Governing in a Disruptive Environment

Charting a Course in a Stormy Sea

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Disruptive forces affecting local government

- National politics filtering down
- Technology
- Social issues

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Change Impacts Identity
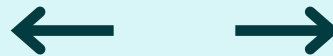
- Who we were
- Who we are
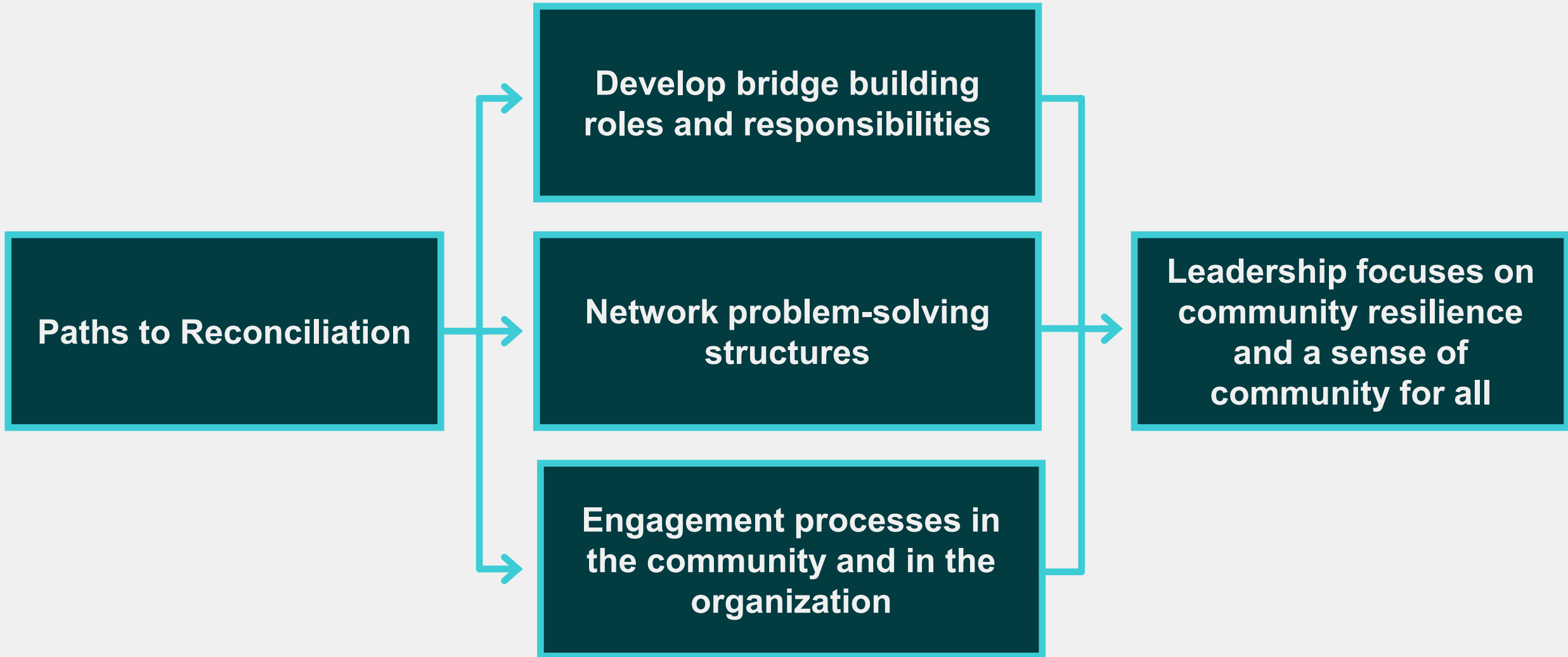- Who we will become

→

Widen the gap between:

- Political acceptability
- Operational sustainability

POLITICAL ACCEPTABILITY

THE GAP

← →

OPERATIONAL SUSTAINABILITY

Paths to Reconciliation

Develop bridge building roles and responsibilities

Network problem-solving structures

Engagement processes in the community and in the organization

Leadership focuses on community resilience and a sense of community for all

Driver 1
National Politics Filtering into Local Governance

"All politics is local" has become "all politics is national."

"The **deep division** in national politics has crept its way into local governing bodies. We have seen local elections influenced by outside funding and individuals running for City Council who **want to be legislators, not members of a governing body**. The **art of politics**—cultivating consensus and legitimately debating an issue and being willing to be influenced by others—**is quickly disappearing**."

› Former City Manager in the Northeast and current local government consultant

State-Local Relationships

"I believe we will see a continuation of state governments attempting to pre-empt more elements of local government services and policymaking. Politically, state government leaders (elected and appointed) can score points and gain power by exerting control over what local governments do and how they do it. I believe that **state pre-emption will enter into more aspects of what we want to do and how do it at the local level**."

› City Manager in Tennessee

Driver 2
Technology and Social Media

"There are challenges for local government that are driven by economic variables and performance for service delivery but also by resident **preferences for how they want to interact with their government for goods and services**. Residents are consumers and governments are expected to provide more virtual services akin to the private sector. Government officials must understand key technology components in order to manage risk, budgets, and expectations for service delivery."

› City Manager in the Dallas Metroplex

Driver 3
Social Issues

"We are having a **racial reckoning** in our society right now and it is driving a relook at our institutions; communities are coming to terms with the fact that our **institutions are perpetuators of racist policies, practices, and behaviors, and because of that, there is a deepening distrust of our institutions and the people in them.** Policing "best practices" are being questioned far and wide, and for good reason. Our black, indigenous and people of color communities don't trust the Police; not just individual, racist police officers, but the actual institution of the Police. City departments perpetuate (knowingly and unknowingly) racist policies from purchasing and contracting to zoning and housing. Because technical experts (professional staff) are part of those institutions, they are viewed with skepticism."

› City Manager in the Portland Area

Equity Resolution

Questions asked in budget and CIP processes:

Who benefits?

Who is burdened?

Who is missing?

How do we know?

What do we do?

› Deputy County Manager, Northern Virginia

Change and Community Identity

Three classes of change and resistance

1 Change that may be self-initiated and/or is substitutional in nature. Some reorganization/adjustment may be required.

2 Change that is significant but builds on one's past—requires adjustments but can be seen as growth. Bumps in the road, but in the long run, past is unchallenged.

3 Change that challenges identity anchored in the past. Change is experienced as loss and will be resisted. E.g.; MAGA

Questions about the Driving Forces and Change

- Is there evidence of one or more of the driving forces influencing your work?

- Is there an issue you face now or anticipate that would fit into the third category of change? Challenge community identity?

National Politics Influencing Local

Three Driving Forces

Technology/ Social Media
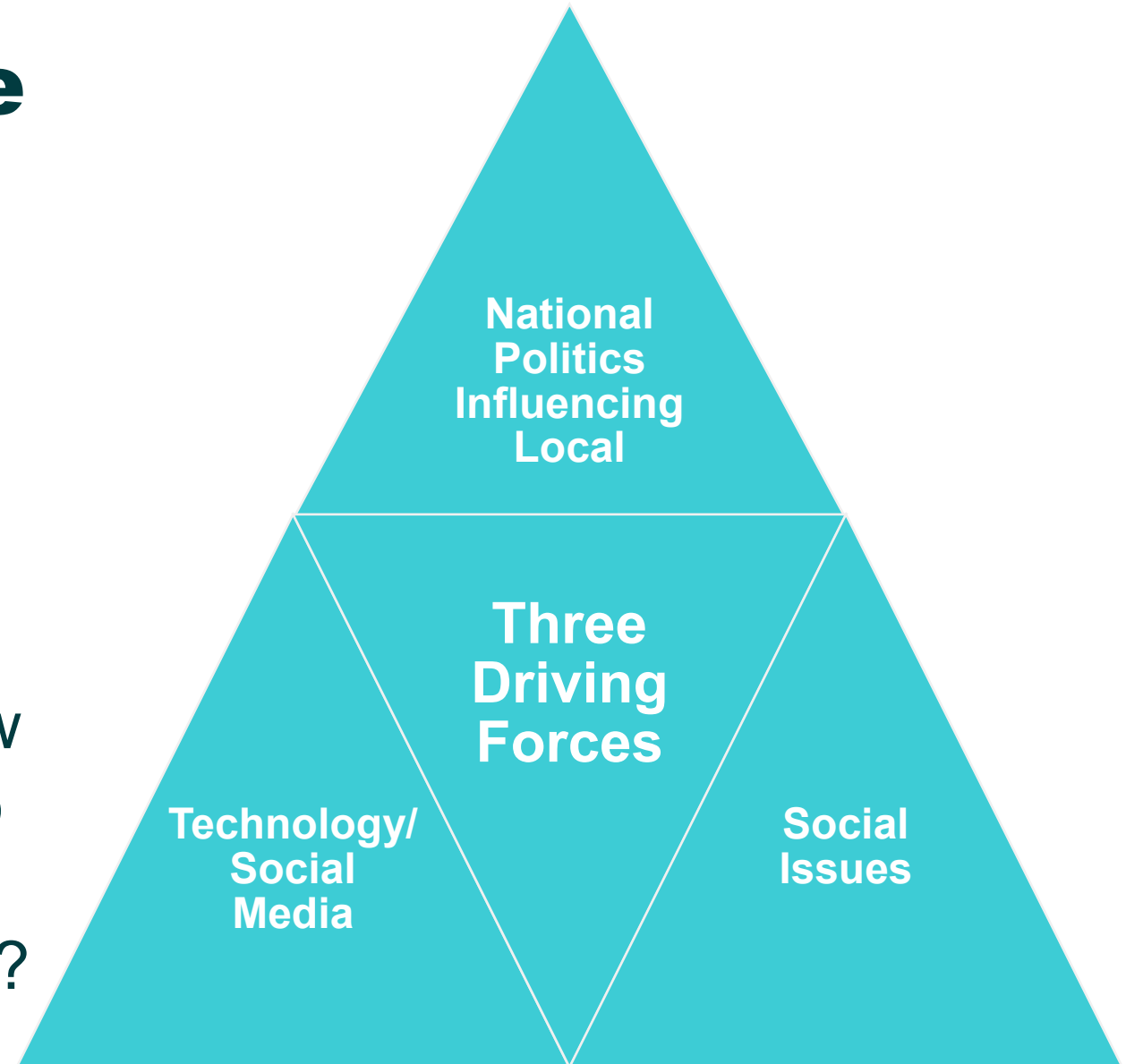
Social Issues

THE GAP

Identity Politics

The Assertive Citizen

Big Data

Complexity

Rate of Change

Unvetted Social Media

Social Issues

Institutional Bias

POLITICAL ACCEPTABILITY

OPERATIONAL SUSTAINABILITY
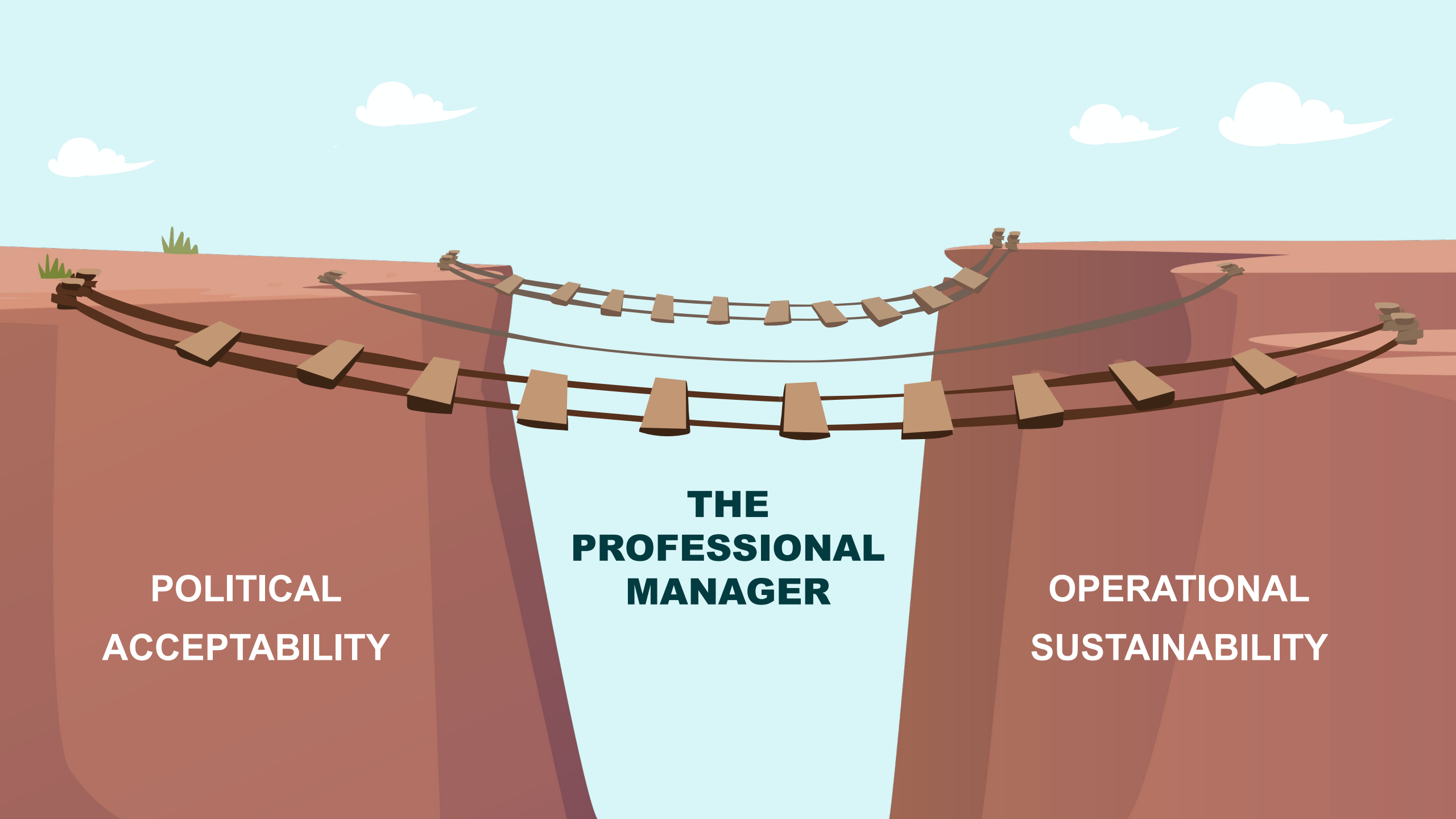
POLITICAL ACCEPTABILITY

THE PROFESSIONAL MANAGER

OPERATIONAL SUSTAINABILITY

Questions

How does the gap concept apply to your work with the staff and community?

_____

Can you apply the gap concept to a specific issue you are dealing with?

Paths to Reconciliation

Roles and Responsibilities

Political and administrative actors moving into the gap

Structures

Developing skills/mindset where the problems to be solved drive the work and boundaries adjust – acknowledge identify/issues of loss

Processes

Imperative for engagement that incorporates public values and deliberative processes

Roles and Responsibilities

"…if the manager is expected to be more outward facing and more attuned to the elected body and the community, assistants and department heads need to understand this expectation. They are now expected to take on **more of the interpretation and bridging role** that the city/county manager has in order to assist the manager to effectively executive council and community goals. This is a new twist on the concept of delegation—**what's being delegated is ways of 'being' more than tasks of 'doing.'"**

› Former City Manager in the San Francisco Bay Area
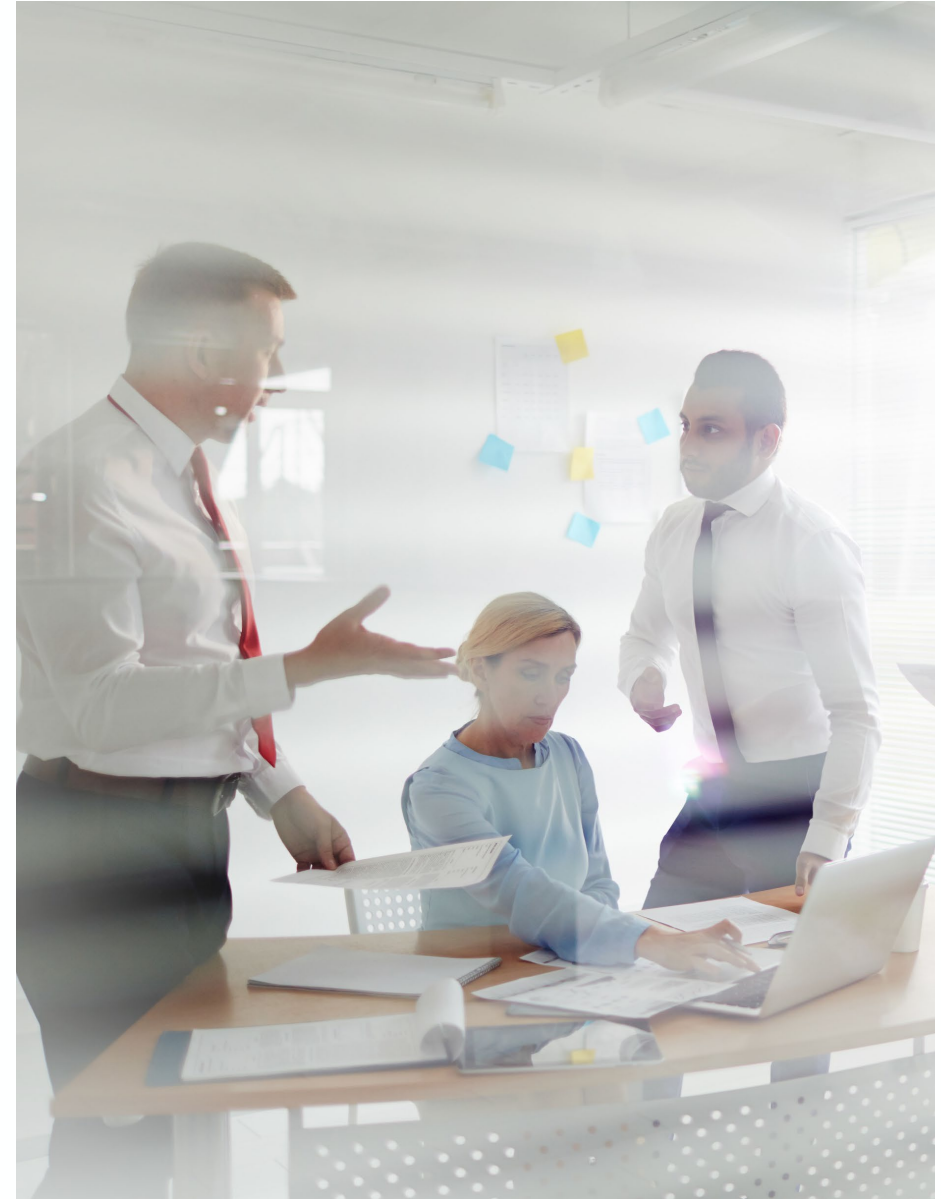
Structures

"I think there's a recognition that **solving the 'wicked problems' of government**—from homelessness to economic equity to sustainability—**demand leadership across functions and teams** both inside and outside of government. This requires far more than the technocratic expertise of 'managing' a function"

› Michigan City Manager

Structures

"There is a need to cultivate meaningful relationships with the **durable partners** in the community across government, schools, the private sector, and non-profits.

› Colorado City Manager

Processes/Engagement

"Traditional engagement with residents is complicated by public access to information and data bases that can truly create resident experts. In the 20th century staff were experts and had sole possession of most of the information required to address community issues. Today, one could argue that **the role of staff is more about validating good information and working with 'community experts' to reach decisions."**

"With such accessible information, **engagement has gone beyond the standard function of providing information to residents.** It has now moved into the "consultative" and "empowering range of government/citizen relationships."

› Former County Manager in Virginia

Disruptive Forces Affecting Local Government
- National politics filtering down
- Technology
- Social issues

Widens the gap between:
- Political acceptability
- Operational sustainability

Change impacts identity
- Who we were
- Who we are
- Who we will become

Paths to Reconciliation

Networked problem-solving *structures*

Engagement *processes* in the community and in the organization

Develop bridge building *roles and responsibilities*

Leadership focuses on community resilience and sense of community for all

Questions/Comments

Which part of the presentation will you continue to think about?

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ASSEMBLY BILL 992: The Brown Act & Social Media

Application of AB 992 to modern day use of social media by members of a legislative body

Brown Act Basics

<u>Requirements</u> Meetings of legislative bodies of local agencies must:

- Be open and public
- Include advanced notice
- Post the agenda
- Be accessible to the public.

<u>Prohibitions</u> the Act prohibits:

- *A <u>majority</u> of members*
- from using a "series of communications <u>of any kind</u>
- to <u>discuss, deliberate, or take action</u> on any item of business that is within the subject matter jurisdiction of the legislative body,"
- if the communication occurs <u>outside of a meeting</u> authorized by the Brown Act.

Within the confines of the Brown Act, the social media questions have thus become:

(1) Can members of a legislative body use social media to discuss or communicate with other members of a legislative body, about "business that is within the subject matter jurisdiction of the legislative body," without violating the Brown Act?

(2) Can members of a legislative body use social media to answer questions, provide information to the public, or solicit information from the public regarding "business that is within the subject matter jurisdiction of the legislative body," without violating the Brown Act?

AB 992 provides some answers to these questions:

<u>AB 992 explicitly provides that:</u> "a member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted or shared by any other member of the legislative body." Govt. Code sec. 54952.2 (b)(3)(A).

Thus, the answer to the **first question** is simply:

NO!!

Members of a legislative body may not use social media to discuss or communicate with other members of a legislative body, about "business that is within the subject matter jurisdiction of the legislative body," without violating the Brown Act.

Implications

Even a **SINGLE CONTACT** between one public official and another (who serve on the same legislative body) on social media, could constitute a violation of the Brown Act.

EXAMPLE:

If one member of the legislative body comments on or even simply "likes" a post by another member of the legislative body, which discusses a matter that is within the subject matter jurisdiction of the legislative body, *that is a violation of the new provisions of the Brown Act*.

AB 992's answer to the second question—What can members discuss on social media?

A public official may communicate on social media with <u>members of the public </u>(as opposed to with each other) to answer questions, provide information to the public or solicit information from the public, even regarding matters within the legislative body's subject matter jurisdiction, so long as *a majority* of the members do not use social media to "discuss among themselves" official business.
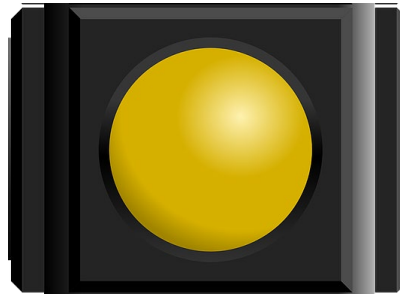
AB 992 defines (i) "Discuss among themselves" as communications made, posted, or shared on an internet-based social media platform between members of a legislative body, *including comments or use of digital icons that express reactions to communications made by other members of the legislative body*.
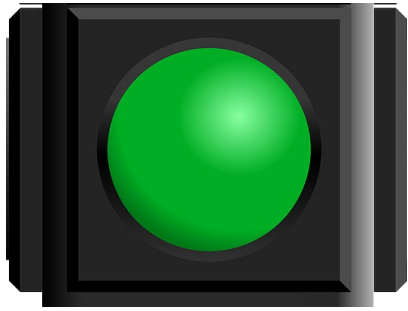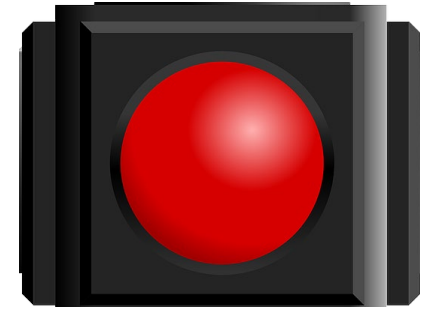
Permissible	Problematic	Prohibited
• Announcing the opening of a new business • Inviting the public to attend the member's coffee chat	• Announcing positions on broad public policy issues in advance of a meeting at which the topic is agendized	• "liking" another member's post; • Expressing support or opposition on an appeal in an upcoming quasi-judicial hearing; • Posting data in support or opposition to a matter subject to an upcoming quasi- legislative hearing

Important Reminder

'Due process' and 'fairness' constraints prohibit decision-makers from announcing their positions or advocating for particular results before matters are actually heard in a public hearing context.

What social media platforms may members use to communicate with the public?

AB 992 provides that if members of a legislative body would like to use social media to communicate on matters within the body's jurisdiction, they must use social media platforms that are:

1. open and accessible to the general public,

2. free of charge, and

3. do not require approval for participation from the social media platform or any third party.

NOTE: It is fine of the site reserves the right to block or remove users who violate site protocols.
Govt. Code sec. 54952.2(b)(3)(B).

AB 922 leaves some unanswered questions:

(1) Whether communications by members of a legislative body on social media amounts to "official government communication," which should be retained and produced under the Public Record's Act.

(2) Whether the sharing of public information by a public official on social media converts the member's social media page to a "public forum," making it applicable to First Amendment constraints.

*** For this reason, members should not "block" individuals for simply disagreeing or not liking a member's post or comment.

Takeaway

Members of a local agency <u>may</u> post and communicate <u>with the public</u> about agency business by responding to a question or soliciting information, without violating the Brown Act.