



Library Material Collection Challenges

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Collection Development Policies



What does the current climate look like and what are the legal concerns?



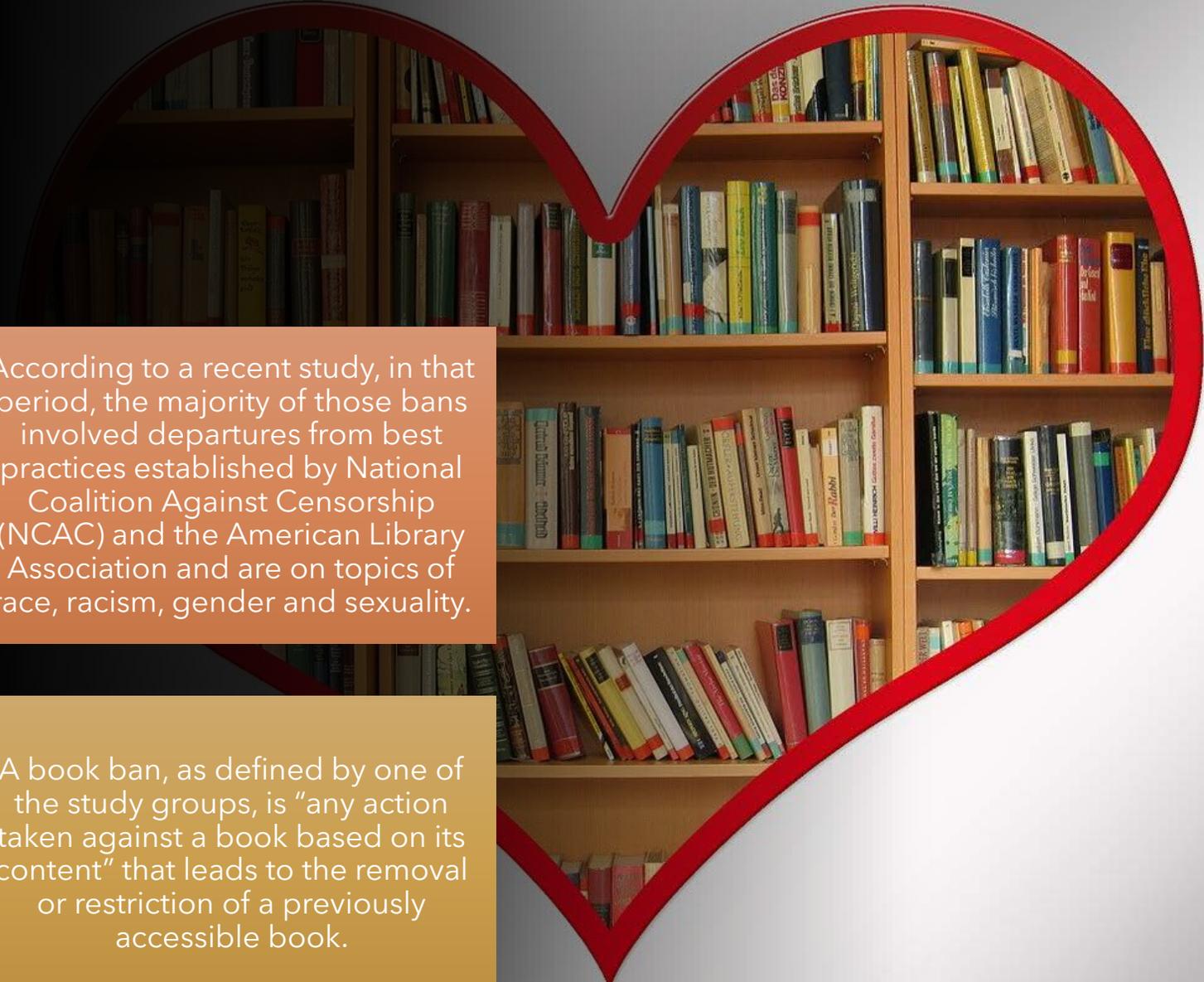
What does a best practice Collection Development Policy look like?



Let's review some Collection Development Policy language



Questions?



Current Challenges in the News

From July 1, 2021, to
July 31, 2022

According to a recent study, in that period, the majority of those bans involved departures from best practices established by National Coalition Against Censorship (NCAC) and the American Library Association and are on topics of race, racism, gender and sexuality.

Texas led the country with the most book bans. Across the US, more than 729 complaints were received against 1,597 different books

A book ban, as defined by one of the study groups, is "any action taken against a book based on its content" that leads to the removal or restriction of a previously accessible book.

Current Challenges in the News

Pressure has increased on public libraries including efforts to close or defund, reorganize advisory boards and redraft material collection policies and intimidate library staff

Nationwide groups, state political leaders and local organizations are leading the way with a focus on public school libraries but public libraries are also on their radar

Multiple lawsuits have been filed across Texas and the U.S. Including censorship and retaliatory employment actions

Current Challenges in the News - Opposing views



Those who are demanding certain books be removed insist this is an issue of parental rights and choice, that all parents should be free to direct the upbringing of their own children



Those who say prohibiting these titles altogether violates the rights of other parents and the rights of children who believe access to these books is important. Many libraries already have mechanisms in place to stop individual students from checking out books of which their parents disapprove.

Current Challenges in the News - County

In Llano County, Texas, seven residents are suing county officials, claiming their 1st and 14th Amendment rights were violated. The lawsuit names the County Judge, County Commissioners, Library System Director, members of Library Board. The lawsuit claims county officials removed books from the shelves of the three-branch public library system "because they disagree with the ideas within them" and terminated access to thousands of digital books because they could not ban two specific titles.

The books removed include "*in the Night Kitchen*" by Maurice Sendak and "*It's Perfectly Normal: Changing Bodies, Growing Up, Sex, and Sexual Health*" by Robie H. Harris, "*Castle: The Origins of our Discontents*" by Isabel Wilkerson, "*They call themselves the KKK: The Birth of an American Terrorist Group*" by Susan Campbell Bartoletti, "*Being Jazz: My Life as a (Transgender) Teen*" by Jazz Jennings, most of the books on the list deal with race, gender or sexuality.

The lawsuit, filed in U.S.W.D. in San Antonio, alleges the county suspended access to e-books (Overdrive digital catalog of 17,000 books), dissolved its existing library board and appointed individuals who had pushed for book removals, and closed the advisory board meetings to the public. The library has recently contracted with a different on-line database provider.

A photograph of a wooden desk with a stack of books and a yellow pencil. The background is a blurred chalkboard. The text is overlaid on the right side of the image.

Current Challenges in the News - County

- "Whether that's in the school board or whether that's in a library, somebody wants something gone and it appears to be going. At their meetings, there's no resistance, there's no friction, there's no one in some of these rooms saying 'well, hold on a minute, let's make sure we exercise due diligence, due process, consider the kind of diversity of opinions as people who our institution serves,'"

Jonathan Friedman, director of PEN American's Free Expression and Education program.

Fighting Back - Book Smugglers and More!

The Librotraficantes, or book traffickers, lead a pair of caravans loaded with banned books to Austin from Houston and San Antonio (April 29, 2022) in partnership with LULAC Texas.

Brooklyn Public Library - Books Unbanned/free access

NYPL - Books for All/free access

Many Books - free access
COM Library - free access
College of the Mainland,
Texas City, Texas - free access



Texas Library Association Position

- The Texas Library Association (TLA) is the largest state library association in the U.S. Its almost 5,000 members represent all library types: academic, public, school and special. TLA was established in 1902 and is a 501(c)3 governed by volunteer leaders to promote, support, and improve library services in Texas.
- “We believe that while a specific book may not be the right fit for one child, that doesn’t mean it isn’t the perfect fit for another child. Librarians have extensive education and training which they rely on to meticulously develop a diverse set of learning materials for a diverse group of children. The government should not be making sweeping decisions that take that process of careful consideration away from the experts.”
- The right to receive an education is foundational to America and our democracy. An education helps students not only prepare to be adults and learn how to read, write, add and subtract, but also provides important critical thinking skills. Books currently being targeted are those written by and about traditionally marginalized people and experiences. We fear this is just the beginning and if not stopped will have long-term ramifications on society

The Relevant Case in Texas

- Sund v. City of Wichita Falls, Tex., 121 F. Supp.2d 530 (2000)
- Public library patrons brought action to enjoin enforcement of city's resolution that gave library card holders the right to censor children's books by having books removed from children's area of library and installed in the adult section.
- The District Court, Buchmeyer, Chief Judge, held that: (1) resolution violated patrons' First Amendment rights to receive information; (2) public library was a "limited public forum"; (3) resolution was an improper delegation of governmental authority to private citizens under Texas law; and (4) patrons' First Amendment right to receive information would be irreparably injured if denied permanent injunction.



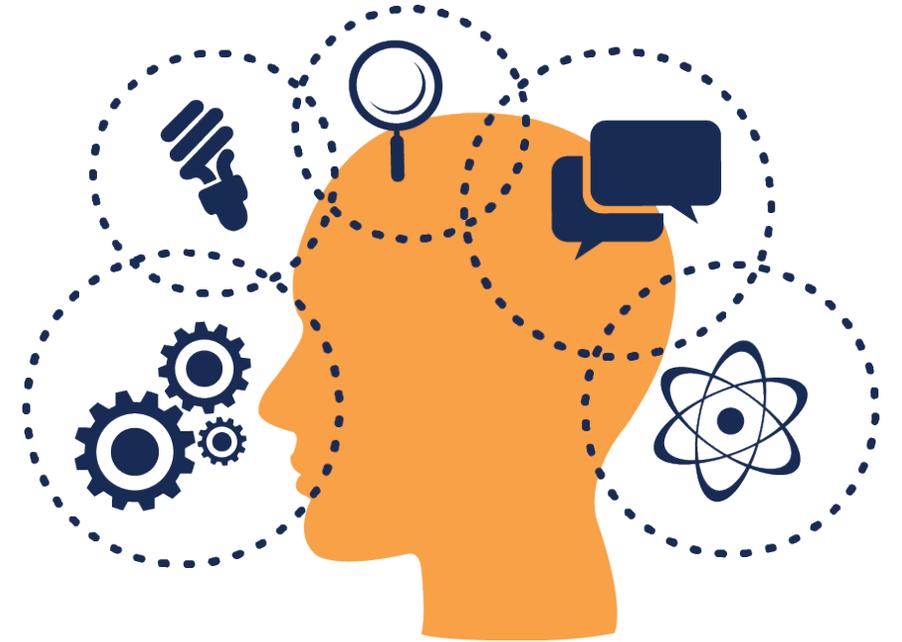


Sund v. City of Wichita Falls

- Under the First Amendment, states may regulate children's access to materials not deemed obscene for adults; however, such regulation is permissible only where the restricted materials meet the stringent test for obscenity as to children, or are harmful to minors
- Resolution by city council, which gave 300 library card holders the right to censor books on the subject of children with gay and lesbian parents by having the books removed from children's area of library to adult section, was an improper delegation of governmental authority to private citizens under Texas law; city council unlawfully delegated its proper governmental authority over selection and removal of library books to any 300 private citizens who wished to remove books from the children's area of the public library.

Constitutional Principles

The First Amendment to the United States Constitution, and [Article I, Section 8 of the Texas Constitution](#), indisputably protect the right to receive information, See [Reno v. American Civil Liberties Union](#), 521 U.S. 844, 117 S.Ct. 2329, 2346, 138 L.Ed.2d 874 (1997)—a fundamental right that is enjoyed by both adults and children. See, e.g., [Board of Education v. Pico](#), 457 U.S. 853, 867-68, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982) (plurality opinion) (noting that “the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom,” and clarifying that “students too are beneficiaries of this principle”); [Tinker v. Des Moines Indep. Community Sch. Dist.](#), 393 U.S. 503, 511, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969); [Campbell v. St. Tammany Parish Sch. Bd.](#), 64 F.3d 184, 190 (5th Cir.1995).

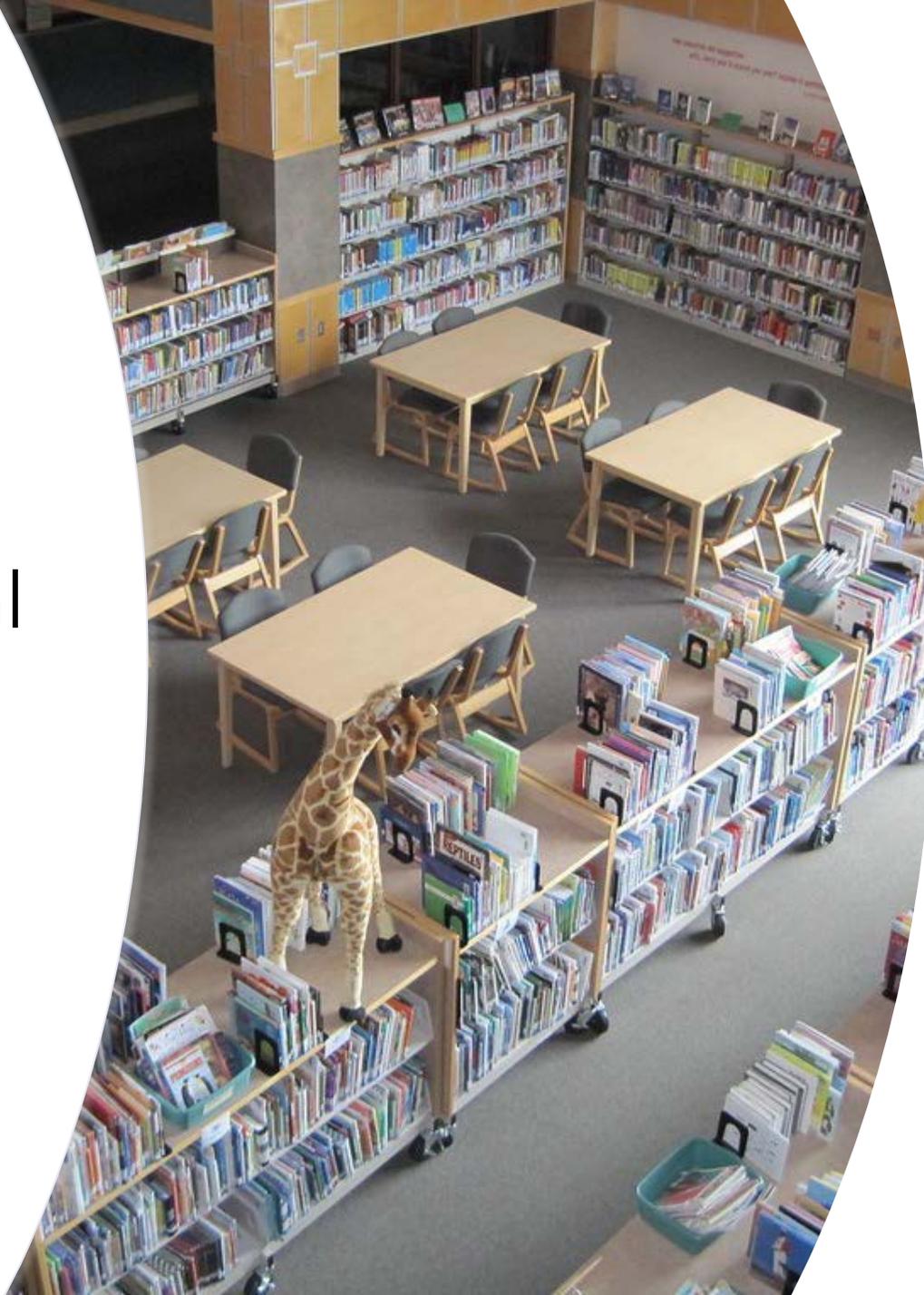




Constitutional Principles

The right to receive information is vigorously enforced in the context of a public library, “the quintessential locus of the receipt of information.” *Kreimer v. Bureau of Police*, 958 F.2d 1242, 1255 (3d Cir.1992). See also, e.g., *Pico*, 457 U.S. at 868, 102 S.Ct. 2799, 73 L.Ed.2d 435 (noting that “public library is ‘a place dedicated to quiet, to knowledge, and to beauty’”) (quoting *Brown v. Louisiana*, 383 U.S. 131, 142, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966)); *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 582 (6th Cir.1976) (“A library is a mighty resource in the free marketplace of ideas.”). In *Pico*, for example, the Supreme Court made clear that government officials may not remove books from school library shelves “simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’” *Pico*, 457 U.S. at 872, 102 S.Ct. 2799 (quoting *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943)). See also, e.g., *Campbell*, 64 F.3d at 190 (same).

Constitutional Principles



- The principles set forth in *Pico* –a school library case–have even greater force when applied to public libraries.
- Although it confirmed that the state may not “contract the spectrum of available knowledge” by restricting books on the basis of their message or viewpoint, *Pico*, 457 U.S. at 886, 102 S.Ct. 2799, the *Pico* plurality acknowledged that public schools have an “inculcative” function that affords school boards greater discretion in curricular matters. *Id.* at 846, 102 S.Ct. 2799.
- By contrast, public libraries do not serve the same inculcative functions, and instead are, as even Justice Rehnquist’s *Pico* dissent recognized, “designed for freewheeling inquiry.” *Id.* at 915, 102 S.Ct. 2799 (Rehnquist, J., dissenting).

Constitutional Principles

All public libraries, are a limited public forum for purposes of First Amendment analysis

In a limited public forum, the government's ability to restrict library patrons' First Amendment rights is extremely narrow.

Thus, the City cannot limit access to library materials solely on the basis of the content of those materials, unless the City can demonstrate that the restriction is necessary to achieve a compelling government interest and there are no less restrictive alternatives for achieving that interest.

Where a speech regulation targets not only the content of expression, but also its perceived viewpoint, judicial scrutiny is even more exacting

In *Sund*, the City's removal of the two Books, constituted impermissible content-based and viewpoint-based discrimination

Constitutional Principles

The Defendants argued that Plaintiffs' First Amendment rights were not implicated because no book was actually physically removed from the building.

Although, under the Altman Resolution, petitioned books are not banned entirely from the Library, *the burdens on Plaintiffs' First Amendment rights imposed by the Resolution are nonetheless constitutionally objectionable.*

Even where a regulation does not silence speech altogether, the Supreme Court has given "the most exacting scrutiny to regulations that *suppress, disadvantage, or impose differential burdens* upon speech because of its content."

By authorizing the forced removal of children's books to the adult section of the Library, the Altman Resolution places a significant burden on Library patrons' ability to gain access to those books.

Avenue to Avoid Constitutional Challenge



Collection Development Policy - Best Practices

Mission Statement or Purpose Statement – as basic or expanded as needed for your goals and objectives, can be tied in to overarching community goals, i.e. city or county

Community – identify and define if needed.

General Selection Guidelines

Support mission or purpose

Identify any guidelines of any other entity or organization that will be used as reference or in conjunction with the policy

Mission or Purpose Statement

- It is the mission of the New Braunfels Public Library (NBPL), within the constraints of its budget, to provide library materials and services to all residents of the City of New Braunfels in order to meet their informational, educational, cultural, and recreational needs. The library places special emphasis on stimulating children's interest in reading and learning. In addition to acquiring and circulating library materials, the library provides access to other collections and information sources throughout the state, nation, and world.
- The Schertz Public Library promotes the love of reading and the joy of discovery for persons of all ages, provides information and learning resources in a variety of formats for both education and leisure, and supports our customers in their life-long learning pursuits.
- Universal City Collection Development Policy mission statement identifies that the public library is a dynamic civic resource that will provide access to information, materials and services to all members of the community to stimulate ideas, advance knowledge and enhance quality of life



Community or Identity

- The New Braunfels community reflects varying economic, racial, ethnic, and educational backgrounds. A strong knowledge and understanding of the community is key in terms of selecting materials and providing services to a changing populations.
- Our collections and services will continue to evolve and grow as the needs of the New Braunfels community change. As the community changes, the library will need to reassess and adapt its collections to reflect new and differing areas of interest and concern. The collection development policy will be periodically evaluated and revised (at least every 3 years) as necessary to provide guidance for implementing collection change.
- The New Braunfels Public Library defines its service audience as the residents and property owners of New Braunfels, Texas, and its Extra Territorial Jurisdiction (ETJ).
- Over 300,000 patrons now visit NBPL each year, many in pursuit of research material, others looking for recreational reading, and still others to attend various programs and have free access to library computers.





Community or Identity

The Schertz Public Library is a community library serving a growing and diverse population. It exists to encourage and support reading and learning by people of all ages, educational levels and socioeconomic levels by providing educational, recreational, and cultural materials and programs. The Library is a department of the City of Schertz, but also serves as the home library for the Cities of Cibolo and Selma, and for Guadalupe County. The service population exceeds 120,000 people and is expected to continue growing at a rate of approximately 3-4% per year for the foreseeable future.



Community or Identity

The Universal City Public Library serves an area encompassing Guadalupe, Comal, Kendall, Bandera, Medina, Atascosa, and Wilson Counties. The library clientele is comprised of diverse groups, including students, professionals, recreational users, independent researchers, children, retirees and visitors to the local area. The library provides resources for various opinions relating to important, complex, and controversial issues, including views that are unpopular and unorthodox.

Collection Development Policy - Selection

Identify authority/responsibility for material review and selection or recommendation depending on your policy (Identify key players as well)

Identify your criteria for selection and how that will play out if needed, any weight or goals, should be flexible and responsive, should identify principles or local considerations that have been identified,

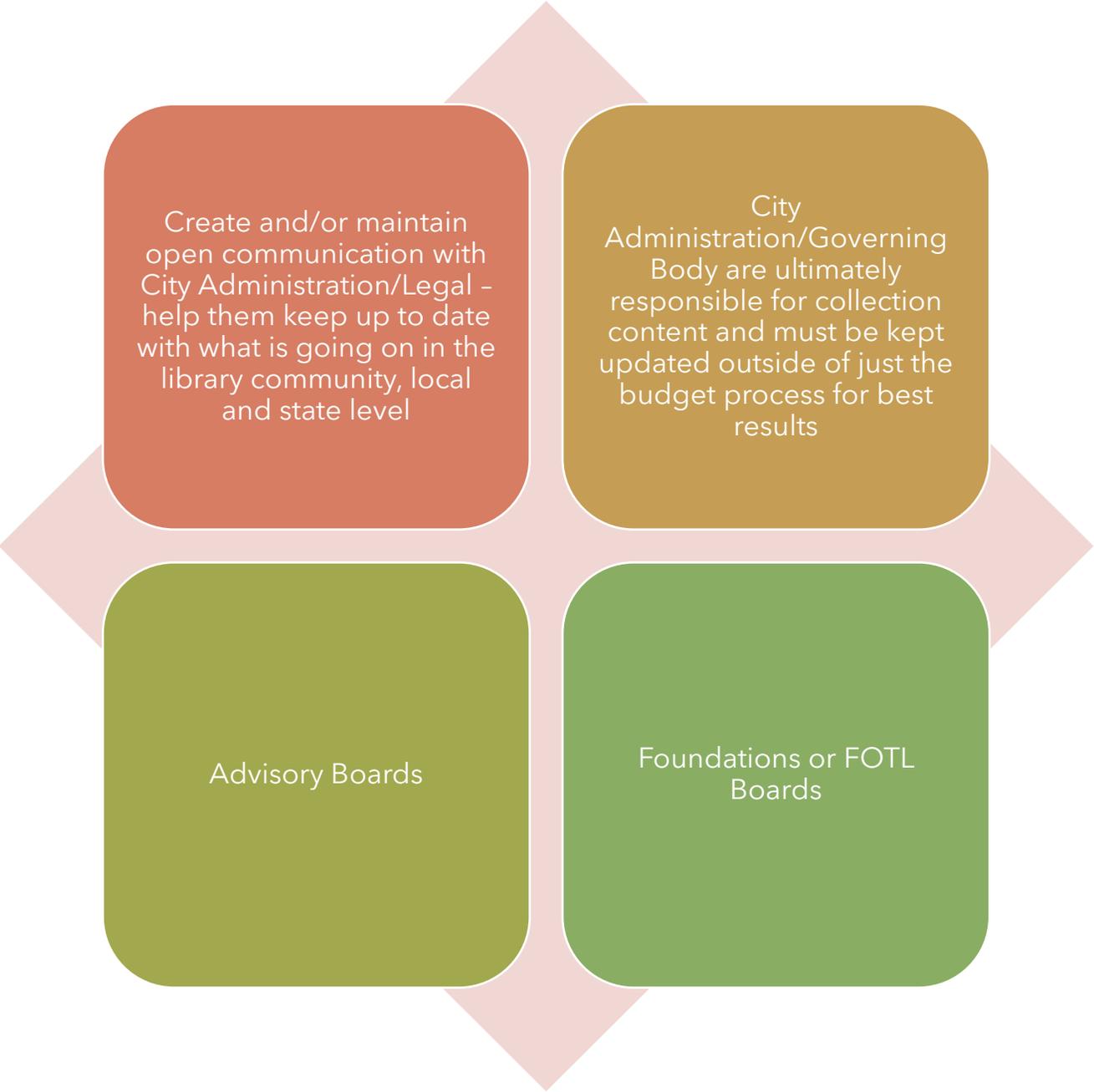
Can include

- Positive review from professional sources or media
- Accuracy of content
- Suitability of material for intended audience (i.e. based on type of collection)
- Public demand
- Extra: space limits, scarcity of material, medium, local authors or subjects, etc...

Collection Development Policy - Review Processes

- Review of Materials/Collection
 - Independent review or Staff initiated review/Maintenance - periodically and reserve the right to perform as desired.
 - Lack of use
 - New edition
 - Inaccurate information or outdated
 - Other sources of same information
 - Cost/budget
 - Patron request for review
 - Provide form for consistency and identify of necessary information
 - Identify procedure for review of request
 - Staff or LAB, chain of command, etc...
 - Appeal or resolution all the way up

Administrative Ideas for Collection Concerns



Create and/or maintain open communication with City Administration/Legal - help them keep up to date with what is going on in the library community, local and state level

City Administration/Governing Body are ultimately responsible for collection content and must be kept updated outside of just the budget process for best results

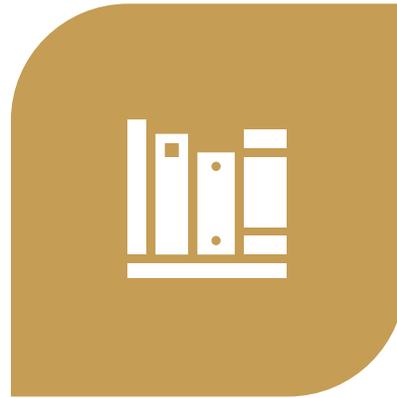
Advisory Boards

Foundations or FOTL Boards

Administrative Ideas for Collection Concerns



MAKE SURE POLICIES ARE UP TO DATE, DON'T BE AFRAID TO TAKE THE TIME TO COLLABORATE AND REACH OUT TO OTHER RESOURCES FOR IDEAS ON PRACTICES THAT YOUR COMMUNITY MAY BE READY TO CONSIDER; MAKE SURE AVAILABLE TO PUBLIC, USE WEBSITE AS TOOL AS WELL



INITIATE COLLECTION REVIEW IN A PRO-ACTIVE MANNER JUST TO HELP BE MORE FAMILIAR WITH MATERIALS CURRENTLY UNDER SCRUTINY IN OTHER LIBRARIES, ETC...



START DISCUSSIONS WITH COMMUNITY STAKEHOLDERS IF SPACE CONSTRAINTS/LAYOUT/ETC... ARE AFFECTING OR IMPACTING AVAILABILITY OF MATERIALS TO UNINTENDED AUDIENCE, FOTL CAN ASSIST AS WELL ON LEASE SPACE AND REMODELING FUNDS, ETC...

Governing Body

- City Council may formally review the Collection Development Policy to amend the criteria for selection and review.
- City Council may create a committee of the council to participate in the selection and review of material
- City Council may add an appeal to the full council following a decision by the Library Advisory Board
- Any changes, would be subjected to the Constitutional test for limited public forums...City cannot limit access to library materials solely on the basis of the content of those materials, unless the City can demonstrate that the restriction is necessary to achieve a compelling government interest and there are no less restrictive alternatives for achieving that interest



Questions?

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