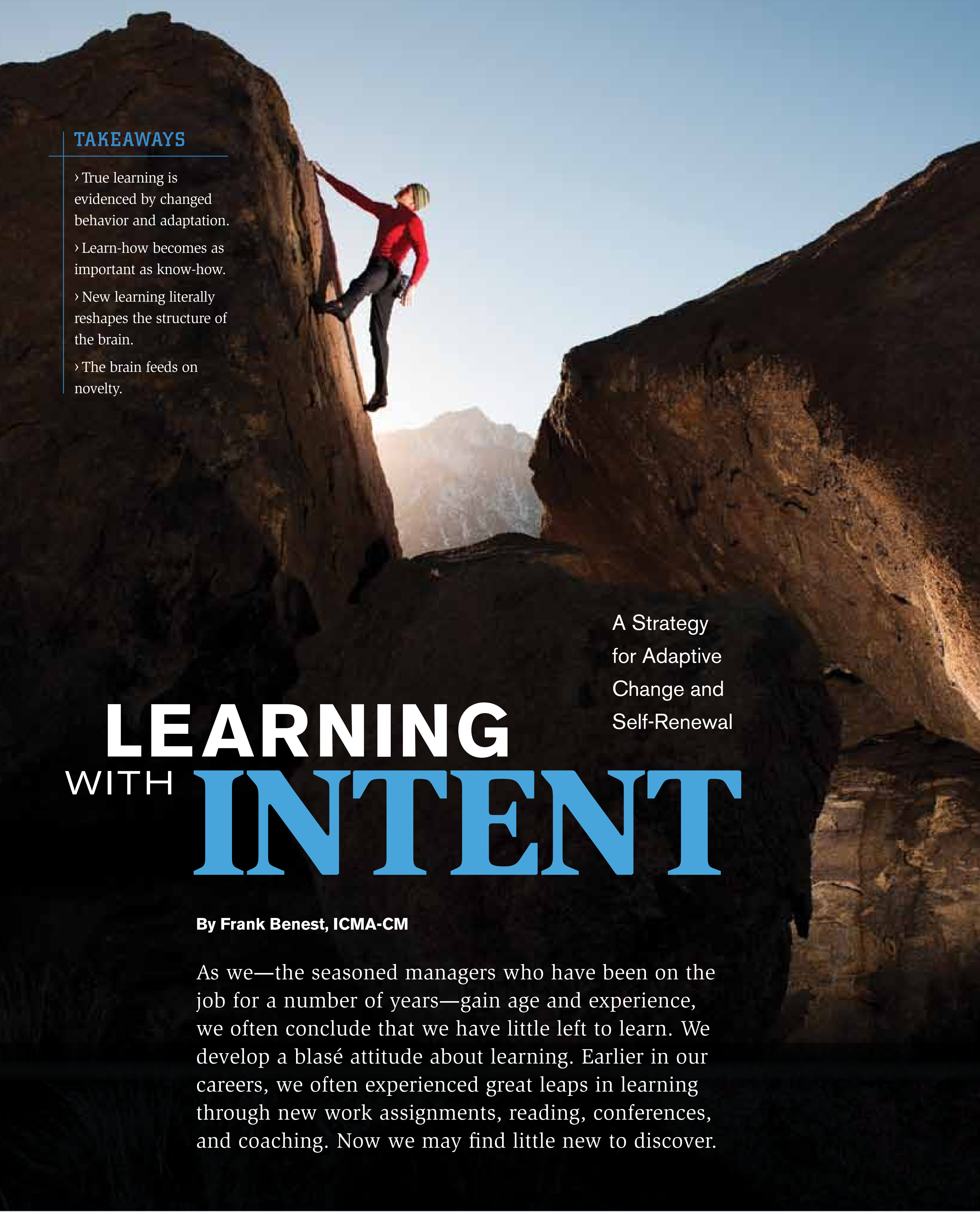


TAKEAWAYS

- › True learning is evidenced by changed behavior and adaptation.
- › Learn-how becomes as important as know-how.
- › New learning literally reshapes the structure of the brain.
- › The brain feeds on novelty.

A Strategy for Adaptive Change and Self-Renewal

LEARNING WITH INTENT

By Frank Benest, ICMA-CM

As we—the seasoned managers who have been on the job for a number of years—gain age and experience, we often conclude that we have little left to learn. We develop a blasé attitude about learning. Earlier in our careers, we often experienced great leaps in learning through new work assignments, reading, conferences, and coaching. Now we may find little new to discover.

Why Learning?

True learning is evidenced by changed behavior and adaptation. Learning is especially critical for local government managers because we lead organizations facing accelerating and discontinuous change.

Local governments are overwhelmed with the service and fiscal consequences of demographic shifts, a tax system not aligned with our service and knowledge economy, technological innovations, escalating demands by everyone, unsustainable costs, and environmental stewardship challenges. Moreover, citizens lack confidence in all institutions, including government, at the very point that we need strong institutions to address our challenges.

To exacerbate matters, most local government structures, processes, and practices are tied to the static world. Now we are being forced to change. Forced change can be traumatic for organizations, employees, and community members. With ongoing organizational flux and restructuring, local governments need flexible and ever-learning employees.

In this disruptive world, technical knowledge becomes quickly obsolete. Learn-how becomes as important as know-how. Learning agility is the ability to take on a new challenge, do research, try out some ideas, and fix up things as we go along. For both line employees and managers, learning agility becomes the key competency.

As management consultant Gary Hamel asks, "Are we learning as fast as the world is changing?"

It is difficult, even depleting, to be a leader in turbulent times. Learning is critical to self-renewal and to staying energized while grappling with new realities.

Learning and Life Phases

Frederick M. Hudson, author of *The Adult Years: Mastering the Art of Self-Renewal*, identifies three key phases of adult development:

Dream and plan. During this phase, we dream, anticipate, and plan for developing our careers and starting our families. We experience great leaps of learning as we continue with formal education, begin our careers, and encounter new situations.

Plateau. In the plateau phase, there is much learning as we take on leadership challenges and confront adversity. The work is difficult but there is contribution and joy. Everything seems to be aligned and clicking.

Doldrums. In the doldrums, there is "little wind left in the sails." We experience the "been there, done that" blues and find that we are not learning much either through our day-to-day work or structured learning (reading, conferences, seminars). In the doldrums, we have three choices:

- Do nothing (and things get worse).
- Make a mini transition (take on new learning, get energized through a new passion project).
- Make a major life transition (retire and move on to a new life phase, develop an encore career, find a new life partner).

Learning with Intent

The ICMA Credentialing Advisory Board promotes learning with intent, in other words, becoming more purposeful in our learning. This kind of learning can help managers adapt to the disruptive world and can help us refresh and renew ourselves. Learning with intent encourages us to:

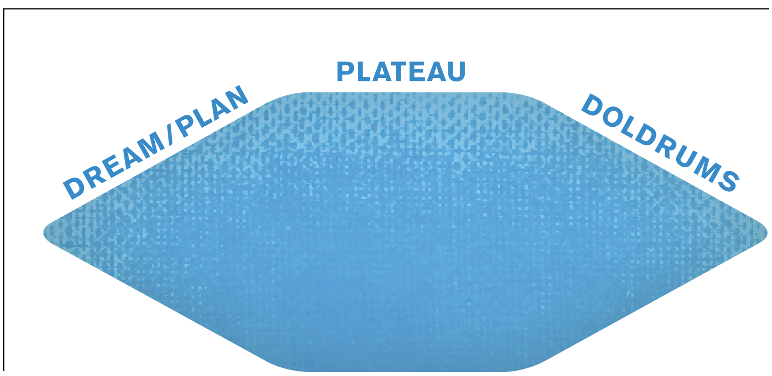
- Consciously seek out new experiences and learning.
- Explore ways to apply new ideas.
- Reflect on one's practice.
- Share insights with others, be open to their perspectives, and together build on lessons learned.

Midlife Stagnation

People can stagnate at any age, but the doldrums are more likely at midlife. According to gerontologist Alex Comfort, at midlife, psycho-social—as opposed to biological—factors account for 75 percent of the limitations to learning. Our mind-sets and habits can limit our learning.

Given our success and professional stature as managers, for

Frederick Hudson's Life Phases



It is difficult, even depleting, to be a leader in turbulent times. Learning is critical to self-renewal and to staying energized while grappling with new realities.

example, we may fear the mistakes and setbacks that are keys to learning and adaptation. As we age, we sometimes also believe that:

- Learning and creativity are for young people.
- We have seen everything.
- We are too old to learn "new tricks."
- Our brains are losing cells.
- Our memory is getting much worse.

To learn with intent, we obviously need to challenge these mind-sets.

Experience Compared with Structured Learning

Some managers see a dichotomy between on-the-job experience and classroom education and argue that work experience is the better teacher. This is a false dichotomy. Structured learning—reading, research, classes, and conferences—helps create a conceptual framework for new behavior and adaptation but does not change behavior. Experience by itself also does not necessarily lead to true learning, better performance, or adaptation to changing realities. The keys to both are *reflection* and *application.*

For maximum value, structured learning must be augmented by reflection about the content and the application of knowledge to practice. Likewise, to maximize the value of work experience, one must reflect on what happened, what went well and not so well, and what kind of lessons can be applied to new practice.

The best experiences tend to be stretching job assignments coupled with personal reflection, debriefing with others, and candid, helpful feedback and coaching. Structured learning works best when one reflects, shares insights with others, and applies the concepts to work.

In both cases, the sweet spot for applying new learning is when we stretch ourselves and have a 50 to 70 percent chance of success. If less than 50 percent, the experience can be overwhelming, and we tend to withdraw. If more than 70 percent, the assignment does not stretch us enough.

Growth Mind-sets

Carol S. Dweck, in her book *Mindset: The New Psychology of Success,* contrasts fixed versus growth mind-sets. Those with fixed mind-sets believe that one's talents are fixed, that the capacity to learn and grow is limited, and that failures are to be avoided. Those with fixed mind-sets typically do the same things over and over to reinforce their sense of competency.

Those with growth mind-sets believe that talent grows with effort, and they treat challenges and even failures as opportunities for learning and acquiring new skills.

By consciously learning with intent, including coaching, we can move beyond fixed mind-sets and promote growth attitudes.

Brain Research

Brain research suggests that we do not lose brain cells as we age. The key issue is the tens of thousands of synapses that are the connections between brain cells. Over time, we experience synaptic pruning. The brain creates well-worn grooves or pathways that each individual uses the most. Other pathways or connections wither if they are not used.

The good news from neurological research is that there is still brain plasticity as we age. New learning creates new synapses and pathways in the brain. As we adapt to changing demands, new learning literally reshapes the structure of the brain.

Neuroscience also suggests that memory circuits in the brain are not merely for reflecting on the past but are also vital mechanisms for imagining, anticipating, and preparing for the future. The proactive brain helps us integrate the past with new experiences so we can better navigate the future.

Learning Strategies

To learn with intent and nurture new pathways and a proactive brain, we can turn to a variety of strategies:

Give your brain a rich and diverse bank of experiences. New experiences (for example, interim management assignments, shadowing a frontline employee, new relationships, learning another language, travel or work abroad, volunteering with a free clinic) plus new structured learning (such as reading and classes outside the profession) provide richer information to our brains so we can better adapt and even help create the future. The brain feeds on novelty. Shaking things up helps create new pathways.

Reflect on structured learning or work experiences. Quiet, uninterrupted time allows the brain to wander, recombine prior experiences, and make connections.

Share experiences and reflect with others. By sharing learning, others can help us reflect, make connections, and anticipate the demands of the future. We can also learn by borrowing from the experiences of others.

Think about the future. By reflecting on our values, hopes, and dreams, we can identify and help shape future scenarios for ourselves and our organizations.

Apply new learning by testing new ideas. To stretch and grow, we need to test new ideas, reflect on what we learn, and incorporate the new learning into practice.

To minimize the risk of failure in the risk-aversive political environments of local government, we can tell everyone, including the governing board, that we have initiated a pilot from which we will learn from mistakes.

Debrief everything. As learning leaders, we can encourage everyone to debrief important and not-so-important experiences. A simple debriefing explores:

- What went right?
- What did not go well?
- What did we learn for future practice?

Schedule wide-ranging learning reports. As senior managers, we can make it a ritual to start each staff meeting with a learning report. Someone makes a report on something learned from a class, personal reading, a trip, or even a preteen's comments at breakfast.

Involve as many senses as possible. To enhance learning and create new brain pathways, we can incorporate different senses:

- Visualize taking on a challenging task, the steps in the process, and your success.
- Tell a story to teach about new experiences and learning.
- Remember a new fact or face by attaching it to a visual (for example, Steve, a new acquaintance who has black hair).
- Promote reflection by listening to soothing music.

Exercise. A great deal of research emphasizes the positive impact of exercise on information processing and improved connectivity in the brain. The brain, like the heart, needs oxygen and blood flow.

Teach, coach, and be coached. Teaching and coaching, which now count toward the ICMA credentialing professional development requirement, allow us to critique and consolidate our own experience and learning, pass them along, and receive feedback. Coaching and teaching are also ways to create legacy—a key developmental task at midlife. Being coached provides the same benefit. To stimulate learning, we all need coaching regardless of where we are in our careers.

These approaches pose much good news. First, in tough budget times, these learning strategies are cheap. They simply require the will to learn with intent. Second, the more we expose ourselves to new learning, the better we learn.

Self-Renewal

Learning with intent can certainly serve us and our organizations as we embrace adaptive change. It is equally powerful, however, as we struggle with the doldrums of midlife. New learning refreshes, renews, and helps us recapture the passion for our values and our work. PM

FRANK BENEST, Ph.D., ICMA-CM, is the former city manager of Palo Alto, California, and currently serves as ICMA senior adviser for Next Generation Initiatives. This article was developed as a result of several annual conference sessions sponsored by the ICMA Credentialing Advisory Board. In developing this article, assistance was provided by Mark Achen, former city manager, Grand Junction, Colorado, and now an ICMA senior adviser.

FOLLOW-UP READING

John Medina, *Brain Rules: 12 Principles for Surviving and Thriving at Work, Home, and School* (Seattle: Pear Press, 2008).

Frederic M. Hudson, *The Adult Years: Mastering the Art of Self-Renewal* (San Francisco: Jossey-Bass, 1999).

BY STEVEN ORR, B. TILDEN KIM, AND SHIRI KLIMA

MAKING GOOD ON PERFORMANCE BONDS

Nine tips to help managers with bonds

In boom times, no one pays much attention to performance bonds. But when the economy crashes and developers disappear, local governments are often left with half-built public improvements and can feel compelled to fund completion from their own tight budgets.

One way to avoid drawing on scarce public resources is tendering to sureties, which are private companies that take premiums to guarantee the developer's performance. By design, this process is lengthy, frustrating, and often expensive.

Here are nine tips for managers with communities in this situation:

1. CREATE YOUR WISH LIST. Some improvements are urgent because there are health and safety concerns. Other improvements are less pressing but still important for aesthetic or economic reasons. Still other improvements may no longer make sense, including landscaping lots without structures, or they may simply no longer be a priority.

Target the urgent and important concerns while using the other improvements as negotiating chips. In an ideal world, the surety will take care of everything; in the real world, you may have to drop the bubbling water fountain.

2. DON'T FORGET THE SUCCESSOR DEVELOPER. The successor developer may refuse to furnish new bonds, but it is always responsible for its property, including what its predecessor left incomplete. A seasoned developer knows bonds are required. That said, to maintain your community's business-friendly reputation and to protect it from the successor developer's potential default, propose a three-party agreement among the local government, the old surety, and the new developer so the other two entities share the costs of completing the remaining projects.

3. OFFER TIME-TIERED SOLUTIONS. Even if improvements are important, they may be able to wait a few weeks or months. Offer extra time to complete some of these improvements, and the new developer may be in a better position after it has recovered some cash. Be sure, however, to retain mechanisms for the local government to ensure projects are completed.

4. CONSIDER THE IMPACTS. If the improvements require landscaping and there aren't enough homeowners to establish a significant maintenance district or other recovery mechanism, the local government may be setting itself up for high maintenance costs in an uninhabited area. In dry climates, consider xeriscape, with commonsense measures that will help conserve water. Encourage creative solutions that save all parties money.

5. PROPOSE A TOLLING AGREEMENT. If the community wants or can live with improvements completed at some later date, enter into a tolling agreement with the surety in which the city or county reserves its rights on these issues, and, in exchange, the surety agrees to pause the running of any statutes of limitations. Make sure the former developer is included in this agreement if it still exists so all statutes of limitations toll.

There are, of course, also lessons for future bond requirements:

6. BE SURE TO RECOVER YOUR ATTORNEYS' FEES. Most performance bonds provide for the city or county to recover its attorneys' fees and costs when the surety forces the local government to prosecute a claim against the surety. This creates a strong incentive for the surety to resolve the dispute before the local government files suit. If you can, also include recovery for prejudgment or no judgment fees and costs. It is worth reviewing the bond requirements and forms of other entities; not all bonds are created equal.

7. DON'T UNDERCALCULATE. As you will find, frequently the bond amounts are insufficient because of inflation in costs or labor. Also, if the surety decides to pay out and the local government must complete the improvements, prevailing or other higher wages may apply. Include these considerations in calculations of bond requirements.

8. INCLUDE EVERYTHING. Make sure all public improvements on all developments are covered in the bonds. All of them, including that one seemingly little inconsequential storm drain. According to Murphy's Law, that will be the one left incomplete.

9. VERIFY THE COMMUNITY'S INTERNAL PROCESS. Make sure your local government has a process for confirming all of the bonds are in place before any permits are issued. The "two out of three street bonds ain't bad" approach may fail you in the future.

In these economic times, developers are not yet back, sureties are overwhelmed with claims, and the public does not want to see half-completed public improvements. These realistic approaches will heighten the chances of a successful resolution. PM

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BY MATT LEIGHNINGER

THERE'S MORE TO ENGAGEMENT THAN TRANSPARENCY

Use a full cadre of tactics to engage residents

Public managers at all levels of government are working hard to provide more information to citizens. To some critics, the pace of this transparency movement seems too slow, but it does have momentum. Transparency advocates inside and outside government claim that making more information publicly available is an empowering act that will help rebuild trust between citizens and government.

When I began the research for *Using Online Tools to Engage – and Be Engaged by the Public* (http://www.businessofgovernment.org/report/using-online-tools-engage-public), I found that when some people talk about public engagement and citizen involvement, what they really mean is transparency.

The problem is that although transparency is one element of engagement, it is not the whole enchilada. And if it is not conducted as part of a more comprehensive set of engagement initiatives or reforms, transparency promises to create new tensions and controversies, further erode citizen trust in government, and destroy the careers of many managers.

Main Challenge

The central problem in most democracies is not a lack of information. The main challenge is that citizen expectations and capacities have undergone a sea change in the past 20 years, and our public institutions have not yet adjusted to the shift.

Because of rising levels of education, increased access to the Internet, and different attitudes toward authority, 21st-century citizens are better able to disrupt policymaking processes and better able to find the information, allies, and resources they need to make an impact on issues they care about.

Managers at the local government level, and increasingly now the state and federal levels, have experienced the most immediate result of these changes: a small cadre of people—sometimes referred to as "expert citizens" or more derisively as "the usual suspects"—who regularly make themselves heard at public meetings and in the blogosphere.

In case after case, on issues ranging from land use decisions to school closings to the use of vaccines, these active citizens are able to wield an outsized influence on public decisions. Managers are constantly being surprised by the timing and ferocity of the challenges they receive and are constantly wondering whether the views of these active citizens are truly representative of the broader electorate.

For some time, smart and experienced managers have been dealing with these challenges and trying to tap the new capacities of ordinary people by organizing large-scale public engagement efforts. These projects are successful when they involve large, diverse numbers of people ("going beyond the usual suspects" is a common phrase), and when they create environments where citizens compare notes on their experiences, learn more about the issues, and talk through what they think government should do. Some of these initiatives also build in opportunities for action planning so that citizens can decide how they want to contribute to solving public problems (in addition to making recommendations for government).

More People Involved

Transparency can enrich these kinds of engagement efforts, but it doesn't replace them. We need larger numbers of people to be involved in public discussions, and we need those people talking with each other, not just to government.

Without initiatives and structures that will produce that sort of engagement, transparency will simply give more information to journalists and active citizens who are trying to expose government misconduct and misjudgment, champion tax revolts and other antigovernment measures, and oppose decisions and policies they don't like.

"Transparency is a necessary but insufficient condition for democratic control," says Archon Fung, a professor at Harvard's Kennedy School of Government who is one of the authors of *Full Disclosure: The Perils and Promise of Transparency.*

It is of course beneficial to expose the errors and transgressions of public managers. There is truth to the favorite quote of transparency advocates, Louis Brandeis's 1914 pronouncement that "Sunshine is the best disinfectant." But while transparency makes government cleaner, it won't necessarily make it better. By itself, transparency doesn't change the arms-length relationship between citizens and government. It just gives more ammunition to those who are inclined to throw stones.

In addition to providing more information to citizens, managers should focus on the enormous potential of the Internet to overcome the distance between people and their governments. Face-to-face and online interactions are different—both kinds of communication have unique strengths and weaknesses, and they complement each other well—and so the most forward-thinking managers are finding ways to integrate the two in their public engagement initiatives.

Still other pioneers are considering ways to sustain public engagement, in part by using social media, so that the democratic principles of proactive recruitment, small-group deliberation, and joint action planning become more embedded in the ways that public business is conducted.

Exploring and implementing these other aspects of engagement will be critical for bringing out the productive side of transparency and dealing with the conflicts and scandals that will inevitably emerge. For local government managers, transparency is already the right thing to do; if it is part of a broader engagement strategy, it can also be the smart thing to do. PM

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BY RAYAN COUTINHO

PHOTOCOPYING AND COPYRIGHT LAW

Can complying with public records requests violate copyright law?

IN THE UNITED STATES, COPYRIGHT LAW PROTECTS ORIGINAL WORKS OF AUTHORSHIP FIXED IN A TANGIBLE MEDIUM OF EXPRESSION, INCLUDING WORKS THAT ARE LITERARY, DRAMATIC, MUSICAL, AUDIO-VISUAL, CHOREOGRAPHIC, PICTORIAL, GRAPHIC, AND SCULPTURAL.

Recently, a community my firm represents faced an interesting dilemma. As part of the permitting process, a developer submitted certain architectural drawings and documents related to a project and then made a demand for confidentiality, stating that the prints were copyrighted and provided the firm a competitive edge over other developers. Another developer then made a public records request for the submission.

The issue was whether such a record submitted to a public agency is exempt from disclosure under the public records laws because it is subject to a copyright interest. Put differently, does federal copyright law preempt state public records laws for certain documents? Here's how we resolved this issue under Ohio law.

Ohio's Example

The Ohio Public Records Act exempts a record if, among other exceptions and exemptions from disclosure, a specific provision of either state or federal law prohibits its release. This catchall exemption essentially recognizes the confidential nature of certain types of information—for example, attorney-client privilege and sealed court records—founded in statute or in the state constitution.

In the United States, copyright law protects original works of authorship fixed in a tangible medium of expression, including works that are literary, dramatic, musical, audio-visual, choreographic, pictorial, graphic, and sculptural. The law also grants to the owner of the copyright exclusive rights to publish, copy, and distribute the work.

In copyright law there is no grant of the right to confidentiality. Indeed, confidentiality seems to be antithetical to the policy underlying copyright law, which is the broad dissemination of copyrighted works in a manner that protects the owner's economic interests.

Thus, because copyright law does not mandate confidentiality, the catchall exception was determined to not apply to the documents at issue.

Within copyright law there is also a concept called "fair use" that serves as a defense to an allegation of copyright infringement stemming from the reproduction of a protected work under certain limited circumstances. These circumstances generally involve criticism, research, comment, education, or nonprofit purpose that is not commercial in nature.

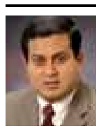
Although courts use several factors in determining what is fair use, one of the important ones is whether the reproduction negatively impacts the market for the work. Clearly in this case, it did not.

Compliance Issues

Finally, if the recipient of the drawings pursuant to the public records request decided to use the protected materials in a manner that would be a violation of the copyright owner's statutory rights, then the copyright owner's recourse would be to pursue a federal civil action against the violator. The public agency would not be involved.

The purpose of Ohio public records laws is to guarantee the people broad access to the records of public offices. Any doubts about whether to disclose are required by the state supreme court to be liberally interpreted in favor of disclosure.

Be sure to check your local laws to ensure that your community is in compliance with all applicable laws. PM



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If You Purchased Municipal Derivatives from January 1, 1992 to the Present

You Could Get a Payment from a Class Action Settlement

A partial Settlement has been reached with Morgan Stanley, one of the Defendants, in a class action lawsuit alleging bid rigging in the sale of municipal derivatives. The case, *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950, No. 08-02516, is pending in the United States District Court for the Southern District of New York.

Who Is Included in the Settlement?

This Settlement includes all state, local and municipal government entities, independent government agencies and private entities that purchased:

(a) By negotiation, competitive bidding or auction municipal derivatives directly from an Alleged Provider Defendant or Co-Conspirator, or through an Alleged Broker Defendant or Co-Conspirator,

(b) Any time from January 1, 1992 through the present in the U.S. and its territories or for delivery in the U.S. and its territories.

The Alleged Provider and Broker Defendants and Co-Conspirators are listed on the website referenced below.

What Does the Settlement Provide?

The Settlement affects only the claims against Morgan Stanley. The case is continuing against the other non-settling defendants. Morgan Stanley has paid $4,950,000 for the payment of claims, plus an additional $1,550,000 to pay certain administrative and litigation costs. Morgan Stanley will also provide information to the attorneys for the Class and cooperate in connection with claims against the non-settling defendants.

What Do I Do Now?

- **Remain in the Settlement**. To remain in the Settlement Class and participate in the Settlement, you do not need to do anything now. If the Court approves the Settlement, you will give up the right to sue Morgan Stanley for the claims in this class action. To receive a payment, you will have to submit a claim form that will be available at a future date. Register on the website to receive a claim form when it becomes available. If you remain in the Settlement Class, you will still have the right to exclude yourself from any other class that may be certified in the case.
- **Exclude yourself from the Settlement**. If you do not want to remain in the Settlement Class, you must exclude yourself. You must send a written request for exclusion by first-class mail, **postmarked no later than October 11, 2011**. If you exclude yourself, you cannot participate in the Settlement, but you retain your right to sue Morgan Stanley on your own for the claims in this lawsuit.
- **Object to or comment on the Settlement**. If you remain in the Settlement Class and want to object to or comment on the Settlement or any of its terms, you must file an objection with the Court and deliver a copy to Class Counsel and Morgan Stanley **postmarked no later than October 11, 2011.**

Who Represents You?

The Court has appointed the law firms of Hwausfeld LLP; Boies, Schiller & Flexner LLP; and Susman Godfrey LLP to serve as Class Counsel and represent all members the Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

When Will the Court Decide Whether to Approve the Settlement?

The Court has scheduled a hearing on **November 23, 2011**, at 9:30 a.m. at the U.S. District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007. The Court will consider whether to approve the Settlement as fair, reasonable and adequate, and whether to approve Class Counsel's request for reimbursement of litigation expenses.

You or your lawyer may ask to appear and speak at the hearing but are not required to. If you want to be heard by the Court, you must, **no later than October 11, 2011**, file a written request with the Court and deliver a copy to Class Counsel and Morgan Stanley. The Court may change the time and date of the hearing. Any change will be posted on the website.

For more information on this lawsuit, your rights, or to obtain a list of defendants, call or go to the website shown below or write to Municipal Derivatives Settlement, c/o Rust Consulting, Inc., PO Box 2500, Faribault, MN 55021-9500.

For more information: 1-877-310-0512 www.MunicipalDerivativesSettlement.com

BY MIKE WALKER, ICMA-CM

CHOOSING (AND SHARING) OUR CAREER PATHS

Make being a mentor part of your path

Several years ago, I read the book *Outliers: The Story of Success* by Malcolm Gladwell. If you haven't read this book, I encourage you to do so. Gladwell believes that it is a myth that people succeed or reach greatness in their lives or professions through individual talent, initiative, and hard work.

Instead, people who succeed owe much to parentage and patronage. They benefit from extraordinary opportunities and cultural legacies that allow them to learn, work hard, and make sense of the world in ways others cannot.

> I ALWAYS ASSUMED THAT PERSONALITY, INTELLIGENCE, AND SPECIAL TALENT WERE THE PRIMARY REASONS THAT GOT ME TO THIS POINT.

Influences

I started thinking about how Gladwell's thesis applied to me and my 34 years in municipal government. I was not born with a silver spoon and worked hard during my career to be an effective city manager. I always assumed that personality, intelligence, and special talent were the primary reasons that got me to this point, yet now I am told by Gladwell that my career advancement was really the result of hidden advantages that were gained from my life experiences. I decided a self-assessment was in order.

From this assessment, I realized that Gladwell is on target. I clearly benefited from being in the right place at the right time and from various mentors in my life and career.

Looking back, I now see it started with my dad who benefited greatly from the GI Bill to become the first in his family to attend college. He believed that his success in life was directly related to the assistance from Uncle Sam. Although he knew very little about the city management profession during my youth, he felt strongly that the work of government was important and essential to a successful society.

My political science professor at High Point University, Dr. Karl Wheeless, was instrumental in educating me about public administration and directing me away from attending law school. I will never know for sure, but I believe that he made contacts that led to my acceptance at several recognized graduate schools. One, at the University of Tennessee, included a fellowship that covered most of the cost, including living expenses. I learned quickly that Tennessee orange is a beautiful color!

Career Luck

After graduate school, I was fortunate to be picked by Lyle Lacy from a large group of candidates and hired for the entry-level position of budget officer at the city of Oak Ridge, Tennessee. I learned later from Lyle that it was important to hire someone who not only could "understand the numbers" and prepare reports and recommendations but also could talk and relate to the public works crews.

In 1986, the then Oak Ridge city manager, Jeff Broughton, took a chance and appointed me as assistant city manager with oversight of development activities—planning, zoning, code enforcement, engineering, and economic development. It was an important challenge that helped me greatly in my career.

In 1990, the city commission of Brentwood, Tennessee, was looking for a new city manager with a background in finance and an ability to deal with developers in this fast-growing community outside Nashville. I was fortunate to be hired, and after 21 years in the position I still enjoy going to work each day and helping others in need, as envisioned by my dad.

Take Time to Self Assess

I encourage everyone in the profession to undertake a self-assessment to determine how you got to where you are and whether your accomplishments to date are the result of being in the right place at the right time with a few breaks along the way. This doesn't discount the importance of talent, initiative, and hard work, but it does put it in better perspective.

For veteran managers, a self-assessment should provide a better appreciation for the importance of mentors in your career. It also raises the following questions: Have you provided a similar opportunity recently to an intern or younger member in the profession? With the increasing diversity in the U.S. population, even in Middle Tennessee, are you making an effort to reach out to individuals of color and others to generate interest in local government management?

A small break along the way could make a big difference to an individual and to the future success of our profession. PM

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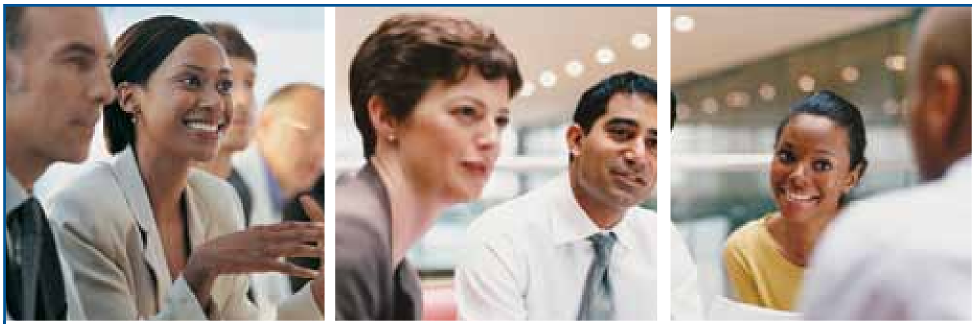
Save the Date



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For Members and State Officers

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- Discuss ICMA issues and programs.
- Provide feedback to the ICMA Executive Board and staff.

icma.org/SUMMIT

Southeast	Midwest	Northeast	Mountain Plains and West Coast
March 15–16 Location TBD	March 29–30 Location TBD	April 12–13 Location TBD	May 3–4 Location TBD

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