

RECEIPT OF REFERENCE MATERIALS

VILLAGE OF ROSCOMMON

I, (Council Name), newly appointed member of the Village of Roscommon Council has received the following reference materials:

Copy of MML Handbook

Copy of Meetings, Agendas and Minutes

Copy of Ethics Ordinance

Copy of the Ethics Handbook

Copy of Email Retention poster

Copy of 21 PR Commandments for Public Officials

In addition, I authorize staff at Village Hall to open any correspondence received in my name. The correspondence may be copied and distributed to the other members of the Village Council upon judgment of the staff.

NAME

DATE



HANDBOOK FOR

MUNICIPAL OFFICIALS



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Preface

Better Communities. Better Michigan.

The Michigan Municipal League is the one clear voice for Michigan communities. Through advocacy at the state and federal level, we proactively represent municipalities to help them sustain highly livable, desirable, and unique places within the state. We create and offer our members services and events that range from traditional to cutting edge, in order to help educate and inspire them to remain focused on their passion for the area they represent. We are a nonprofit, but we act with the fervor of entrepreneurs; our people are dynamic, energetic and highly approachable, passionately and aggressively pushing change for better communities.

We salute the officials across the state that give freely of their time and show great dedication to their communities. Acutely aware that knowledge is the key to effective decision-making, the League and the MML Foundation present this *Handbook for Municipal Officials* with the hope that it will provide you with excellent information and act as an important aid as you carry out your local government responsibilities.

Every four years, over 5,000 officials are elected across the state to local government. Of these, approximately 3,600 are first-time officials, and often have little or no government experience. The League's objective is to educate these new officials on municipal issues by offering educational training and information. The *Handbook for Municipal Officials* is one of the many tools the League has developed to offer basic local government information for local officials and to familiarize them with the responsibilities they face as policymakers.

The *Handbook for Municipal Officials* is a collaborative effort of the Michigan Municipal League and the Michigan Municipal League Foundation.

Daniel P Gilmartin
CEO & Executive Director

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Section 1: Local Government

Chapter 1: Welcome to Public Service

The flush of election victory has faded a little and you've taken the oath of office. Now you're probably asking yourself, "What do I do next?"

Serving as an effective official requires dedication, knowledge and a substantial commitment of time and effort. No matter your motivation or background, as a member of the council/commission you have the opportunity to make important contributions to shape the future of your community. For this reason, becoming a local elected official can be one of the most rewarding experiences of your life.

On Being an Elected Official

Being well informed, listening carefully and knowing how to make decisions will enhance those qualifications you need to succeed as a public official: integrity, intelligence and a genuine concern for people.

Being Well-Informed

There is no substitute for thoroughly understanding the issues as well as the federal, state and local laws affecting these issues. As a public official you will receive an enormous amount of information. It is important to be able to handle this material efficiently and effectively.

For starters:

- **Become familiar with your city or village charter.** Ask your clerk for a copy of the charter. It is the governing document of your municipality. Think of it as the constitution of your city or village.
- **Know the duties and limitations of your office and of the municipality.** This requires familiarity with the state and federal constitutions, local ordinances and the court cases

interpreting them—as well as your city or village charter.

- **Know your city or village.** Know its history, its operations and its finances. Review all reports from the mayor (and/or manager if your municipality has one), department heads and citizen boards and commissions.
- **Become familiar with your municipality's plans.** Review the master plan, the parks and recreation plan, the infrastructure and economic development plans. There may also be a number of other documents outlining the goals, objectives and plans for your city or village.
- **Be aware of current state and federal legislation, pending court cases and other factors that affect local issues.** The Michigan Municipal League and the National League of Cities frequently send materials to help you stay up-to-date.
- **Talk to people with differing points of view and relevant information.** Your constituents, officials in neighboring villages, cities, and townships, and county and state officials will all have important and different perspectives on each issue.

Listening

Although seventy percent of our waking day is spent in some form of communication, and at least six hours a day is spent listening to some form of oral communication. We don't always do this well. Yet, it is imperative to listen actively and accurately to be an effective council/commission member.

Making Decisions

No government official can always make decisions that please everyone. Honest people have honest differences of opinion.

Making decisions is not always easy; it takes hard work and practice. However, each commission member must eventually “stand up and be counted.” It is this process by which your constituency judges you and for which it will hold you accountable.

Responsibilities of an Elected Official

The specific duties of village and city officials are spelled out in the charter of each municipality. However, all elected officials share certain responsibilities.

First and foremost, council members must remember they are elected to make decisions as a collective body, not to act as individuals or apart from the council. Together, as well as individually, it is their responsibility to:

Identify Community Needs and Determine Priorities

Each city and village is unique, with its own set of problems, and each person has a different view of the relative importance of those problems. You must discover the specific needs of your municipality and the relative importance of each.

Observe

Take a tour of the community with the rest of the council, the manager (if your municipality has one), and department heads. Such a tour is especially valuable for newly elected officials. They often discover areas never seen before, learn where the legal boundaries are and see where major trouble spots are now and where they might develop.

Keep your eyes open as you go back and forth to work or to city hall, taking the opportunity to look for problems. Use a different route to see more than just one area. There is really no substitute for first-hand observation.

Talk with Citizens

Direct interaction with your constituents is both politically and practically prudent. Municipal officials need to be accessible, concerned and open minded—and you will be if you talk not just with friends, but also with people you do not know well or at all. Be sure to include people representing various economic levels, professions, occupations and cultural backgrounds.

In talking with citizens, be concerned primarily with listening. Avoid arguing or defending existing positions. Your attitude should reflect a genuine desire to secure information.

In addition to seeking information in a person-to-person setting of your choice, you should also be prepared to receive unsolicited information and criticism from citizens who seek you out.

Read

Elected officials receive a large amount of printed material: minutes, reports, articles, letters, proposed state and federal legislation and more. Much of this relates to problems and possible solutions, and some of it may help you discover the needs and wishes of your constituents. A letter or a newspaper article may reveal a problem that had not surfaced previously. Problems in other communities that are spelled out in journals and other printed sources may raise the question, “Do we have that same problem in this community?”

Establish Priorities

Having defined the problems and needs of the community, it is important to establish the priority of each. How is this done—remembering that the resources, both human and financial, of any municipality are limited? Even if resources were unlimited, there are a number of activities that would not—and should not—be engaged in by the local government.

Each request should be examined in terms of citizen demand, financial cost, benefit to the entire community, availability from other sources and even political expediency. A balance should be maintained between the flexibility required to reorder

priorities when conditions require and the firmness required to resist changing the programs to meet the momentary whims of special interest groups in the community.

Participate in Formal Council Meetings

The council meeting is the final step in determining the projects and programs required to meet community needs. Here, under public scrutiny (sometimes face to face with suspicious and distrustful citizens), the municipal lawmaker must transact the business of the community based on established priorities and data that have been gathered and analyzed.

In council meetings, it is important to:

- **Look attentive, sound knowledgeable** and be straightforward and meticulously honest.
- **Be familiar with a systematic and efficient way to handle business brought before the council.** The mayor or president, manager or clerk will have prepared a concise and easily understood agenda outlining for you—and the general public—the order in which items will be considered during the meeting. This agenda may allow the general public and the members of the council themselves to bring up additional items of business for discussion. Your copy of the agenda may come with a packet of background material. These should be read before the meeting, to assist you in decision-making.
- **Bring all appropriate documents, notes and memoranda to the meeting.** Arrange the material in the same order as the agenda so pertinent information can be found easily.
- **Have a reasonable knowledge of parliamentary procedure and the rules of procedure the council has adopted.**

This will keep the meeting moving smoothly and efficiently, with a clear indication of each item's disposition. However, too much attention to procedure can slow down the meetings with complicated rules.

- **Eliminate personal remarks** intended to ridicule another person. Regardless of the actual relationships between the members of the council or commission, the general atmosphere of any meeting should be relaxed, friendly, efficient and dignified. Sarcasm, innuendoes and name calling should be avoided in interactions with the other council members, staff and the public. This does not mean falsehoods, misinterpretations, distortions and challenges to your integrity or honesty should be left unanswered. They should be answered—and sometimes vigorously—but these rejoinders should address the facts rather than the qualities, or lack of them, of the person being addressed.

Engage with Citizens

One of the greatest assets to elected officials is the public. Having causal and frequent interactions with community members a great way to build relationships and learn about community concerns and ideas. It's also important to establish more formal engagement strategies for important policy initiatives and planning projects. Effective engagement strengthens the community, improves government-citizen relationships, builds capacity, and eases program/policy implementation.

Because project and policy-based engagement can sometimes be a long and challenging process, the League makes the following recommendations for smoother civic participation:

- Develop a vision and goals for what engagement should look like.
- Start engagement in the project/policy ideation phase, and continue through plan formation and implementation.
- Build a diverse team of residents and community stakeholders representative of the community to guide public engagement activities.
- Build capacity by developing local leaders and partnering with organizations and community groups.
- In partnership with the stakeholder group, build a campaign around the

work, develop a project timeline, and celebrate accomplishments to keep the momentum going.

- Document activities in traditional and social media, evaluate engagement strategies, and make changes accordingly.
- Have fun! Stay open minded, positive, and energized throughout the process.

For more information and examples of great civic engagement across the state, visit placemaking.mml.org.

Placemaking

Investing in communities is critical to long-term economic development, and Michigan's future depends on its ability to attract and retain active, diverse, and engaged residents. Local governments must foster the dynamics of place to become thriving communities in the 21st century. Placemaking capitalizes on the distinctive assets of a community to integrate a mixture of uses that connect people and places on a human scale. It is scalable strategy to create adaptable, economically-competitive communities worth caring about.

Through forums, research, and education, the League identified eight assets Michigan's communities need to grow and strengthen for our state to sustain and prosper in coming years: physical design & walkability, green initiatives, cultural economic development, entrepreneurship, messaging & technology, transit, education, and being welcoming to all. Helping Michigan's leaders grow these assets in their own communities is the focus of the League's placemaking efforts. Visit placemaking.mml.org for comprehensive resources and solutions.

More and more of the problems a council must face extend beyond the legal boundaries of the municipality. Many—water and wastewater treatment, solid waste disposal, healthcare and drug abuse, for example—cross municipal, township, county or state boundaries and must be

solved either at a higher level or cooperatively by several different units.

Working with other units and agencies may be easier if you initiate meetings rather than wait for them to occur.

Communicate with the Media

If you have had little or no experience with members of the press, whether newspaper, radio or television, you may suddenly realize that public figures live in a different world than the rest of us. Anything you say in public—whether seriously or jokingly—can appear in the paper or on the TV screen the same day. An unguarded comment about a person or about someone's idea may be indelibly printed, much to your embarrassment. A poor choice of words, made on the spur of the moment, may be used to distort your opinion on a public issue. It is important to learn to work with the press effectively and comfortably.

Tips for Working with the Media:

- **Be honest.** Covering up, lying and distorting statements and actions are guaranteed to establish poor relations with the press.
- **Never say “No comment.”** It is always better to say that you don't have all the facts yet and are not prepared to publicly discuss the issue at this time.
- **If you don't know the answer to a question, say so.** Offer to refer the reporter to a staff person with more information, or offer to call back later with more details. If you are going to call later, be sure to ask when the reporter's deadline is, and call promptly.
- **Be consistent.** Do your best to maintain the same position on public matters from one meeting to the next. If the facts have changed or you have thought through an issue and come to a rational change in opinion, be sure to carefully explain that to the media.
- **Be cautious.** Even though you may trust a reporter, remember that reporters have a story to get and that what you as a public official say or think or do, is news.

- **Do not make statements “off the record.”** They will only come back to haunt you later.
- **Be positive in your attitude toward the press.** The media can help the village president or city mayor, manager and council communicate the work of the municipality to the citizens of your community. A good working relationship can be established if the council is open in its dealings with the press. Under the Open Meetings Act the press is entitled to attend **all public** meetings. Provide members of the press with copies of reports, recommendations and other documents related to the business of the city or village and initiate contact with reporters rather than waiting for them to come to you.

Chapter based on materials provided by **Gordon L. Thomas** (*deceased*), former mayor of East Lansing, past president and honorary life member of the League.

Section 1: Local Government

Chapter 2: Structure of Local Government

The present status of cities and villages in Michigan is the result of historical tradition, of the home rule provisions of the Constitutions of 1908 and 1963, of the home rule acts of 1907, and the initiative of individual communities.

During the nineteenth century, the state Legislature recognized the need to incorporate the densely settled communities within the basic pattern of counties and townships. The system of local government written into Michigan's 1908 and 1963 constitutions recognized the continuing existence of counties and townships, with the voluntary incorporation of the more densely settled areas as cities and villages. An innovation in the 1908 constitution was a provision for city and village home rule charters—a change which was to have many repercussions.

Villages

The basic difference between a city and a village is that whenever and wherever an area is incorporated as a village, it stays within the township. The villagers participate in township affairs and pay township taxes in addition to having their own village government. Incorporation as a city, however, removes an area from township government. City dwellers participate in county elections and pay county taxes as do villagers but are removed from township units.

Villages in Michigan are organized primarily to establish local regulatory ordinances and to provide local services such as fire and police protection, public works, and utilities. Certain of the local duties required by the state are not demanded of the village but are performed by the embracing township including assessing property; collecting taxes for counties and school districts; and administering elections.

Most of the villages (212 of 260) are still governed under the General Law Village Act, 1895 PA 3 as amended. Charters for villages are the exception, although any village may adopt a home rule document under 1909 PA 278, the Home Rule Village Act.

Cities

A city, being withdrawn from the township, must perform the basic, state-required duties as well as its own services. In addition to being responsible for assessing property and collecting taxes for county and school purposes, the city also becomes solely responsible for registration of voters and conduct of all elections within its boundaries.

The greater independence of the city, in maintaining local regulations and functions and state-imposed duties in one integrated unit, accounts for the creation of many small cities in Michigan during recent decades. The trend has also developed in villages to seek incorporation as cities whereby they achieve a separation of jurisdiction from the township.

As of January 2015, Michigan had 279 incorporated cities and 254 incorporated villages—a total of 533 municipalities. Of this total number, 320 had adopted home rule charters.

In 1895, adoption of the Fourth Class City Act created two types of cities: those of 3,000 to 10,000 population, which came under the Act, and all others which remained “special charter” cities. As of October 2014, all but one of the “special charter” cities have reincorporated as home rule cities. As of January 1, 1980 all fourth class cities became home rule cities by virtue of 1976 PA 334 (see also OAG 5525, 7/13/1979), which continued the Fourth Class City Act as the charter for each former fourth class city until it elects to revise its charter. As of

January 2015, four cities continue to be governed by the Fourth Class City Act.

Standards of incorporation

For incorporation of a home rule village, a minimum population of 150 is required, but there must also be a minimum density of 100 persons per square mile. There is no statutory requirement that a village must become a city when it experiences a rapid growth in population. Once incorporated, villages may seek reincorporation as fifth class home rule cities, providing their population is between 750 and 2,000. Alternatively, they may seek reincorporation as home rule cities if their population exceeds 2,000 with a density of 500 per square mile. For many years the Home Rule City Act required 2,000 population and density of 500 per square mile for city incorporation. A 1931 amendment permitted fifth class city incorporation at 750 to 2,000 population with the same 500 per square mile density requirement, but authorized villages within this range to reincorporate as cities regardless of density.

There is no basic difference between a fifth class home rule city and a home rule city, except the population differential and the statutory requirements that fifth class home rule cities hold their elections on an at-large basis (wards are not permitted). If all the territory of an organized township is included within the boundaries of a village or villages, the village or villages, without boundary changes, may incorporate as a city or cities as provided in 1982 PA 457.

Unincorporated territory may be incorporated as a fifth class home rule city provided the population ranges from 750 to 2,000 and there is a density of 500 persons per square mile. The same density rule applies to the incorporation of territory as a home rule city if the area has a population of more than 2,000. There are no other methods of city incorporation today. A new city must be incorporated under the Home Rule City Act.

State Boundary Commission

Under 1968 PA 191, the State Boundary Commission must approve all petitions for city and village incorporation. The Boundary Commission is composed of three members appointed by the governor. When the commission sits in any county, the three members are joined by two county representatives (one from a township and one from a city), appointed by the probate judge.

In reviewing petitions for incorporation, the Boundary Commission is guided by certain statutory criteria: population; density; land area and uses; valuation; topography and drainage basins; urban growth factors; and business, commercial, and industrial development. Additional factors are the need for governmental services; present status of services in the area to be incorporated; future needs; practicability of supplying such services by incorporation; probable effect on the local governmental units remaining; relation of tax increases to benefits; and the financial capability of the proposed municipality (city or village). In other words, the Boundary Commission review centers on the feasibility of the proposed city or village.

After review on the basis of criteria, the Boundary Commission may deny or affirm the petition. (Affirmative action may include some revision of the proposed boundaries on the commission's initiative.) Once the Boundary Commission has issued an order approving incorporation, a petition may be filed for a referendum on the proposal. The referendum permits the voters to accept or reject the incorporation. If incorporation is approved by the voters, the incorporation may be finally accomplished only through the existing process of drafting and adopting a city or village charter.

Home Rule

Home rule generally refers to the authority of a city or village under a state's constitution and laws to draft and adopt a charter for its own government. This contrasts with legislative establishment of local charters by special act, which results in

mandated charters from state capitols. Home rule frees cities and villages to devise forms of government and exercise powers of local self-government under locally prepared charters adopted by local referendum.

Constitutional home rule is self-executing in some states and not so in others. Non-self-executing home rule, which Michigan wrote into its 1908 Constitution, leaves it up to the Legislature to implement the home rule powers. Michigan's Legislature did this by enacting the Home Rule City Act and the Home Rule Village Act, both of 1909.

In implementing home rule when it did, Michigan became the seventh state to join in a movement which now includes 37 states. It was more than a national trend which motivated the Michigan Constitutional Convention early in the 1900s. Under the special act system of the nineteenth century, Michigan cities were, according to one observer writing closer to the time, "afflicted by their charters with an assortment of governmental antiquities." Robert T. Crane, *Municipal Home Rule in Michigan*, Proceedings of the Fourth Annual Convention of the Illinois Municipal League (Urbana, 1917), pp.62-65.

The Legislature, under Article VII (Sections 21-22) of the 1963 Michigan Constitution, must provide for the incorporation of cities and villages by general law. Such general laws of incorporation must limit their rate of taxation and restrict their borrowing of money and contracting of debt. The voters of each city and village have power to frame, adopt, and amend charters in accordance with these general laws.

Through regularly constituted authority, namely their established representative government, they may pass laws and ordinances pertaining to municipal concerns subject to the constitution and general laws.

By January 2015, 274 cities and 46 villages had adopted home rule charters. The total of 320 charters so adopted makes Michigan one of the leading home rule states in the nation.

Charters

The Michigan Municipal League, versed in the needs of cities and villages, renders informational assistance through its charter inquiry service. A few Michigan attorneys have become specialists in drafting charters. The quality of city and village charters has improved steadily. No longer is it necessary for elected home rule charter commissioners to search for model charters elsewhere, since many good charters exist in Michigan.

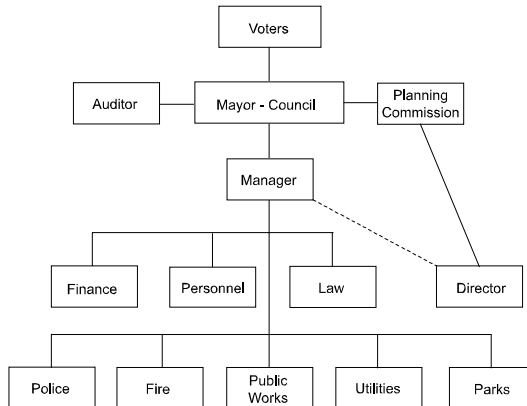
With some exceptions, Michigan charters have been influenced by nationwide trends in municipal practices such as the short ballot, the small council, election of councilmembers at-large, and nonpartisan nominations and election of councilmembers. Chief executives of either the appointed kind (a manager) or the elected type (a mayor) are favored. Municipal officials have shown their ingenuity in searching for what is most appropriate to their needs. No longer is the Legislature burdened with enacting individual charters. The responsibility lies with locally elected charter commissioners, subject to legal review by the governor under statutory requirements. Since charters must be adopted only by local referendum, the voters themselves make the final determination about the design of their government.

Form of Government: Cities

Council-manager form

Among Michigan home rule cities, more than 175 use the council-manager form, in which the elected council appoints a professionally trained and experienced manager to administer the day-to-day operations of the city, and to make recommendations to the city council. The council makes all policy decisions, including review, revision, and final approval of the proposed annual budget. The council may dismiss the manager (sometimes called city administrator or superintendent) if duties are not being performed satisfactorily.

Council-manager form



rather than through any specific authority extending beyond that of the councilmembers. The mayor also serves as chief administrative official, although department heads often operate more or less independently with only general coordination.

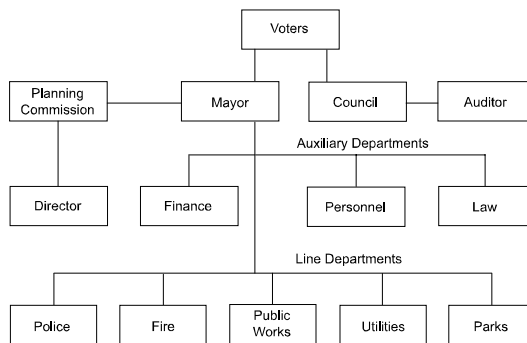
Under the weak mayor form there is no central administrator by formal title such as city manager. Some smaller cities are fortunate to have key long-serving staff who sense the overall cooperation needed to accomplish the city's programs, and informally proceed for the city's betterment.

Mayor-council plan

Two forms of the mayor-council plan are used by a number of Michigan home rule cities:

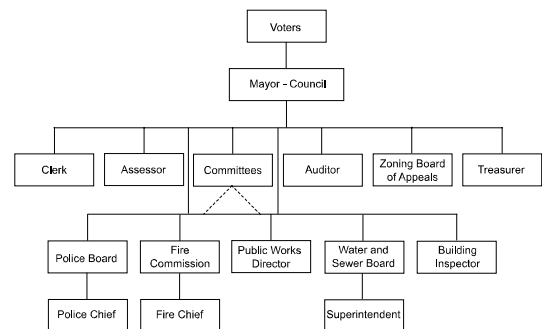
The "strong" mayor form is most often found in larger cities where the directly elected mayor, who is not a member of the governing body, appoints and removes the key administrative officials (those who, by charter, report directly to and assist the mayor); often has variations of veto power over council decisions; is usually salaried; and is expected to devote full-time to mayoral duties.

Strong mayor form



The "weak" mayor form is found generally in smaller cities and villages. The mayor (city) or president (village) is a member of the governing body, chairs council meetings, and normally is the municipality's chief policy and ceremonial official by virtue of the position of mayor

Weak mayor form



Election/selection of mayor

Mayors in about two-thirds of Michigan's home rule cities are chosen directly by the people, in at-large, city-wide elections (including all strong mayor communities). In the remaining cities the councilmembers typically choose the mayor from among their ranks to serve a one- or two-year term. A trend to call the members of a city's governing body councilmembers rather than commissioners is at least partially to avoid citizen confusion with county commissioners.

City councilmembers and village trustees typically are elected for two-year or four-year terms, about half at each election, to preserve some continuity of personnel, experience, and perhaps policy. Often a charter calls for election of half of the council at each election, plus the mayor for a term half as long as the councilmembers, preserving continuity but making possible a shift of majority at any election.

Most Michigan cities have at-large elections for councilmembers, rather than ward elections where voters in each ward (geographic section of the city) elect a councilmember or members. Only a few Michigan cities have partisan elections where major political party labels on the ballot identify candidates.

Selection of administrative officials

The trend in Michigan home rule charters is to appoint, rather than elect, administrative officials who must have technical competence. In council-manager cities and villages, the manager appoints and removes department heads, sometimes with—but more often without—council approval, depending on charter requirements. In the weak mayor form, council approval of appointments is generally required.

Form of government: Villages

Of the 254 villages in Michigan, 46 have home rule charters, and 208 are governed under the General Law Village Act (1895 PA 3). Under that Act all of the then existing villages in Michigan were reincorporated and standards were set for future incorporations. The general law village, still the most common by far, has the typical weak mayor-council form of government.

Village presidents in general law villages are elected at-large, village-wide. The Act was amended in 1973 to provide for two-year terms for the president and made the village president a full voting member of the village council. In 1974, the Act was amended to provide for four-year terms for the six trustees—three of whom are elected biennially, unless a village exempted itself prior to January 1, 1974. The most recent amendments to the GLV Act passed in 1998. These included the ability to reduce council from seven to five members, allowed for the appointment of a clerk and treasurer, and allowed for nonpartisan elections.

The Home Rule Village Act requires that every village so incorporated provide for the election of a president, clerk, and legislative body, and for the election or appointment of such other officers and

boards as may be essential. However, the president need not be directly elected by the people but may be “elected” by the village council. Of the 46 home rule villages, only 22 have a village manager position.

The home rule village form of government offers flexibility that is not found in the 1895 statewide General Law Village Act provisions. Home rule village charters in Michigan are as diverse as the communities that adopt them.

Interesting municipal facts

Who’s the oldest? Who’s the newest?

- Sault Ste. Marie is the oldest community, founded in 1641. However, Detroit was the first *incorporated* “town” in 1802 and then as a city in 1815; followed by Monroe in 1837 and Grand Rapids in 1850.
- Grosse Pointe Farms is the only municipality incorporated from a detached territory (from Grosse Pointe Village in 1893).
- Village of Lake Isabella is the most recent incorporation from an unincorporated area, in 1998.
- The most recent incorporations as cities from general law villages are Jonesville and Dexter, in 2014.
- Mackinac Island is the only special charter city.
- Remaining Fourth class cities (population)
 - Harrisville (493)
 - Omer (313)
 - Sandusky (2,679)
 - Yale (1,955)
- The only city/city/village consolidation in Michigan occurred in 2000 when Iron River, Stambaugh, and Mineral Hills merged.

The following cities incorporated from townships

- Auburn Hills, 1983
- Burton, 1971
- Farmington Hills, 1972 (also included the villages of Quakertown and Woodcreek Farms)

- Livonia, 1950
- Norton Shores, 1967
- Portage, 1963
- Rochester Hills, 1984
- Romulus, 1968
- Southgate, 1958
- Sterling Heights, 1966
- Taylor, 1966
- Warren, 1955 (was a village plus incorporated Warren Township when it became a city)
- Westland, 1964

Michigan Population

- 1820:** 8,767 (in the Michigan Territory, which included much of Ohio and Indiana)
- 1837:** Michigan admitted to the Union as 26th state
- 1840:** 212,267
- 2000:** 9,938,444
- 2010:** 9,883,640

Michigan has:

- 83 Counties
- 1,115 General law townships
- 127 Charter townships
- 274 Home rule cities
- 4 Fourth class cities
- 1 Special charter city
- 208 General law villages
- 46 Home rule villages

Most & Least

- Tuscola County has the most villages with 10

- Wayne County has the most cities with 33
- Oakland County has the most cities and villages with 39
- Keweenaw, Luce, Montmorency, Ontonagon, and Roscommon Counties each have one incorporated area, a village
- Crawford, Schoolcraft, and Alpena counties each have one incorporated area, a city.

Smallest and Biggest		
Villages	2010 Population	County
Forestville	136	Sanilac
Eagle	123	Clinton
Melvin	180	Sanilac
Holly	6,086	Oakland
Milford	6,175	Oakland
Beverly Hills	10,267	Oakland
Cities	2010 Population	County
Lake Angelus	290	Oakland
Gaastra	347	Iron
Whittemore	384	Iosco
Warren	134,056	Macomb
Grand Rapids	188,040	Kent
Detroit	713,777	Wayne

Section 1: Local Government

Chapter 3: Charter Revision and Amendment

Background for Change

Michigan cities and villages exist within a framework that is part of a greater system of state and federal law. The system is described in governing documents which fit into a hierarchy of importance and must be kept current. Constitutions, statutes, and charters are primary examples of these documents.

Most Michigan cities are incorporated under the Home Rule City Act, 1909 PA 279 (HRCA) (MCL 117.1 et seq.). Home rule villages are created through the Home Rule Village Act, 1909 PA 278 (HRVA) (MCL 78.1 et seq.). The HRCA and HRVA are statutes that were authorized by the Michigan Constitution of 1908, and currently by Article VII, Section 22, of the Michigan Constitution of 1963.

Locally, the city or village charter is the principal governing document. This chapter addresses existing charters of home rule cities and villages. As each community changes in various ways over time, its charter has to change with it. The same is true at the state and federal levels. The U.S. Constitution has been amended 27 times to date. Michigan has had four constitutions and numerous amendments. Statutes are being enacted and amended constantly.

When a charter becomes outdated it hinders the ability of local government to serve properly. A charter that is no longer current is one with provisions that are illegal, obsolete, or missing. Changes are needed to correct misleading, unreliable, or unresponsive charters.

Illegal Charter Provisions

Charter provisions may be preempted by other law. No provision of any city or village charter shall conflict with or

contravene the provisions of any general law of the state (MCL 117.36; 78.27). Other instances of illegality result when a court declares them so.

Obsolete Charter Provisions

The mere passage of time contributes to charter obsolescence. Provisions that once made sense in the history of a community may later be irrelevant or too restrictive. Certain dollar limitations for expenditures, titles of municipal officers and departments, and descriptions of functions are some of them. Archaic charter language, or charters dominated by male pronouns, also contribute to examples of obsolescence. One charter provision may be in conflict with another, leading to confusion of interpretation.

Omitted Charter Provisions

Does the charter claim all powers allowed by law or does it unduly limit their exercise?

The HRCA and HRVA provide in similar language that each city or village charter may provide “for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers are expressly enumerated or not; for any act to advance the interests of the city or village, the good government and prosperity of the municipality and its inhabitants and to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state” (MCL 117.4j(3); 78.24(m)).

The HRVA permits a village to adopt as part of its charter any chapter, act, or section of state statutes not inconsistent with the Act, which relates to the powers or

government of villages generally (MCL 78.25).

The HRCA and HRVA prescribe certain charter content. Essential provisions are mandated. Others are permissive. Still other provisions are prohibited, or are further restricted.

Room for Improvement

With decades of experience under municipal home rule, generations of citizens have come to view home rule as deserving of the public trust, as reflected increasingly in modern charter language.

Does the community want or need more innovative charter provisions than presently exist? It is possible to guide local officials, officers, and employees in their various functions by specific creative charter authorizations declared to be in the public interest. Examples are continual planning for change; providing continuing education at all levels of civic participation; improving intergovernmental relationships; employing alternative dispute resolution methods; conserving resources (both human and environmental); keeping the public informed of vital concerns; enhancing cultural qualities; and promoting ethical standards and behavior.

Examination of the local charter for practical use should also raise the following questions:

- Is it organized in logical sequence?
- Does it define key terms?
- Is the language clear and understandable?
- Are provisions easy to locate when needed?
- Does it have an index?
- Is it preceded by a meaningful preamble and historic statement?

To Revise or Amend

The two forms of legally authorized charter changes are by revision or amendment.

The home rule acts allow communities to make substantial or nominal changes in their charters by different routes. Charter revision implies re-examination of the entire

document, and that it may be recreated without obligation to maintain the form, scheme, or structure of the former charter. Amendment implies that the general plan and scope of the former will be maintained, with corrections to better accomplish its purpose. Revision suggests fundamental change, while amendment is a correction of detail, according to the Michigan Supreme Court.

A change in the form of government will require charter revision and not merely amendment. What constitutes such a change may require in-depth study. Legal advice should be sought if that question arises.

Charter Revision

Cities

Revision of city charters may be initiated by a resolution adopted by 3/5 of the legislative body or by petition signed by at least five percent of the registered voters, unless the present charter provides otherwise. In any case, the decision to revise is for the electors to approve or reject. They must also select a nine member charter commission to revise the charter, none of whom may be an elected or appointed city officer or employee. Both matters may be voted upon at the same or separate elections. An advisory vote may also be taken on the question of a change in the form of government.

The city council determines the place of meeting, the compensation of charter commission members, and provides funds for expenses and ballots.

The city charter commission convenes on the second Tuesday after the election. The city clerk presides at the first meeting. The clerk administers oaths of office and acts as the clerk of the commission.

The city charter commission assesses the qualifications of its members, chooses officers, determines rules of procedure, keeps a journal, and fills vacancies. City charter commission members are compensated for attending a maximum of 90 meetings (one per day). A majority of city charter commission members constitute a quorum. Commission sessions are public.

It is generally advisable for a city charter commission to engage a legal consultant experienced in these matters as there are numerous legal issues at stake.

A proposed revised charter is submitted to the governor for approval. The attorney general reviews it and advises the governor regarding its legality. The governor signs the charter if approved; otherwise the charter is returned to the charter commission with a commentary of recommended corrections.

An approved proposed city charter is to be published in full as prescribed by the charter commission. The adoption of the revised charter is for the electorate to decide by a simple majority of those voting on the question. Specific provisions for a city charter may also be decided as separate ballot propositions. The ballot questions are to be approved for clarity and impartiality by the attorney general. The ballot contains voting instructions and explains the effect of each proposal.

If a proposed city charter revision is rejected, the charter commission reconvenes and determines whether to take no further action or to proceed with a further revision. If no action is taken, the city charter commission ceases to exist. Proposed revised city charters may be submitted to electors by a charter commission three times within a three-year period. A new proposal to revise a charter may be voted upon at any time after termination of the charter commission.

Home Rule Villages

The initiation of a home rule village charter revision requires a 2/3 approval vote by the legislative body, or by electors' petition of at least 20 percent of the total vote cast for president (village) at the last preceding election, unless otherwise provided by charter. The village charter commission consists of five elected members.

The village council determines the place of meeting, the compensation of charter commission members, and provides funds for expenses and ballots.

The village charter commission convenes within ten days after its election,

and frames a charter within 60 days thereafter.

The village charter commissions assesses the qualifications of its members, chooses officers, determines rules of procedure, keeps a journal, and fills vacancies. Three or more village charter commission members constitutes a quorum. Commission sessions are public. The county prosecutor is required by statute to advise village charter commissions.

A proposed revised charter is submitted to the governor for approval. The attorney general reviews it and advises the governor regarding its legality. The governor signs the charter if approved; otherwise the charter is returned to the charter commission with a commentary of recommended corrections.

The attorney general's position is that publication is to be in a newspaper in general circulation within the community, which is the statutorily required method of publication of village charters.

The adoption of the revised charter is for the electorate to decide by a simple majority of those voting on the question. A proposed revised village charter must be filed with the village clerk not less than 90 days before the election. A revision may be submitted to the electors only once in two years.

Charter Amendment

Amendment of a city charter may be proposed by 3/5 of the members of the legislative body, or by an initiatory petition of electors containing the signature of at least 5 percent of the qualified registered electors of the city. If proposed by the legislative body, the proposal is submitted to the electors at the next municipal or general state election, or special election held in the city not less than 60 days after it is proposed. In the case of petitions, the election is to occur not less than 90 days following their filing.

A village charter amendment may be submitted to the electors by a 2/3 vote of the legislative body or petitioned for by not less than 20 percent of the number of electors voting for president at the last election.

The governor is presented with the proposed amendment of a city or village charter for approval, and signs it if approved. If not approved, it is returned to the legislative body with stated objections for reconsideration. If 2/3 of the members agree to pass it, it is submitted to the electors. If the amendment was initiated by petition, it is submitted to electors notwithstanding the objections.

An amendment to a village charter is submitted to electors at the next general or special election. An amendment originated by the legislative body is published and remains on the table for 30 days before action on it is taken. The form of a proposed amendment to appear on the ballot is determined by resolution of the legislative body, unless provided for in the initiatory petition. Publication is made in a newspaper published or circulating in the village at least once, not less than two weeks, nor more than four weeks before the election.

Proposed amendments are to be published in full with existing charter provisions to be altered or abrogated by them. The purpose of a city charter amendment is designated on the ballot in not more than 100 words, including the short title or caption. The statement of purpose must be true and impartial so as to create no prejudice for or against the amendment. The attorney general examines it for compliance before its printing. The form of the proposed amendment is determined by resolution of the legislative body unless provided for in the initiatory petition. In the latter case the legislative body may add an explanatory caption.

A proposed amendment is confined to one subject. If a subject embraces more than one related proposition, each of them must be separately stated to allow an elector to vote for or against each proposition.

A majority vote of electors voting on the question is required to pass an amendment.

A failed proposed amendment to a city charter may not be resubmitted for two years.

Legal References

The sections of the Home Rule City Act that directly relate to charter revision are 18, 19, 20, 22, 23, 24, 26, and 28. Those that govern amendment are 21, 22, 23, 24, 25, 26, and 28. The corresponding sections of the Home Rule Village Act are 14, 15, 18, 19, 20, 21, and 26 for revision and 17, 18, 19, 20, and 21 for amendment.

The remaining provisions of each of the acts, respectively, must be referred to in considering changes to a city or village charter. Certain features of each municipal charter are mandatory and are not subject to exclusion. Others, as noted above, are permissive or restrictive and deliberate consideration is to be given to them. Constitutional provisions and a host of statutory laws also bear upon what may appear in charters, and to what extent and content.

Courts have interpreted the validity of various charter provisions and the statutes that dictate their use. The Michigan attorney general has also rendered opinions, when requested, for guidance in areas of specific legal concern.

All sources of law that bear upon charter issues need to be consulted in any effort to reform charters, to achieve the desired benefit to the communities served by them.

Charter Revision Strategies

To do justice to the charter revision process, it is well to project an 18-month time frame after the election of the charter commission in order to complete the task. Each commission will set its own pace. It should meet regularly and assign a chapter of the charter at a time to be considered at a subsequent meeting or meetings. The review of each provision should be by all members so that each participant has a grasp of the issues involved. The entire charter document is subject to revision and improvement. Officeholders are to be consulted for views regarding the effect of current charter provisions upon their duties and performances.

It is well for the commission members to wrestle with and to dispose of the most

volatile issues first, and to resolve them expeditiously—and to then close ranks. The charter commission must present to the public a unified approach and avoid divisions caused by single or limited issue positions, which tend to discourage voters and lead to defeat of the product of countless hours of study, debate, and drafting. It is also well to have one person draft all segments of the document, to preserve continuity of style and form. Until the commission approves a final version, each draft should be regarded as tentative to allow the entire work product to evolve into a cohesive whole.

The election cycle is a foremost consideration in the timing of charter submission to the electorate. To achieve timely completion of the charter is to also allow sufficient opportunity for review by the attorney general on behalf of the governor. It is prudent, and a courtesy to those offices, to request their optimum timing in advance. The review of total charter language is given expert, in-depth analysis by the highly experienced assistant attorney general in charge of that service. The reviewer may need to refer various articles of the charter to other state agencies for inspection. Further consideration must be given to the prospect that added time will be needed for adjustment if objections are raised.

Revised charters and amended charter provisions approved by the electorate with the vote for and against are filed in duplicate with the county clerk and the secretary of state, within 30 days after the vote is taken. They become effective upon filing, unless a different effective date is specified in the document, in the case of a city charter.

Conclusion

The service performed for the community by the members of a charter commission is immeasurable and has its own reward. It is a significant honor to participate in the creation of the document that most directly affects the quality of local government and the well-being of its citizens.

The League's Resource Center and its city charter database are excellent resources for research as to what other city and village charters contain. In addition, the League has an online Charter Revision Handbook to aid charter commissions in this effort.

Chapter based on materials provided by **Dan Matson**, city attorney for the City of DeWitt and village attorney for the Village of Fowler. He chair of the Michigan Association of Municipal Attorneys' Charter Focus Group and Ethics Roundtable Committee.

Section 1: Local Government

Chapter 4: Boundaries and Annexation

Introduction

The first and only principle of law governing boundaries of municipalities is that no one—no governmental authority, or individual, person or entity—has any legally protected right to the placement of a municipal boundary in a particular location. Municipal boundaries are drawn by politicians in the legislature. They can be redrawn at any time by those same politicians or by a vote of the people.

Political boundaries are created by incorporation. They are changed by disincorporation, consolidation, annexation, or detachment.

Incorporation

Villages and cities have separate statutes addressing incorporation. Both statutes have one thing in common. The process begins by securing a petition for incorporation from the State Boundary Commission (SBC). The SBC has an informational guideline on how to fill out a petition to incorporate.

In general, the petition must be signed by a sufficient number of qualified electors. It must legally describe the area to be incorporated and have a survey attached showing the boundaries in juxtaposition with its surrounding communities. Before submitting the petition, it is recommended that the municipality meet with the staff of the SBC. They will review the petition and tell you to correct any deficiencies. This is important because a petition, once submitted, cannot be amended. It will be rejected if there is any doubt whether it meets all of the statutory requirements.

The SBC determines the legal sufficiency of the petition; holds a public hearing to determine the reasonableness of the incorporation; and, if so found, approves the petition. A period of 45 days is then triggered allowing five percent of the population to petition for a referendum. If no

petition is filed, or if a referendum is held and the incorporation passes, the SBC then orders an election to be held to elect a charter commission. Upon election, the charter commission drafts a charter and sends it to the governor's office for approval. If so approved, an election is then held (1) to approve the charter, and (2) to elect the first slate of municipal officials. If the charter does not secure approval of the electorate, the charter commission has three years within which to submit a new proposed charter to the governor's office.

(See Chapter 3, Charter Revision and Amendment for more on charter commissions)

Disincorporation

Disincorporation in a home rule city begins with the filing of a petition of at least 25 percent of the city electors. A city sends the petition to the county commission, which is required to review it. If the county approves the petition, it will pass a resolution calling for an election. A 2/3 vote of the city electorate is required to win.

Home rule villages have no statutory mechanism to disincorporate. They would have to insert a provision in their charter permitting them to do so before they could disincorporate.

Consolidation

Consolidation begins with the filing of a petition with the SBC signed by five percent of the total population of the two or more cities or villages. If the petition is approved, the SBC orders an election on the question to be held along with the election of nine charter commissioners. If the question passes the election, the charter commission drafts the proposed charter. If the governor's office approves the charter, the election is held on the charter and candidates for office to the newly consolidated entity.

Annexation

There are three rules to consider. First, in order to be annexed, the territory has to be contiguous to the municipal border. Second, the amount of land touching along the boundary line must be somewhat proportional to the size of the territory to be annexed. And, third, no islands of township property can be created between the municipality's old boundary and the newly drawn boundary line.

Home rule villages secure permission from the county commission to hold an election to annex property. If the county approves the petition, it passes a resolution ordering an election.

Home rule cities annex property in several ways. If the property is owned by the city and vacant, the city council adopts a simple resolution stating their intent to annex the property. If the township agrees, annexation takes place by the adoption of a joint resolution of the legislative bodies of the city and the township. If the property is in a charter township, the county is petitioned to hold an election in the city and in the area to be annexed.

Most other annexations are through petition to the SBC. Petitions can be filed by the city, by 75 percent of the land owners, by 25 percent of the registered voters in the area to be annexed or by one percent of the entire population of the city and township.

The petition process consists of:

1. a pre-application review of the petition provided by the SBC containing: legal description of the territory, a survey, a map of the general area in juxtaposition with the rest of the city.
2. a determination of the legal sufficiency of the petition by the SBC.
3. a public hearing by the SBC.
4. an adjudicative hearing at which time the SBC reviews their staff reports and responses to questionnaires sent out to the city and township, and
5. approval by the SBC.

If the SBC approves the petition and the head of the Consumers and Industry Services Department signs off, a 45-day

referendum period is required before the annexation becomes final. If five percent of the registered voters in the area to be affected, file a petition to hold an election on the question of annexation, the election is held. If both the majority of the electors in the annexed area and the majority of the city or township electors voting separately approve the annexation, the decision of the SBC stands. If either group fails to register a majority vote, the SBC decision is overturned.

Exemption and Exclusions from Annexation

Two Year Rule

No petition will be accepted by the SBC if filed within two years of a previous determination by the SBC on any portion of the territory included in a current petition.

Charter Township

If a charter township substantially meets all of the following requirements, property can only be annexed under the provisions set forth in Section 34 of the Charter Township Act. The township has:

- a state equalization value greater than \$25 million;
- a minimum density of 150 persons per square mile;
- fire protection services provided directly or by contract;
- a zoning ordinance or master plan;
- solid waste disposal services;
- water or sewer services;
- police protection by contract or otherwise.

All of these services must be provided to the entire township.

Annexation of territory from a charter township is still permitted but it is only allowed by:

- election called for by petition of registered voters within the territory to be annexed and the city;
- joint resolution of the city and the township, and

- petition to the SBC to straighten the boundary between the two municipalities or to remove enclaves.

The Charter Township Act does not provide a means for a property owner to petition for annexation with the SBC.

PA 425 Agreements

Property within the jurisdiction of an agreement entered into pursuant to 1984 PA 425 cannot be annexed during the term of the agreement. The 425 Agreement must have been entered into for an actual economic development project as defined by the act. It cannot be entered into merely to exchange utility services between the municipalities. There also has to be an actual conditional transfer of property. To effectively block annexation, the 425 agreement cannot have been entered into as a sham or “shark-repellant” to block annexation. *Twps of Casco, Columbus and Lenox v SBC*.

Boundary Changes by Agreement

Two statutes, the “Urban Cooperation Act” and “Act 425,” are often used to approve a boundary change between a city and township.

Urban Cooperation Act

The Urban Cooperation Act (1967 PA 7) and the Intergovernmental Transfers of Functions and Responsibilities Act (1967 PA 8) are preferred by cities. The acts permit two or more local governments to enter into an interlocal agreement to do anything either one of them could do on its own. If the agreement is to provide water and sewer to an area of the township, the consideration would be the sharing of the millage on the property with the township. Each municipality would hold a public hearing on the agreement. Final agreement would not occur until after the expiration of a 45 day referendum period.

To effect a boundary change under an Act 7 or 8 agreement, each municipality would have to adopt mutual resolutions under Section 9 of the home rule cities act

agreeing to annexation of property into the city.

PA 425 Agreements -- Conditional Transfer of Property for Economic Development

1984 PA 425, as amended, permits units of government to conditionally transfer municipal jurisdiction over property from one municipality to another for the purposes of economic development. For example, if a developer of an economic development project in the township requires water and sewer, the property is conditionally transferred into the city in order to secure those services. The city shares the taxes it receives from the transferred property with the township for the length of the agreement, at the end of which the property either returns to the township or stays with the city. Each municipality has to hold a public hearing. Finalization of a 425 agreement does not occur until the expiration of a 30-day referendum period, when it is filed with the county clerk and the secretary of state.

Detachment

Villages

Detachment of property from a home rule village is initiated by the filing of a petition with the county clerk of one percent of the population of the qualified electors in the village and township. If the petition is legally sufficient, the county approves the petition and orders the election. The votes of the village and township electors are counted collectively. A majority wins. Assets owned by the home rule village in the detached area are sold pursuant to the statute and the proceeds divided proportionately with the township. Debts are likewise divided and shared proportionately with the township.

Home Rule Cities

The detachment process is started by the circulation and filing of a petition signed by one percent of the registered electors of the city or township with the county clerk. If legally sufficient, the county board approves and orders an election to be held on the

question of detachment, with the combined total of all the votes cast in both the city and township being counted together. A simple majority determines the outcome. Any assets that the city may own in the detached territory are then sold under special formula in the home rule city act and divided proportionately between the city and the

township. Debts and obligations are also divided proportionately with the township

Material for the chapter was provided by **William B. Beach**, retired senior attorney with Miller, Canfield, Paddock and Stone, P.L.C.).

Section 2: Roles and Responsibilities

Chapter 5: Duties of City and Village Officials

Sources of Authority

The duties of local elected officials are specified in each city or village charter. The Home Rule City Act (1909 PA 279) and Home Rule Village Act (1909 PA 278) both require the adoption of a “home rule” charter. Essentially, home rule is the right of citizens to determine their own government structure. This is done through a written charter drafted by an elected charter commission and adopted by the electors by referendum. The home rule acts establish the procedures for framing charters. (See Chapter 3: Charter Revision and Amendment).

Both Acts outline the mandatory, as well as permissible, provisions for local charters. Mandatory requirements of the charter provide for the election of certain local officials and define the powers and duties of those officials—and to some extent the appointed officials for home rule municipalities.

Mandatory Charter Provisions

(HRCA, MCL 117.3; HRVA, MCL 78.23)

- Election of mayor and legislative body; election/appointment of officers;
- Nominations of officers;
- Elections;
- Officers-qualifications, duties, compensation, contracts;
- Establishment of wards;
- Taxation;
- Appropriation of money;
- Public peace, health, and safety services;
- Ordinances;
- Adoption of laws, codes and rules;
- Adoption by reference;
- Open meetings;
- Public access to records

- Legislative journal; and
- System of accounts.

Permissive Charter Provisions

(HRCA, MCL 117.4; HRVA, MCL 78.24)

Both Acts list many provisions which *may* be included in the charter to require council action. Some of these include: provisions for streets; utilities; planning; establishment of special assessment districts; and penalties for ordinance violations.

Prohibited Powers

(HRCA, MCL 117.5; HRVA, MCL 74.25)

In addition, both Acts prohibit cities and villages from taking certain actions in their charter. For example, no city may exceed the tax limits established by law or the charter; call more than two special elections a year; or sell certain land or issue certain bonds except by the vote of the people.

Power and Duties of the Council

The home rule acts each place the legislative authority of the municipality in the council. It is important to remember that this authority is granted to the council as a whole, rather than to individual members, and that many of the powers granted to the council are permissive in nature rather than obligatory.

Does this mean that as a council you may take any action you deem appropriate as long as it is “for the benefit” of your community? Probably not. Cities and villages operate as governments of law within a system of constitutional federalism and a complex network of federal and state laws and regulations. Foremost are the guarantees and restraints found in the U.S. Constitution, and federal legislation and regulations. Next are Michigan’s

constitution, statutes, and regulations. The next level of regulation is local, and includes your charter, municipal ordinances, and policies.

Ordinances, Resolutions, and Motions

For the newly elected official, the distinction between motions, resolutions, and ordinances can be confusing.

- **Ordinances** are formal actions by the council and constitute local legislation. If the council wants to change a duly adopted ordinance, it must amend, repeal or rescind the ordinance. (See Chapter 7: Local Ordinances). Ordinances carry the force of law and may impose penalties on violators. The clerk is required by state law to maintain an ordinance book, and from time to time a municipality may compile or codify all of its current ordinances and publish that compilation or code.
- **Resolutions** are less formal than an ordinance, and are often used for short-term matters, such as adopting the annual budget. A resolution may be used to state the council's position, such as to support or oppose a piece of state or federal legislation. When the council wishes to commend a citizen or commemorate an occasion, it acts by resolution. Resolutions are a part of the permanent record of the municipality.
- **Motions** are used to introduce a subject or propose an action to the council. For example, a trustee might say, "I move the ordinance (or resolution) be adopted." Once a motion is made and seconded, the matter can be discussed and acted upon. (See Chapter 6: Successful Meetings).

The League's Resource Center maintains a collection of sample ordinances. You may request them by emailing info@mml.org. Your municipal attorney should review all ordinances, including samples you receive from the League, to provide you with guidance on the language, the relevance of state statutory requirements, and the application of case and

constitutional law, as well as consistency with previous ordinances.

Some actions, such as a zoning ordinance, require that a public hearing be held prior to enactment. In other instances, it may be politically wise to hold a public hearing, even though it may not be mandatory.

A 2/3 majority of the council is required to pass certain types of ordinances. The village or city attorney should be consulted about which ordinances require this type of super-majority.

Some villages and cities require an ordinance to be "read" several times before it is adopted. This may be a full reading of the entire ordinance—which can be quite lengthy—or only a synopsis. The introduction of the ordinance is usually considered the first reading, and a second reading occurs at a subsequent meeting when the ordinance is actively considered. These readings are not required by state statute, but they do provide an opportunity for public awareness and input. Your charter or council rules of procedure may provide for such readings and may authorize the suspension of one or more readings to avoid verbatim readings of lengthy measures or emergency actions.

Operating in the Sunshine

A basic premise of democracy is that the public's business is conducted in public. This requirement is particularly necessary in a representative democracy.

The State of Michigan has established that the public is entitled to full and complete information regarding the affairs of government and the actions of those who represent them. In 1976, the Legislature enacted the "Sunshine Laws." The Open Meetings Act (OMA), and the Freedom of Information Act (FOIA) provided for the people's right to know and set limits and parameters on a council's actions. (See Appendix 5: Overview of the Open Meetings Act and Appendix 4: Overview of the Freedom of Information Act).

In a nutshell, the OMA requires that all deliberations and decisions of a public body shall be made in public—with only a few, very specific exceptions.

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all public bodies in the state. FOIA states that all persons, except those in prison, upon written request have a reasonable opportunity to inspect, copy, or receive copies of the requested public record of the public body.

This sounds easy—however, the problem arises in the definition of terms. For example:

- What is a public record?
- Are personnel records of public employees subject to FOIA? What about medical records?
- Can someone FOIA an expensive software program from the municipality, thereby saving themselves several thousand dollars?
- What is a reasonable opportunity?
- Does an employee/official have to stay at village/city hall all night to accommodate a FOIA request?

The answer to these questions is: “It depends.” Documents may be kept confidential only when there is an actual detriment to the municipality, not when the matter would simply be embarrassing.

General guidelines and reference materials are available from many sources, including the League’s Resource Center. However, when specific circumstances arise that make you question the appropriateness of a closed session or the necessity to post a meeting or whether or not to release a document, the safest course of action is to follow the guidance of your municipal attorney. Based on a professional understanding of the law, and the interrelationships of various levels of the law, your municipal attorney will be able to assist you in determining which laws are applicable and how they apply to your village or city.

Citizen Participation in Council Meetings

An important part of serving your community as an elected representative is providing citizens with an opportunity to communicate with the council—not only on a one-to-one basis with you as they meet you on the street, but also in a more formal public forum. Townships may hold an annual town meeting where citizens may participate and vote—however, this is not an option for cities and villages. Only the mayor or president, member of the council, or a staff member (depending on your local charter and rules) may introduce an agenda item. Only members of the council (including the president or mayor under most charters) may vote on matters brought for action.

Meet with Citizen Groups

From time to time, councilmembers are asked to meet with organized groups of citizens such as a parent/teacher organization, a subdivision association, service clubs, or the chamber of commerce. Sometimes you may simply be asked to listen. At other times, you may be asked to speak or discuss a problem. The time spent with these groups can provide valuable insight and build support in the community.

One of the most pervasive criticisms of government is that it is too far removed from the people. Any effort you make to meet with citizen groups will help reduce this complaint.

Tips for Meeting with Citizen Groups

- Find out as much as possible about the group before meeting with them;
- Prepare thoroughly;
- If you are asked to give a speech, be brief. Ten to 15 minutes is plenty. Allow enough time for questions from the audience;
- Be forthright and willing to meet issues head-on without dodging or flinching; and
- If you don’t know the answer to a question, say so. Faking it may bring about embarrassing repercussions later.

Relationships with Municipal Staff

Work with the manager

If your city or village has a manager, the functions of the council and manager are clearly differentiated—at least in theory. The council is the legislative body that must, within the confines of the charter and appropriate state and federal laws and court decisions, formulate policy by which the municipality is to be run. The manager and staff execute this policy—they do not determine the policy. The council, on the other hand, should not wander through city hall making sure that tasks are performed or that directives are carried out.

In actual practice, a clear-cut separation is more difficult. Councils do direct the manager from time-to-time to follow certain administrative practices, and the manager does, at times, influence policy. The council and manager should discuss this interaction and, wherever possible, establish clear guidelines to help keep these functions separate. Each must recognize that occasionally these functions will overlap.

The council is responsible for policy decision making. This is not always easy or pleasant, but it is necessary. As much as possible (except in routine matters), the council should make decisions with as much help from citizens, the manager, and the staff as they can secure.

It is the manager's responsibility to implement policies and programs and, if directed by the city or village charter, to supervise, hire, and fire municipal employees. This doesn't mean the council is powerless in these areas. It can direct the manager to execute its wishes. Noncompliance can result in dismissal of the manager. The manager acts as the liaison between employees and the council. She or he must see that both are well informed about what the other is thinking and doing. Misunderstandings are far less likely to occur if both employees and council are well informed.

Respect the Relationship with Municipal Employees

Perhaps one of the most important jobs of the council is to hire, evaluate, and retain competent staff—and to compensate them fairly. This four-part chore may require the assistance of other professionals. A process by which the council can evaluate the manager and/or department heads is the tool to keep everyone working on the same page. Fair compensation avoids the revolving door.

The council should also trust the staff's professional judgment. They have training, experience, and information the council does not—and need not—have. Remember to show your appreciation for a staff member's time and effort. A smile, a nod, a "thank you," or a compliment will go a long way in establishing a good working relationship with staff.

Powers and Duties of Elected and Appointed Officials

Mayor/President

Both the Home Rule City Act and Home Rule Village Act provide for the election of an "executive head." The role and duties of this individual, known as a president in a village and as a mayor in a city, vary greatly and are established by local charter. It should be noted the term "executive head" is not defined in either Act.

Mayor/President Pro Tempore

Although most, if not all home rule cities and villages have a mayor or president pro tempore, the position is not required by either act. The method of selection as well as the role and duties of these officials are defined by local charters.

City/Village Manager

In the same manner, the duties and role of the chief administrative officer for the municipality, variously known as a manager, administrator, or superintendent, are defined by local charter or, in some instances, by local ordinances—or a combination of the two.

Municipal Attorney

An important, though not always visible, member of the team is the attorney.

Although the duties of the attorney are not always spelled out in the charter, at the request of council they might include:

- drafting ordinances;
- preparing legal opinions;
- reviewing policies and procedures for compliance with local, state and federal law;
- defending the village or city in a court of law; and
- prosecuting violators of municipal ordinances.

Often a small city or village cannot afford to have its attorney present at all meetings. However, copies of agendas and minutes should be submitted for review to assure that they conform to the law and to keep the council from unintentionally placing the municipality in a questionable legal position.

The League's Resource Center and Legal Affairs Division do not give legal advice or render legal opinions (and in fact, are not allowed to by law). However, the legal staff will confer with your attorney on legal issues in your community.

The Resource Center can assist by providing sample ordinances and policies as a starting point for drafting ordinances or policies for your city or village. Many of these are available on the League's website at mml.org.

City/Village Clerk

The office of clerk is a pivotal one, dealing with vital areas of city or village operation: records management, finance, and elections. The importance of recording and preserving the official action of the legislative body cannot be overstated. Years from now, these records will provide the only documentation of actions taken by the municipality.

Traditionally, the municipal clerk has been an elected official. As the requirements for this position became more technical, it is more common for this to be an appointed office. Specific duties of the clerk will be

outlined in the charter. Additional duties may be assigned by the council and/or the manager.

Michigan election law (MCL 168.1 et seq.) dictates that the city clerk will manage city elections, and in addition, state and federal elections under the direction of the Bureau of Elections in the secretary of state's office. Village clerks no longer run village elections.

In a small city or village, the office of clerk can be the most controversial, and perhaps most misunderstood position. Several steps can be taken to help resolve or avoid some of these issues:

- The clerk and council should discuss mutual expectations of the roles and responsibilities of each position. This can lead to cooperation and mutual respect.
- The clerk and council should network with other municipal officials. The Michigan Association of Municipal Clerks offers support for clerks. Help is often just a phone call or click (online at michiganclerks.org) away.
- The clerk and council should attend educational programs about the roles and responsibilities of officials, teamwork, and local government.

City/Village Treasurer

Appointment of the treasurer by the council allows for the requirement of specific job skills and experience for the position, makes the treasurer accountable to the council, and provides greater job security and continuity. In 37 cities the treasurer is an elected position. As a general rule, the treasurer:

- has custody of and receives all village/city money, bonds, mortgages, notes, leases and evidence of value;
- keeps an account of all receipts and expenditures;
- collects and keeps an account of all taxes and money appropriations, keeping a separate account of each fund; and
- makes periodic reports to the manager or clerk and council as required by law.

Changing your Charter

The charter for your city or village can be changed following the procedures outlined in the Home Rule Village Act, 1909 PA 278 as amended (MCL 78.1- 78.28) or the Home Rule City Act, 1909 PA 279 (MCL 117.21- 117.26). An amendment must be approved by the council, submitted to the governor's office for review, and approved by the electors. Both the Acts provide for amendment to the charter to be instituted by petition.

Municipalities interested in amending their charters should work with their municipal attorney to assure that the procedure required in the relevant state statute is followed.

A detailed account of charter amendment and revision can be found in Chapter 3: Charter Revision and Amendment.

Words of Wisdom

The following suggestions have been provided by experienced municipal officials:

- Realize you cannot solve every problem quickly. Looking at problems from the inside lends a different perspective when you are forced to look at all aspects.
Manager
- You have information citizens do not and you are charged with educating as well as listening to citizens. *Manager*
- Get involved. Know what is going on. Communicate with other council members. Review your meeting material prior to the night of the meeting.
Councilmember
- When first elected, listen and observe. Don't challenge existing staff or practices in public until you have done your homework and know what you are talking about. It boils down to good manners. Often, "jumping the gun" on an issue causes it to be magnified in the media. *Clerk*
- Show respect to other officials, including those appointed rather than elected. Our clerk and treasurer are now appointed by the council. They are still officials. Don't treat them like they are your private secretaries. *Clerk*
- Be professional. Don't turn municipal issues into personal issues. Communication and cooperation are the key.
Councilmember

Section 2: Roles and Responsibilities

Chapter 6: Successful Meetings

Rules of Procedure

Adopting rules of procedure to govern its meetings may very well be one of the most important actions a council takes. These rules assist in ensuring that meetings are efficient and genial and provide guidelines for dealing lawfully and effectively with the public and the media

The council should review its rules of procedure at its first meeting after members elected at the municipality's regular election have taken office and when a quorum is present. Following discussion and any amendments, the council should adopt the rules of procedure by majority vote.

Typically, council rules contain provisions for:

- notification of meetings;
- regular and special meetings;
- attendance at meetings;
- meeting information packets;
- agenda preparation and distribution (including the use of a consent agenda);
- voting;
- public hearings;
- parliamentary procedure;
- conduct of meetings (decorum of council members; disorderly conduct);
- public participation;
- minute preparation;
- committees (establishing; appointments; duties and responsibilities);
- resolutions; and
- ordinances (introduction; public hearing; publication; amendments).

The rules should indicate the sequence of the council agenda as well as the procedure for holding public meetings. They might also include whether or not the mayor or president is entitled to speak in debate, any restrictions on abstentions, how items are added to the agenda, how the agenda is distributed, limits on speeches—basically

anything having to do with how you procedurally conduct your meetings.

Agendas

An agenda is a guide for conducting an official business meeting of a duly constituted body. Generally, the person who sets the agenda is the presiding officer (hereafter called the chair). The chair should set a deadline before each meeting to receive agenda items. The deadline should allow enough time before the meeting for an agenda to be produced and supporting information and documents to be mailed or delivered to the members. Board or council members should have enough time before the meeting to read and digest the information. Allowing time for the members to prepare will help the meeting proceed at a more efficient pace.

The chair should mail a message or verbally remind each person on the board or council of the deadline each time an agenda is being prepared. Most people can be verbally reminded before the preceding meeting is adjourned. Other interested and appropriate individuals should also be notified of the date and time when agenda items are due.

The person responsible for each agenda item should be listed on the printed agenda next to that item.

Sample Agenda Outline

1. Call to Order (Pledge of Allegiance, if there is to be one)
2. Roll Call
3. Approval of (regular/special) minutes of the last meeting
4. Approval of Agenda
5. Public Comments – Reserved Time (for items listed on this agenda)
6. Petitions and Communications
7. Consent Agenda

8. Introduction and Adoption of Ordinances and Resolutions; Public Hearings
9. Reports of Officers, Boards and Committees; Routine Monthly Reports from Departments
10. Unfinished Business (unfinished or pending matters)
11. New Business
12. Miscellaneous
13. Public Comments – General
14. Recess – Work Session
15. Closed Session (for situations that meet the circumstances specified in the Michigan Open Meetings Act.)
16. Adjournment

Open Meetings Act

The basic intent of the Open Meetings Act (OMA) is to strengthen the right of all Michigan citizens to know what goes on in government.

Briefly, the OMA requires that nearly all deliberations and decisions of a public body be made in public. While it sounds simple, problems arise in the definition of terms. What is a “public body”? Is a subcommittee of the council a “public body”? Is a discussion of the candidates for the manager’s position a “deliberation”? Does the council have to discuss its final offer to the fire union in public session? The answer to most of these questions is the same: “It depends.”

Remember, the general rule of thumb is to conduct the public’s business in public. Deliberate so the constituents know why decisions are made. Deliberations and documents may be kept confidential only when disclosure would be detrimental to the municipality, not when the matter would be uncomfortable or embarrassing.

When specific circumstances cause you to question the appropriateness of a closed session or the appropriate posting requirements, the safest course of action is to follow the guidance of your municipal attorney. The specific details of the situation and recent legislation and court decisions will make each situation unique.

Closed meetings

In order for a public body to hold a closed meeting, a roll call vote must be taken; depending on the circumstances, either two-thirds of its members must vote affirmatively or it must be a majority vote. (See Appendix 2: Overview of the Open Meetings Act). Also, the purpose for which the closed meeting is being called must be stated in the meeting when the roll call is taken. The law provides for closed meetings in a few specified circumstances:

- to consider the purchase or lease of real property (2/3 vote);
- to consult with its attorney about trial or settlement strategy in pending litigation, but only when an open meeting would have a detrimental financial effect on the public body’s position (2/3 vote);
- to review the contents of an application for employment or appointment to a public office when the candidate requests the application to remain confidential (2/3 vote). However, all interviews by a public body for employment or appointment to a public office must be conducted in an open meeting; and
- to consider material exempt from discussion or disclosure by state or federal statute (2/3 vote); and
- to consider dismissal, suspension or disciplining of, or to hear complaints or charges brought against or to consider a periodic personnel evaluation of, a public officer or employee if requested by the named person (majority vote).

Recording Minutes

Minutes are recorded to provide an accurate written history of the proceedings of a board, commission, or committee meeting. The OMA contains the legal requirements for minutes of public body meetings. Minutes must be kept for all meetings and are required to contain:

- a statement of the time, date, and place of the meeting;
- the members present as well as absent;

- a record of any decisions made at the meeting and a record of all roll call votes; and
- an explanation of the purpose(s) if the meeting is a closed session.

Except for minutes taken during a closed session, all minutes are considered public records, open for public inspection, and must be available for review as well as copying at the address designated on the public notice for the meeting.

Proposed minutes must be available for public inspection within eight business days after a meeting. Approved minutes must be available within five business days after the meeting at which they were approved.

Corrections in the minutes must be made no later than the next meeting after the meeting to which the minutes refer. Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Closed Meeting Minutes

Minutes of closed meetings must also be recorded, although they are not available for public inspection and would only be disclosed if required by a civil action. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

Public Hearings

Council rules should include a procedure for public hearings. A *public hearing* is that portion of a meeting designed specifically to receive input from the public on a single issue. It may be required by ordinance, charter, or statute. The time, place, and subject of the hearing must be posted as required by the ordinance, charter, or statute. The hearing may be before, during, or after a regular meeting or may be at a special meeting called specifically for that purpose. Public hearings are formal meetings of the council to obtain input from the public. Public hearings offer citizens an opportunity to be heard, and should be viewed as a

serious effort on the part of elected officials to secure as much information as possible about a topic before a final decision is made. Public hearings are legal requirement for some matters, such as:

- adoption of the budget, and
- changing the zoning ordinance.

Local charters may also include provisions on public hearings, such as requiring a public hearing for the consideration of a proposed ordinance. Even if not required by law, a public hearing can be useful in helping municipal officials understand how their constituents feel and why they feel that way.

Parliamentary Procedure

A good working knowledge of meeting management and the basic elements of parliamentary procedure will engender a sense of confidence at your first public meeting. You should feel comfortable with how to make a motion, what is expected of you in debate, and how a vote is taken. In other words, know your rights and how to enforce and protect them.

Parliamentary procedure is not meant to be restrictive or prevent free expression of opinion, but rather to serve as a protection of the rights of all—the majority, the minority, individual members, absent members, and all of these together. For a governmental body, that also includes your constituency—the public. The purpose is to expedite business, maintain order, insure justice, and make sure that the will of the organization is accomplished properly and fairly. In other words, these procedures are designed to help, not hinder, the process.

In a message to Congress in 1961, President John F. Kennedy stated “The basis of effective government is public confidence.” As a member of your city or village council, you can help inspire that confidence by being professional in your duties, by having a good working knowledge of parliamentary procedure, and by projecting your image as an efficient, fair-minded, knowledgeable official. An orderly, smoothly run meeting, one that

accomplishes the tasks at hand, should be your goal. And it shouldn't last too long either.

It all sounds so simple. A motion is made, discussed, and voted on. How much easier can it get? Well, we have a tendency to make it much more difficult than it has to be.

Parliamentary law is composed of the rules and customs governing deliberative assemblies. The most widely used authority is *Robert's Rules of Order Newly Revised* (*Roberts Rules*), used by more than 75 percent of all deliberative assemblies, including governmental bodies. Meetings of governmental bodies are regulated by federal and state laws (such as the Open Meetings Act), which take priority, and local charters (which may stipulate that the president votes only to break a tie), and any rules that your municipality has adopted regarding procedure. **If you have adopted the current version of *Roberts Rules*, it should be consulted as a last resort if nothing else applies, not as the first and foremost authority.**

As a member of the public body, you have the responsibility to become familiar with requirements and restrictions under the OMA, your own governing documents—especially your charter—and your council rules of procedure. Your agenda, how business is introduced, how debate is conducted, how the vote is taken—all of these things have their basis in parliamentary procedure.

There are some basic concepts that are common to all organizations: a quorum must be present to take legal action; only one main proposition can be on the floor at a time; only one member can speak at a time; the issue, not the person, is always what is under discussion; and usually, a majority vote decides.

A motion is handled in the following manner:

1. A member is recognized and makes a motion by stating “I move...” (Never use “I want to...” or “I think we should...” or “I motion...” or “So moved.”)

2. Another member “seconds” the motion, without waiting for recognition. This means that another person thinks the subject is important enough for discussion and vote. (To expedite business and avoid confusion when no second is offered, you might want to adopt a rule that eliminates the requirement for a second).
3. The chair states the question: “It is moved and seconded that . . .” The motion now belongs to the assembly for discussion.
4. The chair asks: “Is there any discussion?” or “Are you ready for the question?” The motion is opened for debate, and the member who made the motion has first priority in speaking to the question. According to *Roberts Rules*, each member has the right to speak twice in debate, but may not speak the second time until everyone has had a chance to speak the first time.
5. The chair states “The question is on the adoption of the motion to...” the vote is taken by whatever means is established in your community. If by voice vote, “All those in favor say ‘aye’. All those opposed, say ‘no’.”
6. The chair announces the results of the vote. “The ayes have it and the motion is adopted.” Or “The nays have it, and the motion is lost.”

The chair must be comfortable not only with procedures in handling motions, but also showing impartiality; keeping the discussion focused; soliciting opinions from members; not allowing blame-oriented statements; protecting staff and colleagues from verbal abuse or attack; encouraging alternate solutions; making sure everyone knows what is being voted on; and, even explaining what a “yes” or a “no” vote means.

Individual members should respect their colleagues and the chair; obtain the floor by being recognized by the chair before speaking; use correct terminology; limit remarks to the issue under consideration; raise concerns and objections during debate;

and, actively listen to citizen input and discussion.

Also, remember silence gives consent. Some communities have a restriction on the ability of members to abstain from voting, or they may need approval of a majority, or even unanimous approval, of the other members, in order to abstain from voting. If you have no such rule, you may abstain, but the abstention is not counted as a “yes” or “no” vote. In essence, you have given your permission to the will of the majority, whatever that might be.

Following are the five classes of motions and some examples of when to use them:

1. Main motion
 - To introduce a subject, *make a main motion*
2. Subsidiary motions assist the members in treating or disposing of a main motion
 - To kill or reject a main motion without a direct vote on it, *move to postpone indefinitely*
 - To change a pending motion, *move to amend*
 - To send a pending question to a small group for further study, *move to commit or refer*
 - To put off action or a decision until later in the same or next meeting, *move to postpone definitely*
 - To change the rules of debate, *move to limit or extend limits of debate*
 - To close debate, *move the previous question*
 - To set aside the pending question temporarily in order to take up more pressing business, *move to lay on the table*
3. Privileged motions deal with rights and privileges of members and do not directly affect the main motion.
 - To return to the printed agenda, *call for the orders of the day*
 - To secure a privilege, such as insuring your ability to see or

hear, *raise a question of privilege*

- To take a short break in the meeting, *move to recess*
 - To close a meeting, *move to adjourn*
 - To set a time to continue the business to another day without adjourning the current meeting, *move to fix the time for which to adjourn*
4. Incidental motions are incidental to the business at hand
 - To endorse the rules, *rise to a point of order*
 - To reverse or question the decision of the chair, *appeal*
 - To question the correctness of a voice vote as announced by the chair, *call for a division of the assembly* (rising vote)
 5. Motions that bring a question again before the assembly allow the assembly to reopen a completed question
 - To give members a chance to change their minds, some motions can be redebated and revoted. The move must come from the prevailing side (yes if it was adopted; no if it failed), *move to reconsider*
 - To change what was adopted at a previous meeting, *move to amend something previously adopted*
 - To change the outcome of an affirmative vote, *move to rescind*

Each of these motions, of course, has its own rules regarding when it is in order, if it must be seconded, if it is debatable or amendable, and what vote is required for adoption; and even if it can be reconsidered. Make it your business to become as knowledgeable as you can, and then share your knowledge with others.

This chapter is based on materials provided by **Connie M. Deford**, retired city clerk of Bay City.

Section 2: Roles and Responsibilities

Chapter 7: Local ordinances

Prerequisites to Valid Ordinance Enactment

To be valid, an ordinance must, at a minimum, serve a public purpose within the scope of the local governing body's authority; it must be consistent with applicable local, state, and federal charters, laws, constitutions, and public policies; and it must be precise and reasonable.

Local Government Authority

Local governments in Michigan have no power of their own, except as granted to them by the state constitution, statutes, and local charters, as applicable. Some of the basic constitutional and statutory provisions which empower local governments to enact ordinances are as follows:

1. **The Michigan Constitution** provides local governments with the legislative power and authority to adopt ordinances. For example, cities and villages get their authority from Article 7, §22.

“Each such city and village shall have the power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law.”

The Michigan constitution requires that constitutional provisions and state laws concerning local government powers must be liberally construed. Article 7, §34 provides:

“The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly

implied and not prohibited by this constitution.”

2. **State statutes** also provide local governments with authority to adopt ordinances. These statutes are specific to the type of local government involved and set forth procedures for adoption and other matters such as permissible penalties for ordinance violations. The basic authorization sections are as follows:

- 1909 PA 279, The Home Rule City Act
- 1909 PA 278, The Home Rule Village Act

Requirements of a Local Ordinance

Serve a public purpose

An ordinance must advance a public purpose, not the interests of a private person or an arbitrary class of persons. An ordinance that grants special privileges to a single person or entity exceeds the scope of the governing body's powers. An ordinance must relate to local matters, not to matters of statewide concern. In addition, an ordinance must serve a lawful purpose, either as expressly provided for by law or as necessary for the general health, safety and welfare of the community.

Consistency with State and Federal Laws and Local Charters

The provisions of an ordinance must be consistent with state law; the ordinance may not conflict with or be preempted by a state law. The same holds true for federal law. A direct conflict exists if an ordinance permits what a state statute prohibits or prohibits what a state statute permits. Some areas of potential local regulation may be preempted by a state (or federal) statute, either expressly or because the statutory scheme occupies the field of regulation. In that case,

the local regulation cannot be upheld, even though there is no direct conflict. An ordinance may not conflict with the provisions of a local charter.

Clear and Precise Language

If an ordinance is vague, ambiguous, or indefinite so that it is impossible to determine what the ordinance requires or to determine the legislative intent, the courts will hold the ordinance void. The meaning of an ordinance must be clear enough so that persons who are subject to its provisions can determine what acts will violate it. A penal ordinance (one that imposes a penalty for violation) will be strictly construed by a court in favor of the defendant.

Reasonable in Nature

An ordinance must be reasonable, both at first sight and as applied to a particular situation, or it will be held invalid. In general, whether or not an ordinance is reasonable will depend on the particular language of the ordinance or the particular circumstances to which the ordinance is applied. The inquiry will typically focus on whether the ordinance is intended to advance a legitimate police power objective, whether the ordinance constitutes a rational means to accomplish that objective, and the impacts of the ordinance on rights or privileges which have been granted or guaranteed by applicable laws and constitutions. However, a presumption of reasonableness applies to local ordinances and an ordinance will not be invalidated unless it is clearly arbitrary, confiscatory, discriminatory, or otherwise unreasonable.

Choosing between Ordinances and Resolutions

For each proposed action of a local governing body, it must be determined whether the action requires an ordinance or a resolution. In most cases, the proper approach will be obvious. However, the choice of approach is critically important because the use of the wrong device may result in invalidation of the action taken. If the substance of a local governing body's

action requires adoption of an ordinance, a resolution cannot operate as a *de facto* ordinance, and the attempt to legislate by resolution will be invalid. A state statute or local charter may specify whether an action must be by ordinance or resolution.

Typically, any act imposing a sanction for the violation of the act must be by ordinance. If a statute or local charter does not specify whether an action must be taken by ordinance or resolution, the nature of the proposed action must be examined to determine whether an ordinance or resolution is required. Generally, resolutions implement ministerial functions of government for short-term purposes, while ordinances are intended to have a permanent and more general effect. Labeling a resolution an ordinance does not make it so.

Basic Adoption Procedures and Requirements

Assuming that there is proper authority to enact an ordinance, the ordinance must be enacted according to the procedures set forth by statute or local charter. For example, notice and voting requirements must be observed. Also, ordinances must be published, printed and authenticated by the local government as required by applicable laws. The statutes provide varying times within which an ordinance may become effective, depending upon the type of local government involved.

Notice

Generally, to be bound by an ordinance, a person must have notice of an ordinance, or the reasonable opportunity to have had notice of it. This requirement does not typically pose any problems. State statutes may require that specific notice requirements be met in adopting or amending an ordinance. For example, MCL 125.3103 of the Michigan Zoning Enabling Act provides that prior to the adoption of a zoning ordinance, not less than 15 days' notice of the time and the place of the public hearing must be published in a newspaper of general circulation. Local charters may also

contain notice requirements which must be observed.

Voting Requirements

Unless otherwise provided by statute, an ordinance must be adopted by a majority vote of the elected members of the governing body. Voting requirements and procedures can become complicated, however, particularly in situations involving abstentions, absences, conflicts of interest, the use of alternates, protest petitions and ordinances dealing with special topics. It is important to be familiar with the exceptions to majority vote requirements. Check applicable statutes and local charters.

Publication

After an ordinance is adopted, it must be published in a local newspaper of general circulation before it becomes effective. As applied to ordinances, “publication” means printing or otherwise reproducing copies of them in a manner so as to make their contents easily accessible to the public. Some types of local governments are expressly authorized to publish an ordinance by publishing a summary of the ordinance along with a designation of where a true copy of the ordinance can be inspected or obtained. (Home Rule City Act – whether or not provided in the charter, MCL 117.3(k); Home Rule Village Act, MCL 78.23(i)). The ordinance must be published within the time period specified by statute. The time period varies depending upon the type of local government involved. There must also be compliance with publication requirements or procedures contained in local charters. If a city or village passes an ordinance that incorporates by reference a state statute, the code does not need to be published in full if the code is available for distribution in the clerk’s office and there is compliance with other applicable requirements under the statute and charter.

Printing and Adopting

Local charters will set forth ordinance requirements. These are to include the method for adopting, continuing, amending, and repealing city ordinances under the

Home Rule City Act, and for the publication of an ordinance or a synopsis of an ordinance according to the Home Rule Village Act.

Effective Date

Ordinances usually do not take immediate effect unless stated in the ordinance, particularly if they provide for penalties. Always check applicable charter provisions.

Reading Requirements

Reading requirements govern the number of times that an ordinance must be read aloud or considered by the local governing body, either in full or by title, and on how many different occasions. Applicable state and local laws, including local charters, should be consulted to determine the reading requirements in a particular jurisdiction.

Adoption of Technical Codes by Reference

Various statutes authorize the adoption of specified technical codes by reference. See, for example, the statutory authority for home rule villages (MCL 78.23(i) and home rule cities (MCL 117.3(k)). Charters may also contain requirements for adopting and publishing technical codes by reference.

The statutes authorizing adoption of technical codes by reference may also provide specific means of publishing the codes. Further, all requirements for publication contained in a local charter must be met. Failure to meet the publication requirements as provided by statute and charter will make the code unenforceable. Although a statute authorized the city to adopt the Uniform Traffic Code by reference and without publication in full, both the statute and the city charter required that the city ordinance adopting the code by reference be published in full as a prerequisite to the legal effectiveness of the code being adopted; failure to publish the adopting ordinance in full made that ordinance invalid and precluded prosecution for a violation of the traffic code.

Efforts should be made to stay current. State codes adopted by reference should be

readopted to reflect changes made in the codes as they occur.

Drafting

To be valid, an ordinance must be drafted in the proper form. Although state law does not appear to require any particular form for ordinances (except for ordinance enacting clauses), local charters may contain form requirements which must be followed. Otherwise, there are no absolute rules for drafting ordinances.

Ordinance Amendments

The specific procedures and requirements that govern amendments as provided by state statute, charter provisions, and other applicable laws should always be examined and followed:

- Amendments change, add, or delete material in an ordinance.
- Local charters frequently contain publication requirements in connection with ordinance amendments.
- Amendments should be drafted to conform to the titles and numbering system of the ordinance being amended. The definitions contained in the ordinance should be referred to and followed.
- It is not necessary to repeal an ordinance section or provision in order to change it. The particular section or provision only needs to be amended to read as desired.
- If an ordinance section or provision has already been amended, it is not necessary to repeal the prior amending ordinance. It is only necessary to amend the provision as it currently exists.
- In adding new material, such as a new subsection, the entire section being amended generally should be set forth in full, including the new material, to show how the amended section will read in full. If this is not done, confusion may arise as to where the new material fits in the section being amended and whether old material is superseded. If a long section is being amended, it is appropriate, and may be more

convenient, to set forth only the amended subsection.

- The amending ordinance should state exactly where the new material is to be placed, by section or subsection number.

The first, and perhaps one of the most important steps in the preparation of an ordinance, is to determine exactly what it is the local governing body wants the ordinance to accomplish. Often, local legislation is proposed on the vague idea that there “ought to be a law” and with no clear understanding or articulation of what the ordinance should prohibit or require. If the person drafting an ordinance does not know the precise objectives of a proposed new ordinance or the purpose for a proposed change in an existing ordinance, he or she will be defeated from the outset.

After gaining a clear understanding of the local governing body’s purpose and intent, the drafter must express that purpose in appropriate language arranged in a readable and useable manner. Although the drafting of plain, accurate, and effective ordinances may be as much of an art as it is a science, it is an endeavor that one can get better at with practice.

This chapter is based on materials provided by **George B. Davis**, a partner at Davis & Davis PLC in Grand Rapids, Michigan.

Section 2: Roles and Responsibilities

Chapter 8: Ethics

So there you were, as a councilmember, trying to do the best job you could juggling competing demands—answering calls from residents; asking questions of your city manager, finance director, and DPW director—trying to keep up with what’s going on. And all of a sudden, an angry resident jumps up at a council meeting, charges you with having “a conflict of interest” on a zoning matter, and says you are violating the state ethics law. Your friendly local newspaper reporter corners you after the meeting and asks, “Well, what about it? Are you in violation of the law?”

Who said serving on the city or village council would be easy?

Like it or not, we live in a time of unparalleled cynicism toward government at all levels. Fair or not, critics are quick to point to alleged ethical improprieties as further proof of the untrustworthiness of government officials. In this environment, even the suggestion of improper action can trigger unhappy consequences. Local officials thus need to be aware of the state laws under which they can be held accountable.

This chapter summarizes the two statutes comprising the principal ethics regulation of Michigan local government officials: The State Ethics Act, 1973 PA 196 (Act 196); and 1968 PA 317, dealing with public contracts. Every local public official in Michigan is subject to them and should be familiar with them.

What Is a Conflict of Interest, and Why Should We Care?

To understand the Michigan laws on the subject, let’s begin with what they are trying to address: What is a “conflict of interest,” and why should we care about it?

The second question is easy to answer: Public office is a public trust. Elected officials are merely hired hands, delegated power from the public, obliged to exercise that power as the public’s trustees. We owe a duty of loyalty to the public interest. Actions or influences tending to undermine that loyalty are destructive to the public’s

confidence in government. We all should care about that.

A conflict of interest is any interest competing with or adverse to our primary duty of loyalty to the public interest. A competing interest may be a personal interest, or it may be a duty or loyalty we owe to a third party. In either case, there is a “conflict” if the competing interest impairs our ability to decide a public question objectively and independently.

That is a broad definition, and not everything which might fall within it is necessarily a problem. Each of the statutes discussed below is based upon this general concept: An influence which could impair our impartiality is a potential problem. The laws distinguish between conflicts which are permissible and those which are not.

State Laws

The two state laws each address different aspects of conflict and ethics issues. Act 196 is concerned with individual behavior, and Act 317 regulates approval of public contracts in which local officials may have an interest. Each statute has its own peculiarities.

State Ethics Act (Act 196)

Act 196 prescribes general standards of conduct for public officers and employees by establishing seven areas of prohibited conduct. A local government official shall not:

1. divulge confidential information

2. represent his or her opinion as that of the local government.
3. use governmental personnel, property, or funds for personal gain or benefit
4. solicit or accept gifts/loans/goods/services, etc. which tend to influence his or her performance of official duties.
5. engage in a business transaction in which he or she may profit from confidential information
6. engage in or accept employment/render services for a public or private interest which is incompatible/in conflict with the discharge of official duties or which may tend to impair his or her independence of judgment.
7. participate in the negotiation or execution of contracts/making loans/granting subsidies/fixing rates/issuing permits, certificates, or other regulation/supervision relating to a business entity in which the public officer has a financial or personal interest.

In practice, subparts (6) and (7) created a serious hardship for part-time local officials—such as elected trustees—who are usually employed full-time at other jobs. The Legislature thus amended Act 196 to provide narrow exceptions to subparts (6) and (7), enabling the official to participate in and vote on the governmental decision, but only if all of the following occur:

- a. a quorum is not available because the public officer's participation would otherwise violate (6) or (7);
- b. the official is not paid for working more than 25 hours per week for the governmental unit; and
- c. the officer promptly discloses any interest he or she may have in the matter and the disclosure is made part of the public record of the governmental decision to which it pertains.

In addition, if the governmental decision is the award of a contract, the officer's direct benefit from the contract cannot exceed the

lesser of \$250 or five percent of the contract cost; and the officer must file a sworn affidavit as to the amount of direct benefit, which is made part of the public record.

The exceptions are of limited use since they are available only if there otherwise would be a failure to obtain a quorum.

Prohibitions on Public Contracts (Act 317)

Unlike Act 196, which seeks to regulate the behavior of the individual official directly, Act 317 addresses conflict concerns by prohibiting local public officials from pursuing certain public contracts. Section 2 of the act provides that a local official shall not:

1. be a party, directly or indirectly, to a contract between himself or herself and the official's governmental entity.
2. directly or indirectly solicit a contract between the official's governmental entity and any of the following:
 - a. himself or herself;
 - b. any co-partnership of unincorporated association of which he or she is a partner, member, or employee;
 - c. any private corporation in which he or she is a stockholder (over certain thresholds) or of which he or she is a director, officer, or employee; or
 - d. any trust of which he or she is a beneficiary or trustee.

Act 317 further prohibits the official from either taking part in the negotiation or renegotiation of any such contract or representing either party in the transaction. As with Act 196, there are exceptions. The principal exception is that the prohibitions do not apply to officials paid for working an average of 25 hours per week or less for the governmental entity. The prohibitions also do not apply to community college, junior college or state college or university employees. This is a more useful exception for trustees than that found in Act 196, since the quorum issue is not a precondition.

Even if the exception is available, Act 317 imposes strict disclosure and approval requirements:

- a. Prompt disclosure of any pecuniary interest, which is made part of the public record. Disclosure must be made at least seven days prior to the meeting at which a vote will be taken.
- b. Approval requires a vote of at least 2/3 of the full membership of the approving body (not 2/3 of those present) without the vote of the official making the disclosure.
- c. The minutes must include summary information regarding the name of

Other Considerations

In addition to the two principal ethics statutes, local elected officials should be aware of other potential sources of ethical rules. One example is local charter requirements or local ethics ordinances or policies. Prior to 1997, Act 317 contained a provision which said that the act superseded all local charter provisions pertaining to conflicts of interest, and that Act 317 constituted the “sole law in this state” with respect to conflicts of interest in public contracts. This created an argument that all local ethics regulation was preempted by the act. In 1997, however, the legislature

Ethics questions: What would you do in these situations?

Situation #1

You work for a large manufacturing company which also happens to be your village’s largest taxpayer and employer. The company applies for a tax abatement for the plant in your village. You work at another facility and the tax abatement does not impact your job. Should you vote on the abatement?

Situation #2

Before you were elected to the village council, you served on the zoning board of appeals (ZBA), so you know the ZBA procedures very well. A few months after your election, your neighbor files a petition with the ZBA seeking a variance. Since you know how the ZBA works, he asks you to accompany him to the ZBA and to speak on his behalf. Should you do it?

Situation #3

You are a member of the board of directors of your local chamber of commerce and have been for many years. You then run for and are elected to your village council. The chamber later proposes that the chamber and the village enter into a contract in which the village pays the chamber for economic development services. Should you vote on the contract?

each party to the contract, the principal terms, and the nature of the official’s pecuniary interest.

Finally, Act 317’s prohibitions do not apply to contracts between public entities, regulated public utility contracts, and contracts awarded to the lowest qualified bidder (other than the public official) upon receipt of sealed bids pursuant to published notice.

amended Act 317 to reduce the scope of the potential preemption and expressly approve of local ethics regulation in subjects other than public contracts (1997 PA 145). The legislative analysis accompanying the bill makes it clear the state

preemption is narrow, and therefore, that local regulation—regarding disclosure, conflicts of interest in other situations and nepotism, for example—is permitted. Local officials should consult with their city or

village attorney to become familiar with such local regulations.

Local officials should also be aware of 1978 PA 566 (Act 566), which generally prohibits a public officer from holding two or more “incompatible offices” at the same time. Act 566 is based upon general principles of conflict of interest by prohibiting a public official from serving in two public offices whose duties are directly adverse to one another. “Incompatible offices” is defined to mean public offices held by a public official which, when the official is performing the duties of either public office, results in:

1. subordination of one office to another,
2. supervision of one office by another, or
3. a breach of duty.

The Michigan Supreme Court has said that a breach of duty occurs if the two governmental entities in which the official holds offices are parties to a contract or

enter into contractual. Local public officials seeking to hold two public offices should first ask whether Act 566 will preclude the dual service as a way to avoid potential embarrassment. For more information, the League has sample ethics ordinances and policies, an ethics handbook, and the following One Pager *Plus* Fact Sheets available at mml.org:

- Ethics: Contracts of Public Servants with Public Entities
- Ethics: Incompatible Public Offices - 2010 Updates
- Ethics: Misconduct in Office by Public Officers
- Ethics: Standards of Conduct for Public Officers/Employees

Conclusion

Local elected officials should be mindful of the relevant laws governing ethical issues.

Ethics answers

Situation #1:

No. Act 196 states that a local public official shall not participate in the granting of subsidies, issuance of permits or certificates, or any other regulation relating to a business entity in which the official has an interest. An exception may be available, but only if the official’s participation is necessary to achieve a quorum. The Attorney General has said that if the council person does participate, the council action may be void or voidable where the person’s vote was determinative. See OAG No. 5864 (1981); OAG No. 6005 (1981).

Situation #2:

No. The Michigan Court of Appeals has labeled this situation as “patently improper” and an abuse of public trust for the reason that the person making the argument to the ZBA is also one of the people charged with appointing the ZBA. This creates duress on the ZBA, raising doubt about the impartiality of the ZBA’s decision. Any decision made by the ZBA under these circumstances is void. See *Barkey v. Nick*, 11 Mich App 361 (1968).

Situation #3:

No. Although Act 317 grants to part-time officials an exception from the general rule that officials shall not take any part in the approval or negotiation of a contract between the village and any private corporation of which the official is a director, the Act goes on to require that the contract may only be approved by a 2/3 vote of the full membership “without the vote of the [official].” In other words, Act 317 might permit you to vote, but your approving vote doesn’t count. See OAG No. 6563 (1989). The strict disclosure provisions will apply in any case.

Act 196 and Act 317 provide a good starting point for local elected officials to assure themselves that they are acting appropriately. Adhering to the provisions of these statutes will give you the comfort of knowing, if and when your friendly reporter pulls you aside, that you will be giving the right answers.

Materials for this chapter provided by **Michael McGee**, principal in the law office of Miller, Canfield, Paddock and Stone, P.L.C.

Section 2: Roles and Responsibilities

Chapter 9: Influencing State and Federal Legislation

The Michigan Municipal League provides wide-ranging public policy advocacy services—both at the state and federal levels—for member cities, villages, and urban townships.

Since the late 1960s, the League has maintained a full-time advocacy and lobbying presence at the State Capitol in Lansing through the League's State and Federal Affairs Division (SFAD). The SFAD staff monitors, analyzes, and articulates the municipal viewpoint on many of the 3,000 or more bills that are introduced in the Michigan Senate and Michigan House of Representatives during each two-year legislative session. SFAD staff interacts directly with legislative leadership, legislative committee and sub-committee chairs, individual legislators, and key staff from both legislative chambers. They communicate the municipal point of view on a host of policy issues ranging from taxation and appropriations priorities to public safety, public works, and environmental concerns.

SFAD staff also interacts regularly with executive branch staff and top-level officials in the various state departments and agencies whose decisions can have an impact on municipal operations.

How League's Policies and Positions on Legislation Are Set

The genesis of the League's legislative policies and positions on specific bills rests with the League's five standing committees:

- Economic Development
- Energy, Technology & Environment
- Municipal Finance
- Municipal Services, and
- Transportation and Infrastructure

These committees, each consisting of approximately 20 mayors, councilmembers, managers, and senior staff from cities and

villages throughout the state, meet several times per year (generally quarterly) to review and recommend League positions on specific bills before the Legislature. The committees also conduct an annual review of, and recommend amendments to, the League's policy statements, which guide League staff in discussions and negotiations on legislative issues.

Recommendations on legislation and League policies are then forwarded to the League's 18-member Board of Trustees for further review and concurrence. In turn, recommended amendments to the League's policy statements are then forwarded to the League's member cities and villages for review, debate, and a final vote at the League's annual business meeting.

Additionally, at the start of each two-year legislative session, the League's standing committees recommend a list of specific legislative priorities which are discussed and given final approval by the Board of Trustees.

Municipal Officials' Role in Lobbying

The strength of the League's advocacy program comes from its base of elected officials from the state's 533 cities and villages. Our success as a lobbying unit is directly and unmistakably related to their level of active participation in an issue.

The ultimate success of the League's aggressive lobbying effort in Lansing depends directly on the willingness of municipal officials to take the time and make the effort to get actively involved in the process. Time and again, the League's ability to influence the outcome of legislation affecting municipalities has hinged on the efforts of Michigan's mayors, councilmembers, managers, and key staff to

contact their legislators and urge support for the League's viewpoint on legislation.

To ensure that legislative information is received by municipal officials and acted on in a timely manner, please review our lobbyist blog, *Inside 208*.

In some instances—upon receiving a call-to-action communication from the League—a local official will personally call his or her state senator or state representative and urge that official to vote a certain way. In other instances, the legislative director will share pertinent information on legislative activities with the mayor, village president, council and manager, and coordinate a community or region-wide response to their area's senators and representatives.

This communications network—from the League to local officials to legislators—is remarkably effective. With few exceptions, state senators and state representatives respond quickly and positively to phone calls, letters, and emails from municipal officials in the home district. Where once councils would simply pass a resolution and hope that the legislator read it before voting on an issue of importance to cities and villages, now municipal officials have established a direct pipeline into their legislator's office. And it works!

The technique is especially effective when legislators are urged by their municipal officials to contact League lobbyists for additional technical information and background on a particular bill or legislative issue. When legislators call the League's Lansing office at the urging of local municipal officials, League lobbyists respond with timely and insightful information and a clear message that echoes what municipal local officials in their district have told them.

On occasion—depending on the issue—the League encourages municipal officials to travel to Lansing and meet directly with their senator and representative. Once again, this is a situation in which League staff monitors developments, interacts with legislators and staff, and then makes a determination that a direct, face-to-face

contact between local officials and their legislators will be of great benefit to championing the municipal viewpoint on a bill.

Most often, these meetings with legislators and municipal officials are pre-arranged, with legislators given background materials explaining the municipal viewpoint. Frequently, however, the League will ask local officials to travel to Lansing and request a non-scheduled visit with their legislator during critical committee discussion or floor debate on an important bill.

Almost without exception, these face-to-face meetings—if conducted in an atmosphere of cordiality and respect—yield positive results and help galvanize strong future relationships.

How the League and its Staff Works to Impact the Outcome of Legislation

The League's State and Federal Affairs Division staff in Lansing closely monitors the development and introduction of bills that are introduced each two-year legislative session in the Michigan House and Senate. This work requires daily, one-on-one interaction with legislative leaders, the chairpersons of Senate and House committees, and individual legislators who are working on issues of interest to cities and villages.

League staff also nurtures professional relationships with key staff in both the governor's office and the Legislature who play a pivotal role in the conceptualization, development, drafting, amending, and final passage of the bills that the League is following. In addition, League staff maintains extensive contact with representatives of other interest groups such as the Michigan Townships Association, the Michigan Chamber of Commerce, the Michigan Manufacturers Association, organized labor groups, and other local government associations such as the Michigan Association of Counties and the County Road Association of Michigan.

Success in the legislative arena often means building and maintaining coalitions

comprised of a wide range of individuals and interest groups who share a desire to see a particular bill passed and signed into law or delayed for further consideration.

Whenever a bill that will have a significant impact on cities and villages is introduced in the House or Senate, League staff analyze the legislation, ascertain its effect on municipal operations, and develop a list of influential individuals and organizations with whom the League can partner to advance the municipal viewpoint and secure the desired outcome.

Michigan is one of a handful of states with a full-time Legislature. For Michigan's 38 state senators and 110 state representatives, lawmaking is a very demanding full-time job. Generally, the Legislature is in session at least three days per week (usually Tuesday, Wednesday, and Thursday) most weeks of the year. While the Legislature does recess for an average of a few weeks each spring, two months in the summer, and a few weeks at the end of each calendar year, the business of discussing, evaluating the impact of, amending, and building support for thousands of legislative bills continues without pause throughout the year. That means that the work of the League's State and Federal Affairs Division also continues, without pause, throughout the year.

League staff are frequently at the table when bills are discussed and amendments are drafted. During each legislative session, the League participates in dozens of work groups, task forces, subcommittees, and other activities where legislation is analyzed and final agreements are made.

League staff members also consult regularly with municipal constituent groups such as the Michigan Association of Mayors (MAM), the Michigan Local Government Management Association (MLGMA), the Michigan Association of Municipal Attorneys (MAMA), and the Michigan Chapter of the American Public Works Association (APWA), among others. These organizations help SFAD staff to gauge the impact of legislation (and regulatory decisions) on cities and villages.

In the last few years, the League has also undertaken an ambitious public relations program designed to bring additional public attention to the legislative issues of its members.

A typical legislative day will find League lobbyists at the Capitol building by early morning to testify before Senate and House committees and talk with individual legislators. Depending on the legislative schedule, League lobbyists may be scattered at several House committee meetings or stationed outside the senate chamber to talk one-on-one with senators prior to, and during, the senate session. By early afternoon, the venue changes slightly as League lobbyists attend one of several senate committee meetings while simultaneously monitoring floor action in the house chamber. Breakfasts with coalition partners, lunches with legislative staffers, and an occasional dinner meeting are all part of a routine day for League lobbyists at the Capitol.

Michigan Municipal League Publications

The League's State and Federal Affairs Division produces a number of publications to keep member cities and villages up-to-date on current legislative and regulatory developments in Lansing.

Legislative Link – Produced by the League staff in Lansing, the *Legislative Link* is a brief one-page weekly update on the “happenings” in Lansing and Washington. This communication is sent via email and/or fax.

Email Alerts/Advisories – Produced by League staff and distributed via the League's email network, email alerts are direct calls to action urging municipal officials throughout the state to immediately contact their state senators and state representatives and urge them to vote a certain way on pending legislation that is moving through a legislative committee or on the floor of the Michigan Senate or Michigan House.

Targeted email alerts and advisories – Occasionally, League staff prepares and

distributes via email, special advisories, alerts and calls to action tailored to individual municipal officials. Most

often, these communications are sent to municipal officials whose legislators can provide critical votes on key legislation.

Section 2: Roles and Responsibilities

Chapter 10: Training of Municipal Officials

Elected officials

In this era of unprecedented change, citizens expect more of their elected officials. The public expects responsiveness and accountability at all levels of government. What better place to start than at the local level, where citizens can experience directly the difference that good decision-making and ethical standards can make in a community? Local government is more important than ever before. People who are elected today must demonstrate their professionalism and integrity.

As a leader in your municipality, you should place importance on continual training and updating your knowledge base, as well as emphasizing the development of the knowledge and skills of employees. As an elected official, mindful of the liability exposures to your municipality, you should be aware of established case law and its relevance to your municipality.

Case Law

The case of *Geraldine Harris v City of Canton, Ohio*, decided February 28, 1989, by the U. S. Supreme Court, impacts all local governments in the area of personnel and training.

Harris, detained by the Canton police, brought a civil rights action against the city, alleging violation of her right to receive necessary medical attention while in police custody. The U.S. District Court for the northern District of Ohio decided in Harris' favor and the city appealed. Harris won her case against Canton by proving that the Canton police clearly needed better training and that city officials were "deliberately indifferent" to that need.

The U.S. Court of Appeals, Sixth Circuit subsequently held that inadequacy of police training may serve as a basis for municipal liability. The court concluded that the lack

of training for the police force in this case was reckless and negligent and Harris' civil rights were violated.

In a 1995 case, *Hilliard v. Walker's Party Store, Inc.*, decided in Federal District Court in Michigan, it was held that a municipality may be liable in a federal civil rights action when policy makers are on actual or constructive notice of the need to train employees, but fail to adequately do so. The focus must be on the adequacy of training in relation to tasks that particular employees must perform.

The common denominator in both cases is the fact that the government officials in charge were not correctly trained to handle the situations and to treat the persons concerned with proper care and concern.

The importance of comprehensive and timely training for municipal employees is not limited to police officers with respect to potential liability for the municipality. Although most case law addresses police officer liability, the concept of failure to train may be applied in other areas.

Municipalities must be continually aware of the need for training. In terms of practical application, each person in municipal employment should keep a log documenting all aspects of individual training. The person in charge of training for the municipality should have an identical log and periodic inspection should be made to ensure that individual logs are up to date.

New employees should receive written policy and procedure manuals and sign a log that they have received this manual, which affirms the municipality's desire to provide correct training and orientation. Employees should be routinely scheduled for training to comply with municipal policies and to keep current with changes in the law as it affects job duties and responsibilities. A positive aspect of the *Canton v Harris* decision is that it stimulated the demand for current

training and updates on changes in the law and provides the added benefit of having better trained employees. Of top priority today is sharpening techniques and skills to implement higher productivity among public employees while maintaining high quality services and controlling costs.

Training for elected officials to assist them in becoming better leaders is a prime focus for the League's education programming. An intensive Elected Officials Weekender training is held yearly, along with numerous specialty trainings throughout the year. The League also offers the Elected Officials Academy, which is a four level, voluntary recognition program for elected officials. A number of other programs are geared specifically for the elected official. These programs help elected officials hone their skills and gain the knowledge they need to govern and lead citizens in cities and villages throughout the state. Many of these sessions are held in the evening and on weekends for the convenience of elected officials.

For more information on education seminars and on-site trainings, call the League at 1-800-653-2483 or visit mml.org.

Section 3: Operations

Chapter 11: Written Policies and Procedures

Why you should Put Policies and Procedures in Writing

If your municipality is small or if it operates under a relatively close-knit management group, policies may be “understood.” This means that while you may not have written policies, managers and supervisors have a good idea of the municipality’s expectations regarding certain basic issues pertaining to employees.

Relying on “understood” policies, however, may lead to misunderstandings. For example, the department of public works (DPW) manager calls a meeting and launches into a tirade about the number of employees he sees not wearing appropriate personal protective equipment (PPE). One supervisor may interpret it as a decided shift in the organization’s policy toward this requirement. She responds with a sudden crackdown on lapses in following PPE requirements in her area, disciplining every employee who fails to wear PPE when appropriate. Another supervisor, present at the same meeting, does not take the manager’s tirade as seriously. He knows that some lapses will occur. Besides, he is certain that the manager was not directing his comments at *his* area. He knows there are other areas within the DPW and other departments that are far less strict about PPE than he is. So he decides to sit tight for a while and wait for this “storm” to blow over before he does anything drastic.

Just imagine the kind of resentment and frustration a situation like this might create. What if two employees from the department share rides to work and begin to compare notes on how their supervisors reacted to the manager’s tirade? The individual whose supervisor disciplined him will have every reason to feel angry and put upon. On an organization-wide basis, this can mean lower morale and productivity, more grievances, and understandably poor

relations between supervisors and employees. In addition, neither supervisor has done anything that will consistently improve employee compliance with the requirement to wear PPE.

Managers and supervisors who have worked for the same municipality for a number of years may *think* they understand its policies. Usually all they really have is a sense of how their peers and predecessors have handled similar situations in the past. Other managers go on instinct, dealing with each situation as it arises and relying on their own “good” judgment to make the right decisions. Either approach will almost certainly result in inconsistencies. These inconsistencies can, in turn, result in misunderstandings, grievances, and even lawsuits. There have been many instances where managers and supervisors have taken a single manager’s decision—with no written policy to back it—as “policy setting.” The decision has then influenced many similar decisions by other managers and supervisors throughout the organization. If the original decision was sound, this may not result in any immediate disastrous consequences. What happens, however, if that manager acted illogically, irrationally or even illegally? Managers and supervisors who think they are in accordance with municipal policy may repeat the original error in judgment many times.

These kinds of situations illustrate why a policy manual is absolutely essential in today’s complex, competitive, and regulation-ridden work environment. Employers cannot expect their managers or supervisors to keep up with the many forces that continually shape a municipality’s policy. Among these forces are the latest changes in the law, changes in the character of the work force and its expectations, and changes in operations. There should be a single, current, authoritative source of

guidance and information that they can use when making decisions or enforcing policy. This will reduce the tendency to act on memory or instinct. With a policy manual, managers and supervisors will be able to act decisively, fairly, legally, and consistently. Employees will also know that their managers or supervisors are acting in accordance with municipal policy as well as applicable federal and state regulations.

Of course, a policy manual may not answer all your problems. Your supervisors must know what your policies regarding employee safety and health are, and understand the reasons behind them. Without this understanding, you cannot expect them to carry the policies out with the commitment that is so vital to their effectiveness.

Take your right-to-know program as an example. Let's say a supervisor must hire a large number of summer workers and get them in the field quickly. The supervisor knows it is your policy to provide all new hires in that department with right-to-know training as the Michigan Occupational Safety and Health Act (MIOSHA) requires. However, the supervisor has projects that need immediate attention and would like to ignore the requirement, especially since the employees are short-term. If supervisors do not understand how failure to comply with MIOSHA might result in injury to employees and/or fines to the municipality, they may not cooperate with your efforts to provide employees with a safe and healthful workplace.

Good written policies do more than help supervisors and managers make difficult decisions and enforce rules. They provide the framework and background for such decisions, so that supervisors can explain to their subordinates (and to themselves) why a certain action or decision is the right one under the circumstances. Some policy manuals give a brief introduction to each policy, stating the reason a policy is necessary in this area, and what the organization hopes to achieve through implementation of the policy. Such information is invaluable when it comes to

explaining an unpopular decision to employees, or when a supervisor must decide a course of action that runs contrary to his or her instincts.

How are Policies Made?

Most policies are a natural outgrowth of the decision-making process. A manager who faces a situation or problem for the first time evaluates it and makes a decision or issues an order that he or she feels is appropriate. While this decision may not present an immediate problem, it could lead to complications later. Let's say that a similar situation arises later, but under slightly or quite different circumstances. The manager who must make the decision this time around has to revise the original to fit these changed circumstances. After a period of time, you have many supervisors and managers making totally different decisions in the same area while believing that they are adhering to "organization policy."

Most policies develop from past practices—good or bad, fair or unfair. Even in organizations where a policy manual exists, these past practices can continue to influence managerial decisions. In other words, managers cannot ignore them.

The best policy is one that arises from the best decisions of the past. It should incorporate the careful thought, the good judgment, and the valuable experience of all managers who have faced problems or decisions in a particular policy area. This process should eliminate the irrational, illogical, and unfair decisions that have contributed to inconsistent application of the organization's policy. Most important of all, a good policy is a natural outgrowth of the organization's management philosophy and overall objectives. It helps management direct the organization according to its established goals and mission.

More specifically, policy development occurs when a group of people—a policy committee—meets and reaches consensus on specific policy statements. Committee members review past practices and the traditional approaches to certain situations as well as the latest legal requirements and

management techniques. They try to pool their ideas and experiences, iron out differences of opinion, and come up with policies that are both fair and workable. Ideally, representatives come from the employee, supervisory, and management ranks. This helps to assure that the committee considers the interests of all three groups during policy formulation. Policy development should also include a procedure for enforcing, reviewing, and updating the policies.

What Purposes Does a Policy Manual Serve?

A well written, up-to-date policy manual guides managers and supervisors in making decisions, training, and handling employment issues that relate to safety and health. A policy manual also offers other less obvious benefits. Consider the following:

A policy manual serves as a basic communications tool. The very process of compiling a policy manual includes a survey of managers', supervisors', and employees' views on each subject or policy area. This process provides top management with an opportunity to find out where their staff stands and how they feel about certain issues. Top management can also learn what steps the management staff would like to see the organization take, what areas are giving them problems, and where confusion and misunderstandings lie. In other words, the policy formulation process is perhaps the best opportunity that an organization's top managers will have to communicate with its management team on subjects of mutual interest. In return, supervisors and managers get a chance to find out exactly where top management stands on these issues.

The important thing to remember about policy manuals, however, is that communication should not stop once the committee completes the manual. On the contrary, this should be where the real communication—between supervisors and employees as well as between supervisors and their superiors—begins. Every single time a question concerning a policy arises,

the supervisor or manager in charge has an opportunity to improve communication and understanding with the employee(s) involved.

A policy manual is an excellent training resource. You can use the manual both in training newly hired or promoted supervisors and in conducting refresher courses for experienced supervisors. Some organizations have actually structured their supervisory training programs to correspond with the manual's table of contents. You can develop and use case studies to illustrate problems. Case studies can be particularly useful when discussing employment-related safety issues. The manual can serve as a guide in deciding the right way to handle these hypothetical situations.

A policy manual serves as written documentation of the organization's commitment to its employees' safety and health. Simply having policies on personal protective equipment or right-to-know does not guarantee that you are in complete compliance with the law. However, having policies can be helpful if an employee files a complaint and someone from MIOSHA comes to inspect your operations. If you can show the MIOSHA inspector that you have clearly stated and widely publicized policies in these areas, it will be viewed positively for you. It can also help to reduce any fines you might receive if the MIOSHA inspector finds violations.

A policy manual saves time. Your managers and supervisors will not waste hours coming up with decisions that others have made before. They will not have to struggle with how to handle a "delicate" situation. They will not have to wonder if management would approve of their actions. If your policy committee researches and writes the policies well, supervisors and managers will have all the information and support they need to carry out top management's objectives.

These and other reasons make it *desirable* to have a safety policy and procedures manual. In addition, there are other reasons that make such a manual all but *mandatory* if you are to fulfill your

obligations to serve the public and to preserve all its resources—human, material, and monetary. The regulatory requirements that MIOSHA imposes frequently change. Without current, documented policies and procedures, managers and supervisors are likely to make some mistakes in the area of safety and health that can lead to costly losses.

Another reason for developing a policy manual is the increasing difficulty of managing and controlling complex operations. For example, in some organizations, managers of relatively small departments often make decisions that can affect the entire organization. It may not be possible or even desirable to control all management decisions under circumstances like these. It is, however, desirable to provide managers with a framework within which they can make their own decisions on important or sensitive issues in a fair and consistent manner.

Another important reason for having a policy and procedure manual is requirement in some MIOSHA standards for organizations to provide information to their employees. Employees in particular are becoming more outspoken about their desire to know what regulatory agencies require of their employers. They are most likely to bring their concerns to their immediate supervisors or department heads. It is, therefore, essential that these managers have a resource to which they can turn to provide the requested information.

A policy manual is more than an item you might want to have. It is something you *must* have to preserve your ability to serve your public, to attract and retain satisfied employees and to reach your objectives through logical and consistent management decision-making.

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Section 3: Operations

Chapter 12: Municipal Service Options

Introduction

A principal responsibility of local government policy bodies is to determine the mix of community services to provide to local residents. While variation or mix of services is noted among municipal governments, each unit makes four basic decisions about services:

1. method of organization, production and provision;
2. quantity of services to be produced and provided;
3. quality of services to be delivered; and
4. how to pay for services provided.

These decisions are somewhat interdependent, but can be addressed separately.

The basket of services provided by municipalities to residents varies widely in Michigan. Citizen expectation as to what services are desired beyond the basic constitutional duties of assessing property, collecting property taxes and administering elections are articulated through the political process and imbedded in the city charter.

The Home Rule City Act requires the provision of police, fire, sewer, and water services to residents. Note, the key word is “provision;” the Act does not require the city to be the “producer” but in most circumstances, cities both produce and provide the varied sets of urban services.

As both a producer and provider of selected services such as police, fire, recreation, sewer, water, and other utilities, excess capacity is often present, thus enabling the city to become a seller of services to neighboring local units. As adjacent jurisdictions increase in population, and migration from the central city to surrounding areas occurs, cities and villages may find themselves in a situation of

seeking other service production and provision partners due to economic constraints.

This chapter is intended to provide municipal officials with both a conceptual framework and practical guidelines for exploring ways to provide municipal services other than through self-production and provision.

Community Service Production and Provision Options

Communities, given a choice, would prefer to self-produce and provide municipal services. Any other option to service provision increases transaction costs (negotiating with someone else, public or private) and local officials perceive a loss of control when joining with other units for service provision.

Why Seek Alternatives to Self-Production of Service?

Communities explore alternatives to self-production and provision when faced with excess service capacity, financial stress, capacity constraints (financial or human capital), spillover benefits or costs associated with the service, or as a means of sharing risk.

For example, fire protection and emergency service production requires significant financial investment in equipment and accessories, training of personnel, and management. Once the fire suppression or emergency response capacity is generated, excess capacity is often created since emergencies do not occur frequently or regularly.

Communities with excess capacity attempt to sell a portion of the capacity to neighbors, thus a buyer-seller relationship is established.

City government, as a population center, historically became the producer and provider of fire services, and in many cases, sold fire suppression activity to neighboring townships. As a practical matter, a city would be unwilling to sell services to an area outside of the incorporated territory if they lacked the capacity or were unable to obtain compensation to cover the marginal costs of the additional service requirements.

Intergovernmental contracting

The buy-sell, or intergovernmental contracting, method to obtain municipal services is by far the most common method of service provision once self-production is not feasible.

Joint production arrangements and intergovernmental contracting for services represent cost-effective means to obtain services or provide services to units lacking the financial capacity. The key to developing viable and enduring intergovernmental arrangements is to develop a concise and detailed intergovernmental agreement.

Intergovernmental arrangements require patience, perseverance, compromise, and most of all, an open mind.

Joint Service Production through Authorities

Joint production of service may take several forms. A municipality may join forces with an adjacent community to provide services such as fire, police, ambulance, sewer, water, emergency dispatch, solid waste, land use planning, building inspection, and recreation, to name a few.

The city may join with neighboring local governments to establish a special assessment district with a defined service district. Increasingly, local units are creating authorities as a means of producing and providing a service and sharing both financial and associated risks.

Privatization of Services

When adequate private market options are available to the community, service provisions may be privatized. Solid waste collection is a service that a large percentage

of Michigan municipal governments have privatized.

Consolidation of services

A final option is the consolidation of municipal services.

Three types of consolidation exist:

- functional,
- geographic, and
- political.

Functional consolidation might include specific service functions such as fire, police, sewer/water, assessing, road maintenance, or solid waste collection. Such arrangements would involve two or more local government units with each legislative body appointing representatives to an oversight board.

The consolidation of school districts is an example of geographical consolidation.

The political boundaries of a consolidated school district are not consistent with the general-purpose governments, but cut across boundaries. So, a separate governing body (school board) is established to provide oversight.

The most difficult consolidation to achieve is political; that is, merging two or more separate units of government into a new government.

The most recent example is the consolidation in the Upper Peninsula of the cities of Iron River and Stambaugh and the village of Mineral Hills. This merger was approved by voters on November 2, 1999 and took effect July 1, 2000. The new city was called Iron River.

Another example of political consolidation is Battle Creek Township and the city of Battle Creek, although technically the merger between the city and township was accomplished through annexation. As one would expect, political consolidation is difficult to achieve since a sense of community and community identity is involved.

Legal Authority for Contracting and Alternative Delivery Systems

The State of Michigan has permissive legislation enabling local governments to

engage in contracting, consolidation and joint ventures for service provision. Basically, if a local government unit has the authority to engage in the provision of a service to residents, the entity may provide the service through a contractual arrangement (public or private).

The Legislature has enacted a number of intergovernmental statutes specific to municipal services, such as fire, police, sewer, water, and other utilities.

In 1967, during a specifically called session of the Legislature, two broad intergovernmental statutes to facilitate intergovernmental contracting and cooperation were enacted. The Urban Cooperation Act (1967 PA 7) and Intergovernmental Transfers of Functions and Responsibilities Act (1967 PA 8) are frequently used for buy-sell contracts and joint production arrangements for a variety of community services. The popularity of the two statutes is in part due to the flexibility of the laws permitting local governments to tailor agreements to the specific needs of the communities. The two statutes do not provide taxation authority, thus necessitating contracting parties to negotiate the terms, conditions, financing, and method of cost-sharing for the services exchanged or provided.

The Emergency Services Authority Act (1988 PA 57) provides general-purpose governments with the ability to create a special unit of government (an authority) to provide police, fire or emergency service for a unit or in a multiple arrangement. The advantage of creating an “authority” to produce and provide the service is that the new entity is an independent body with its own appointed board, bylaws, and capacity to levy millage in support of the enterprise. Levying millage to support an authority requires voter approval.

Obstacles to Contracting and Joint Ventures

Joint or contractual partnerships may be impeded due to the transaction costs, (the costs of reaching joint decisions). The fear over the perceived loss of control, turf

protection, “skeletons in the closet,” uncertainty of the sustainability of the joint agreement, and the perception that “hidden agendas” are present may constrain viable partnerships from materializing. Local residents and public officials often shy away from joint production arrangements due to the perception that service quality and quantity will change once the unit engages in a joint or contractual venture.

Methods of Cost Allocation under Joint Production Arrangements

The method of sharing and allocating cost shares under a joint production or contractual arrangement is often critical to the success and failure of joint ventures. A necessary step in negotiating sustainable joint ventures involves developing a clear rationale as to why a particular cost allocation method has been selected.

Allocating cost shares is a separate decision from selecting a method to finance the service. In joint production arrangements, sharing costs and generating monies needed to finance a service become somewhat muddled. The strengths and weaknesses of a number of cost allocation methods will be discussed to illustrate how the distributional consequences change under each method.

Relating Benefits to Costs

A basic guiding principle in allocating cost shares is: where possible, relate benefits (services received) to the costs of production and provision. Identifying service demand gets complicated with services such as police, fire, emergency response services, or economic development. Other services such as sewer and water, streets, sidewalks, curb/gutters, street lighting, inspection, tax assessing, etc., lend themselves to easier identification of beneficiaries and demand.

Factors to Consider in Allocating Cost Shares

Buy-sell, contractual, or co-production/provision arrangements for providing community services present a challenge to both the producer (seller) and buyer. The

seller is concerned about covering the total costs of producing and providing services, maintaining service capacity and establishing the price to charge for the services rendered.

Buyers, on the other hand, are concerned about not being overcharged for the service since many municipal services are provided in a monopoly environment.

A variety of options are available to local governments when it comes to allocating cost shares under joint ventures and co-production arrangements. Units that are similar in size and demographic composition and engage in joint ventures will find that an equal division of cost shares presents no problems. The more dissimilar communities are when entering into joint production arrangements, the more creative they need to be to insure equity in cost sharing. Developing a weighted cost share formula that includes factors that influence demand is most fair. This type of “weighted” formula works well with services such as fire, police, ambulance, library and recreation. Population density, congestion, household income or other demographics may influence demand.

Population may be the appropriate factor in determining cost shares for jointly produced planning and development services. Or, a combination of population and tax base could be used since the output from planning and development has applicability to a wide variety of users (governments, private firms and individuals).

Jointly produced infrastructure services, such as sewer and water, present less of a challenge. Variable costs are easily identified and are related to consumption.

Units contracting for services are also concerned with whether the supplier of services will accommodate their specific needs.

Financing Joint Ventures

Financing joint ventures represents a critical decision point, for the selected finance method has far-reaching distributional consequences (who benefits and who pays

the costs). Local governments can use general fund revenues, extra-voted property taxes, special assessment, user fees, third party payments, grants and donations/contributions to fund community services. Each financing strategy carries issues that need to be resolved by the body politic.

General fund revenues are used to finance services that are made available to all community residents. Units engaging in co-production arrangements for service provision often use general fund monies (if available) to support such activities, but with stressed budgets, local governments have sought alternative sources of funding.

Extra-voted property taxes have become a common means of supporting local services and are a way to expand service delivery. Local governments frequently go to the voters requesting additional millage levies for police and fire protection, library, buildings, recreation, new technology acquisition, emergency services and 911, all aimed at maintaining or expanding the level of output of services. Extra-voted revenues become restricted revenues and are treated as special revenue funds (meaning that their use is limited for a specific activity).

Special assessment levies are the financing strategy most municipalities prefer. Special assessment districts are formed when the beneficiaries of a service or public improvement are clearly identifiable, such as the case of streets, sidewalks, street lighting, drains and curb/gutters. Increasingly, local governments use the special assessment districts to provide fire, police, ambulance, and recreation services. Technically, special assessment levies are not considered property taxes, although property value is used as the base upon which the levy is assessed.

User fees and service charges, in large part, eliminate the problem of benefits not being related to costs of the service received. Beginning in the mid-1980s, local governments began to rely more on user fees and service charges to support community services. This was especially true after the

demise of the federal revenue sharing program in 1986 as units scrambled to replace federal monies. User fees increase administrative costs due to collection, monitoring and accounting, but help to regulate demand for the service.

User fees are increasingly being used to support fire run calls, selected police services (such as obtaining an accident report for an insurance carrier) and ambulance calls. Even if a governmental unit is producing and providing a service through the general fund or special millage, local units may assess a user fee.

Third party payments can partially support services such as emergency services, police, fire and ambulance. Homeowner and auto insurance policies, in most cases, contain provisions for reimbursing policyholders for costs incurred in ambulance transport and fire suppression calls. Though local governments incur additional costs in billing customers who use emergency services, third party payments can assist in offsetting costs for service provision. If a unit decides to bill residents or users of emergency services for emergency response, an informational campaign is needed to inform citizens of the new strategy. Residents may have to check with their insurance carriers to see if such coverage is provided or if a rider can be purchased. Charging users for emergency services permits a service provider to charge non-community residents for services used.

Obviously, local governments can combine financing options to provide community services. Utilizing extra-voted millage to support a service does not preclude the use of third party payments. Or a base level of service can be financed through general fund revenue and additional services through the collection of user fees and service charges. Local officials need to examine each revenue option and determine which method matches their community's needs.

Past Relationships Impact Joint Agreements

Joint production arrangements and buy-sell agreements are influenced positively or negatively by intergovernmental relationships. Municipalities often find that border disputes (annexation), conflict over economic development location, and past disagreements inhibit the capturing of benefits from joint relationships. The passage of the Conditional Land Transfer Act, 1984 PA 425, was adopted in part to create a cooperative spirit between adjacent communities and to minimize conflict related to annexation by the sharing of rents from economic development projects.

One of the key roles that elected officials can assume is that of "intergovernmental leader." Political boundaries often become walls even when the lowering of the barrier would result in mutual economic and service gains for both jurisdictions. Building relationships with neighboring jurisdictions is the first step in addressing intergovernmental production and provision options.

Based on materials provided by **Lynn R. Harvey** (retired) professor and extension specialist for state and local government, Department of Agricultural Economics at Michigan State University.

Section 3: Operations

Chapter 13: Employment and Personnel

A proactive approach to employment related issues can pay substantial dividends in reduced legal challenges and associated costs. Municipalities should review the following ten potential problem areas:

1. Pre-Employment Inquiries
2. Personnel Records
3. Disabilities Discrimination
4. Workplace Violence
5. Harassment
6. Fair Labor Standards Act
7. Independent Contractors
8. Family Medical Leave Act (FMLA)
9. Employment Posters
10. Employee Documentation

Pre-Employment Inquiries

While most employment disputes involve current or former employees, a municipality must be aware of issues related to applicants as well. Employers should familiarize themselves with the guidelines and procedures of the issues listed below as they apply to both pre-employment interviews and information requested on an application form:

- Protected classification
- Disabilities and medical history
- Accommodating applicants
- Arrest and conviction records
- Physical and medical examinations
- Drug testing
- Background checks

Personnel Records

Under the Bullard-Plawecki Employee Right to Know Act, employers are required to allow former and active employees to review and obtain a copy of his or her personnel records upon written request and at reasonable intervals. Generally, an employee's review is limited to no more than twice a year unless otherwise provided by law or a collective bargaining agreement.

An employer may charge a fee for copying the personnel records, which is limited to the actual incremental cost of duplicating the information.

The Bullard-Plawecki Act defines *personnel record* as a record kept by the employer that identifies the employee and is used, has been used, or may be used relative to an employee's qualifications for employment, promotion, transfer, additional compensation and/or disciplinary action. An employee is entitled to review his or her personnel records whether the information is kept in a single "personnel file" or in a number of files.

Any medical-related information pertaining to an employee must be kept confidential, in a separate locked cabinet, apart from the location of an employee's personnel records.

Personnel records do not include:

- Employee references supplied to an employer if the identity of the person making the reference would be disclosed;
- Materials related to the employer's staff planning with respect to more than one employee, including salary increases, management bonus plan, promotions, and job assignments;
- Medical records;
- Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy;
- Information that is kept separately from other records and relates to a criminal investigation;
- Records limited to grievance investigations which are kept separate from other records and not used for purposes of qualifications for employment, promotion, transfer,

-
- additional compensation, or disciplinary action;
 - Records maintained by an educational institute which are directly related to a student; and
 - Records kept by an executive, administrative or professional employee that are kept in the sole possession of the maker of the record and are not accessible or shared with other persons.

Disability Discrimination

Both the federal Americans with Disabilities Act (ADA) and the Michigan Persons With Disabilities Civil Rights Act, 1976 PA 220 (PWDCRA), prohibit an employer from discriminating against a qualified individual with a disability in regard to application procedures, hiring, promotion, termination, compensation, job training and other terms, conditions, and privileges of employment if the applicant or employee can perform the essential functions of the position, with or without an accommodation. Reasonable accommodation is a key requirement of the ADA and the PWDCRA since many individuals may be excluded from jobs that they are qualified to perform because of unnecessary barriers in the workplace.

Workplace Violence

Workplace violence continues to be a significant issue for employers. Violence in the workplace obviously affects employee safety, well-being, and productivity. An employer may be held responsible for the actions of its employees. In addition, the courts have recognized claims against employers based upon negligent hiring, supervision, and retention of employees. Also, the “general duty” clause in the federal Occupational Safety and Health Act of 1970 (OSHA) has been extended to cover incidents of workplace violence.

Harassment

Employees have a right to work in an environment free from unlawful harassment in the workplace including: sexual harassment and harassment of discrimination based on race color sex, age, religion, national origin, marital or veteran

status, height, weight, disability, or other protected classes established through state or federal law or by local ordinance.

Prevention is the best tool employers have to eliminate harassment in the workplace. They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains. Additional information on harassment can be found at www.eeoc.gov.

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act establishes the minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. Special rules may also apply to state and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of overtime pay. More information on the Fair Labor Standards Act can be found at www.dol.gov.

Exempt or Non-Exempt

An employer must classify of each employee as either exempt or non-exempt according to the FLSA. Non-exempt positions are legally entitled, whereas exempt position are not. To determine if a position is exempt, it must meet the duties and salary test of the FLSA.

Overtime Considerations

Both the federal Fair Labor Standards Act and a similar Michigan statute require that overtime be paid at 1.5 times a non-exempt employee’s regular rate of pay for each hour over 40 worked in a workweek. Averaging of hours over two or more weeks is not allowed even if the employee is paid biweekly. The Act does *not* require that an employee be paid overtime for hours worked in excess of eight per day, or for work on weekends or holidays, so long as the employee does not work more than 40 hours in a week.

The act does not consider paid holidays, sick time, and vacation leave as hours worked. An employee's meal period can also be excluded from compensable working time if it is at least 30 minutes long and the employee is completely relieved of all duties and free to leave the workstation. Rest periods or coffee breaks 20 minutes or shorter must be counted as hours worked. Whether rest periods longer than 20 minutes count as hours worked depends upon an employee's freedom during the breaks.

Compensatory Time or Overtime

The FLSA authorizes a public agency to provide compensatory time (comp time) off in lieu of overtime compensation, at a rate of not less than 1.5 hours for each hour of overtime worked. In order for the use of comp time to be allowed, there must be an agreement or understanding between the employer and employees.

An employee who has accrued comp time and wishes to use the time must be permitted to do so within a "reasonable period" after making the request if it does not "unduly disrupt" the operations of the agency. Undue disruption must be more than mere inconvenience to the employer.

Even where there is a comp time agreement, an employer may freely substitute cash, in whole or in part, for comp time. In addition, the U.S. Supreme Court has ruled that nothing in the FLSA prohibits a public employer from compelling the use of comp time. Upon termination of employment, an employee must be paid for all unused comp time figured at:

- (a) the average regular rate received by the employee during the last three years of employment, or
- (b) the final regular rate received by the employee, whichever is higher.

Overtime Rules for Police and Fire

In addition to the difference in maximum comp time accrual caps, the FLSA provides another very significant difference for public employees engaged in law enforcement and fire protection activities. As a general rule, employees must be paid overtime at 1.5

times their regular rate of pay for all hours worked in excess of 40 hours per week. Under Section 207(k) of the act, however, police and fire employees who have an established and regularly recurring work period that is not less than seven consecutive days nor more than 28 consecutive days are only entitled by the statute to receive overtime pay if they work more than the maximum number of hours established by law for their work period.

For employees having a 28-day work period, overtime must be paid for hours worked in excess of 171 (law enforcement) or 212 (fire protection). These figures are prorated for employees whose work periods are less than 28 days. For example, police and fire employees with a seven-day work period must be paid overtime after 53 and 43 hours of work, respectively. An employer can agree by union contract, or otherwise, to pay overtime for fewer hours worked.

Independent Contractors

There are a number of benefits to utilizing the services of an independent contractor to perform functions for your municipality. At the same time, there are considerable risks in incorrectly designating a person as an independent contractor when he or she is really an employee. This exposure includes liability for back taxes, overtime compensation, medical expenses, and costs related to completing the work assignment. The existence of an employer-employee relationship versus an independent contractor relationship depends, to a large extent, on the amount of control the municipality exerts over the worker.

The Internal Revenue Service provides common law rules that help an employer determine the degree of control and independence of a possible independent contractor. These include:

1. Behavioral: Does the employer control or have the right to control what the worker does and how the worker does his or her job?
2. Financial: Are the business aspect of the worker's job controlled by the payer?

- These include things like how the worker is paid, whether expenses are reimbursed, who provides the tools, equipment, and supplies, etc.
3. Relationship Type: Are there any written contracts or employee-type benefits? Will the relationship continue and is the work performed a key aspect of the business?

Family and Medical Leave Act (FMLA)

The Family Medical Leave Act of 1993, 29 U.S.C. §2601 et seq., entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees who work for a covered employer are entitled to:

- Twelve workweeks of leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
 - to care for the employee's spouse, child, or parent who has a serious health condition;
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or
- Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Employers Subject to the FMLA

Currently, a private sector employer must employ 50 or more employees in 20 or more workweeks in the current or preceding

calendar year. Public employers, however, are covered without regard to the number of employees employed. This is somewhat misleading because even if a small public employer is technically covered by the FMLA, the employee will not be eligible under the Act unless he or she works within 75 miles of 50 employees of the employer.

Eligible Employees

Only eligible employees are entitled to FMLA leave. An eligible employee is one who:

- Works for a covered employer (all public employers are "covered employers");
- Has worked for the employer for at least 12 months;
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and
- Works at a location where the employer has at least 50 employees within 75 miles.

Employment Posters

Both federal and state labor regulations require employers to clearly display labor and employment posters detailing applicable labor laws. These posters should be posted in a conspicuous area available to all employees. Both federal agencies, such as the Department of Labor, and state agencies have these posters available at no cost and several vendors also provide applicable posters as updates occur for a small annual fee.

Employee Documentation

Too often employers cannot establish the appropriateness of an adverse employment action due to a lack of documentation. Having fair, accurate, and non-biased documentation of employee behavior and performance can establish that the adverse

action wasn't related to discrimination based on race, color, sex, age, religion, national origin, marital or veteran status, height, weight, disability, or other protected classes

established through state or federal law or by local ordinance. Without documentation, it may become difficult for the employer to defend its actions against an employee.

Section 3: Operations

Chapter 14: Labor Relations

Many elected municipal officials find themselves caught in a trap because they allow themselves to be drawn into the local labor relations process. The trap is such that, the more you squirm, the tighter the bindings get. Elected officials are bound to aggravate some constituents no matter what they do.

The solution, with labor relations, is to avoid getting involved in the process as much as possible. Mayors in strong mayor governments are an exception because, as chief executives, they must direct the labor relations in their cities. All other officials, especially councilmembers, would be well advised to stay away from labor relations.

However, keeping out of the labor relations process is easier said than done. Inevitably, city or village councils must approve all labor agreements. They must also adopt budgets which affect, and are affected by, negotiated agreements.

Councilmembers have a responsibility to vote intelligently and with the best interests of the entire community in mind. To do this, they must be well informed.

However, becoming informed leads to a degree of unavoidable involvement. For instance, it would be a council's duty to not approve a labor agreement that would bankrupt the municipality. But such a choice should never have to be made. There are specific steps to take to avoid it.

The goal as elected officials is to stay as far removed from the labor relations process as possible. At the same time, elected officials should be able to fulfill their responsibilities.

Stay Off the Negotiating Team

First, elected officials should not be on the management negotiating team. In most municipalities, elected officials rarely consider this role. However, in smaller communities, there are not always enough

executives who can handle negotiations. Councilmembers are sometimes tempted to get directly involved. This is almost always a mistake.

For one thing, it is not wise for the ultimate decision-maker to face the union across the bargaining table. An argument often used by union negotiators is "I don't think I can convince my membership of your position." Management negotiators need to be able to use the same argument, either expressly or by implication. There needs to be some unseen person or persons who are hard to convince. If the council is right there at the bargaining table, obviously the management negotiators cannot use the same argument when they are cornered.

Another reason to exclude elected officials from the bargaining team is that they may not be skilled negotiators. Most people negotiate many aspects of their daily lives, but labor negotiations require specific technical knowledge. Experience in negotiating the price of a house or used car or the settlement of a lawsuit is, unfortunately, of very little practical use in labor negotiations.

Also, experience in private sector labor negotiations is very often of limited use in public sector labor negotiations. The issues, though similar in appearance, are usually quite different in substance. The life experiences of most elected officials will help them judge a labor agreement they are asked to approve, but do not qualify them to actually negotiate it.

The last reason for an elected official not to be on the bargaining team is political. Issues in labor negotiations stir the emotions. Members of management negotiating teams routinely must say "no" to union representatives who passionately believe in the justice of their proposals. Management negotiators are often perceived as stingy and mean. Frequently union

negotiators do not realize that they are told “no” simply because management cannot say “yes.” The elected official who is one of the people at the table saying “no” is alienating constituents.

Avoid Discussing Negotiations

Elected officials also should avoid discussing labor negotiations. Do not voice a position. No matter what your position is on the labor issue, someone will disagree with it. When the council is presented with a negotiated labor agreement for approval, the differences have been worked out and the parties have agreed to it. Both parties are, in effect, asking for the same thing. If any opinion is expressed prior to that, an official will be perceived as taking sides and will alienate someone.

The worst possible situation is the councilmember whose next-door neighbors are the union president on one side and the leader of the citizens’ committee for tax reduction on the other. A councilmember in such a position can only say to both, “I don’t believe it would be appropriate to discuss the negotiations,” or “I believe in a fair day’s work for a fair day’s pay and I hope the negotiators reach an agreement to that effect.”

This is particularly good advice for the official who was elected with specific union support. The best way such an elected official can help his union friends is to stay out of the negotiations. Any discussion of bargaining table issues away from the bargaining table by people such as councilmembers, who must be ultimately involved, can only disrupt the process. It can never help.

Stay Uninvolved, but Informed

On the other hand, if the council is to be more than just a rubber stamp approving all labor agreements, it may have to have some involvement in determining policies and guiding the management negotiators. The degree to which this is necessary varies.

If the city or village has an experienced management negotiator with whom the council is comfortable, the need for such

involvement is minimal. In a town with an elected chief executive, the council can quite properly exercise no involvement until it is called upon to approve the negotiated labor agreement. If the council feels it needs to discuss the negotiations prior to their completion, it should do so only under carefully controlled circumstances. Whatever the degree, the method of such involvement is important.

Michigan’s Open Meetings Act permits a public body to meet in closed session to discuss labor negotiations. Using a closed or executive session can be an effective way for a city council to exercise some control over the city’s negotiators without disrupting the collective bargaining process. However, this will only work if strict confidentiality is subsequently maintained.

Suggest Broad, General Guidelines

It is important that the council avoid tying the hands of its negotiators by mandating specific bargaining outcomes. Broad, general policy guidelines can be helpful to a negotiator, but absolute, specific instructions can be crippling.

For example, if a city council insists a particular fringe benefit be abolished or a particular work rule be established, it may find later that the result was achieved, but only at an unacceptable cost. This would be especially true if the union negotiators somehow learned of, or guessed at, the council mandate.

Delegate Negotiating Responsibility

It is a much better policy for a city council to delegate all negotiating responsibility to a negotiator with only the broadest of guidelines, if any. This can be a lot to ask; however, the city council is not abdicating its responsibilities. After all, in the final analysis, the council can vote to not approve a labor agreement.

Never Disapprove the Labor Agreement

Even though the option is always available, a city council should never veto a labor agreement. Disapproval by a city council of

a labor relations agreement is roughly equivalent to using atomic weapons in international relations. Disapproval is a power whose very existence keeps both management and union negotiators in line, but which should not be exercised unless all else fails. It is much better to fire the negotiator than to disapprove the agreement.

Obviously, care in selecting the negotiator would be appropriate. Choosing an experienced negotiator with a proven track record is the safest course. When an elected body, be it a city council or a school board, vetoes a negotiated labor agreement, it destroys the credibility of its negotiator and either seriously damages or destroys the credibility of the entire organization. In such a case, the Michigan Employment Relations Commission (MERC) may order the council itself to the bargaining table if an unfair labor practice is charged.

The general advice to elected officials, then, is to place labor negotiations in the hands of the best people available and stay out of the negotiations as much as possible.

Another Pitfall

Another labor relations pitfall that councils should avoid is employee discipline cases. An employee who has been disciplined might turn to a friendly councilmember for help. If the councilmember takes any action, he or she is in a no-win situation. If the employee is represented by a union, the councilmember cannot possibly be of any real assistance, and could add to the problem. The employee's union is always in the best position to see to it that each employee is treated fairly and justly. The union has the know-how, the means, the legal duty and the exclusive right to stand up for its members.

What Role to Play

Labor relations professionals are fond of saying that the correct role for the elected official to play in municipal labor relations is none at all. Unfortunately, this is too simple.

In most communities, elected officials have a serious responsibility regarding the operation of the municipal government. No elected official, particularly a member of a city or village council, should be advised to abdicate or ignore such responsibility.

Ironically, the collective bargaining process works best when there is no direct involvement by elected officials. The issues at the bargaining table are complex enough without adding a political dimension. Involvement by elected officials, by definition, adds a political dimension.

The precise degree of involvement in labor relations, if any, is a decision each elected official must make based on the circumstances of his or her own situation. Perhaps the best advice on this point comes from a small town councilman who advised his colleagues, "When in doubt, stay out."

This chapter is based on materials provided by **Joseph W. Fremont**, the labor relations consultant for the League from 1984 until his retirement in 2005.

Section 3: Operations

Chapter 15: Municipal Liability

Knowledge Can Beat the Fear of Liability

Municipalities operations always seem to be at the cutting edge of trends in litigation. Whether it's huge verdicts—such as the \$14 million jail death verdict against an MML Liability Pool member a few years ago—or new areas of exposure, such as prisoner exoneration claims or class action basement flooding lawsuits—local government always seems to get hit early, and often.

We hear so often that our society has become more litigious that it almost has become a cliché. Municipalities often seem to be a primary target for litigation because of the so-called “deep pockets” of their tax base.

To add some perspective, there are more than 500 cities and villages that are members of the Michigan Municipal League. Many of them, especially our villages, go years without an insurance claim. If you add the number of villages that rarely encounter an insurance claim beyond a minor traffic collision or the payment of medical bills for a slip and fall claim, the number of members who have had “big hits” is truly small indeed.

Most claims for bodily injury, property damage or “wrongful acts” that are made against a municipality never result in a lawsuit. The Liability and Property Pool handles about 1,500 claims filed against our municipal members each year. Only about 150 of those develop into lawsuits.

Two points should be clear. First, you should be generally aware of liability issues that affect municipalities and elected officials. But, secondly, elected officials should avoid becoming inflicted with “litigation paralysis”—the belief that making no decision and avoiding possible lawsuits is preferable to acting in the best interest of your community.

Generally, city and village councils and their individual elected officials have personal immunity from liability for their decisions. Local government would truly come to a standstill if elected officials could be successfully sued by the “losers” of every motion on which they vote.

Listing all the possible sources of municipal claims and how to reduce your claims exposure is beyond the scope of this limited space. Certainly, you did not make a commitment to service in local government with the intent of becoming an expert on municipal liability.

But as an elected official, there are three things you should know.

First, know who your municipal attorney is, and utilize this person's expertise. We recommend that your attorney be present at all council meetings, and he or she should be given time to review the agenda in advance of the meeting. Your own good judgment will often tell you which action items on the agenda require diligent deliberation and possible legal advice.

Question your attorney on the legal ramifications of your decisions. If one or more legal issues require further study, it is preferable to table a motion than to act with incomplete information.

Second, your municipality should have an acceptable insurance program. Know who is responsible for placing the insurance. You should have a coverage proposal you can review, and other sources of information readily available. It is very important that your municipality's liability insurance has adequate limits, and that coverage is available for activities that may result in claims against the municipality.

For example, if you are a growing community with new development, you probably have one or more zoning variance requests each year. Make sure you are aware of how your insurance program responds to

zoning and land use litigation before you make a decision on a zoning issue.

Last, use the services of your Michigan Municipal League. Through a variety of media, we offer numerous opportunities to educate and familiarize municipal officials and staff on liability issues.

- educational workshops are held annually throughout our state dealing with various liability issues;
- an email (info@mml.org) or phone call to the League's inquiry service can direct you to sources of information or individuals that can provide assistance;
- the League's Risk Management Services Division has a staff of professionals who can assist you with most liability issues;
- a wealth of insurance information is available online at mml.org—this is the

website of the Michigan Municipal Liability and Property Pool, the League-sponsored and administered insurance program; and

- the League's Annual Convention has a variety of concurrent sessions and networking opportunities at which information can be obtained

If your municipality is already a member of the Liability and Property Pool, you are taking advantage of comprehensive liability insurance designed for Michigan municipalities, and enjoying immediate access to the information resources mentioned above.

Section 3: Operations

Chapter 16: Planning and Zoning

A Balancing of Interests

Perhaps one of the most difficult aspects of planning and zoning is the need to balance the various, often competing, interests of property owners and residents. These competing interests are represented through the concept of property rights. Local decision makers are required to balance the interests of private property rights against the need to protect the public interest. In other words, how much regulation is enough to protect the public and at what point does that regulation begin to infringe on property rights?

In the midst of these sometimes competing interests and views are the local authorities for zoning; the zoning administrator, the planning commission, the zoning board of appeals, and the city or village council. Dealing with each of these conflicting perspectives is simply not possible, and the intent of zoning is to avoid conflicts that arise. Instead, zoning follows some basic principles and procedures designed to treat each person, property, and point of view fairly and consistently.

Legal Framework

Local planning and zoning authority is based in two statutes, the Michigan Zoning Enabling Act (MZEA) (PA 110 of 2006) and the Michigan Planning Enabling Act (MPEA) (PA 33 of 2008). These laws consolidated and updated various older enabling statutes, and should be referenced when adopting or updating local planning and zoning documents, as they address topics like:

- The creation and membership of the planning commission and zoning board of appeals (ZBA);
- The division of responsibilities between these appointed bodies and the local legislative body;

- Requirements for adopting a master plan and zoning ordinance; and
- Minimum standards for public notices and processes around planning and zoning decisions

If your community has not yet reviewed its ordinances against these new statutes, it is critical to undertake that review, to ensure that you are on solid legal footing.

The Planning Team

The laws that originally set up the land use planning and zoning system for Michigan anticipated the need for the three bodies most involved to work closely together to coordinate their efforts.

The planning commission, an appointed body, was originally given the responsibility of writing and adopting the master plan. This was done to ensure some degree of independence from the political arena, which had plagued the planning process in earlier years. In 2002, this requirement was changed to include more involvement by the legislative body in the planning and adoption process. The planning commission was also given the duty of writing the first draft of the zoning ordinance. This was done to ensure a direct connection between the master plan and zoning ordinance.

The city/village council may choose to be the adopting authority of the master plan, but is required to adopt the zoning ordinance because it is the law.

The zoning board of appeals was granted the authority to waive certain zoning ordinance requirements where conditions of the ordinance deprived property owners of the right to develop their property.

There are, however, situations where this delicate balance fails. For example:

- The planning commission adopts a master plan with which the legislative body has fundamental differences. The

legislative body may refuse to allow the plan to be adopted by the planning commission, or the legislative body may itself refuse to adopt the plan. Accordingly, any attempt to implement the plan through the zoning ordinance may then fail when the legislative body refused to adopt either the plan or the ordinance. To reduce the chance of conflict, the legislative body and planning commission should work together on strategic goal setting early in a master planning process; and

- The ZBA grants variances without sufficient justification, which detracts from the ordinance's effectiveness. In extreme cases, such actions might allow the ZBA to, in effect, take over the zoning policy-making function that is normally reserved for the planning commission and legislative body. If the ZBA believes the zoning ordinance is generally flawed, rather than a unique situation with a particular property, it should communicate with the planning commission to address the issue.

The legislative body, planning commission, and ZBA may find periodic joint meetings or other formal communications helpful: all have an interest in keeping the master plan, as a policy document, the zoning ordinance, as a law, and the administrative and quasi-judicial decisions made on individual applications in alignment.

The Master Plan

Policies regarding land use are expressed through the master plan. A master plan will include a description of the community, outline goals and objectives and map areas of different land uses, ranging from residential to industrial. The master plan must constantly be reviewed to make sure that the new growth conforms to what was planned. But as events unfold, these plans may change to take unanticipated events into account. While a master plan typically considers a timeframe of decades, the MPEA requires a community to formally review its plan at least every five years.

While the planning commission is responsible for drafting the master plan, the legislative body must “approve the plan for distribution,” and may elect to become the adopting authority for the plan. After preparing a proposed plan, the planning commission must submit the proposed plan to the legislative body for review and comment. Before the adoption process can proceed, the legislative body must approve the distribution of the proposed plan. If it does not, it must return the plan to the commission with its objections. The commission must then revise the plan until it is accepted by the legislative body.

The long-term effect of this change to the adoption process will have to be determined. But even if the planning commission is delegated the responsibility of completing and adopting the master plan, the legislative body should be involved in all of the critical steps of the process in order for the plan to be effectively implemented.

Developing a master plan is a reasonably logical process. It consists of:

- identifying community issues;
- collecting information regarding those issues;
- determining the direction in which the community wants to develop;
- deciding how to proceed in that direction;
- adopting the plan;
- fashioning a method of implementation; and
- reviewing the plan periodically.

Of these, perhaps the most important is determining the direction of the community through the development of a community vision and setting goals that will achieve that vision. To begin this process, the planning commission and legislative body should discuss philosophical, broad-ranging questions related to growth and community character. These might include such questions as, “Do we want to grow?” or “What does ‘small town character’ mean to us?”

Once the master plan is in place the normal reaction is a let-down; the planning commission's hard work has paid off and

the plan is completed and ready to be filed. But, in reality, the work has just begun. All too often, the plan sits on a shelf and collects dust.

A plan which is not actively followed and implemented may lead to problems for the community in the future. Failure to follow the plan may discredit any attempt to use the plan as a defense for actions which may be challenged by property owners or developers.

The Zoning Ordinance

Local control of the use of land (with some exceptions, such as state and federal land uses) is an accepted legal principle. Land use is traditionally controlled through the separation of land into various use areas, called zoning districts. The rules governing these districts are contained in a zoning ordinance which includes provisions controlling the type and intensity of development allowed.

Communities often have to wrestle with complex zoning and growth policy issues brought on by new development. The need to provide flexibility, coupled with the desire to maintain some degree of control, has created the need to find innovative zoning and land use policy solutions. Some of these include:

- A planned unit development (PUD) process offers the opportunity to review large or complex developments for their ability to better meet the intent of the zoning ordinance than the strict application of the ordinance provisions. The MZEA introduced the ability for a PUD to take place on noncontiguous properties. In all cases, the zoning ordinance must enable and define the process for a PUD before one may be considered;
- A form-based code (FBC) places focus on the shape, size, and arrangement of buildings or other improvements on a property, with the activity happening on the property a secondary consideration—some communities find this approach is better able to manage community character and impact of

development than a focus on traditional divisions of residential, commercial, etc., activity. Note that the MZEA does not explicitly discuss or authorize FBCs separately from more traditional zoning;

- Two or more communities may form a joint planning commission, to facilitate coordination of development across jurisdictions; and
- The MZEA introduced the option for an applicant to offer conditions to a rezoning request, such as limiting permitted uses under the rezoning to only some of the uses permitted in the target district. Note that municipalities are clearly forbidden from requesting conditions or amending the conditions proposed—this option should be used carefully, if at all.

The Zoning Board of Appeals

A community that has established a zoning ordinance must have a zoning board of appeals (ZBA). A city council may act as the ZBA, or a separate board of not less than five members may be appointed. The Zoning Board of Appeals has a quasi-judicial function and must act objectively when evaluating an appeal. If the elected body also serves as the ZBA, it may become difficult to remain an objective evaluator when an individual is also an elected official.

The number of members is based on population; less than 5,000 must have at least three members. More than 5,000 must have at least five members. The only appointment guidelines are residency, population distribution, and representation for the various interests in the community (residential, commercial, industrial, education, etc.). All members serve three-year terms. Two alternate members may be appointed and serve in the case of an absence or in the case of a conflict of interest with one of the regular members. The alternate, if called, serves on a case until a decision is reached, even if called on the basis of an absence of the regular member, and even if that member returns.

The board has the responsibility for ensuring that the zoning ordinance is properly and fairly applied. The need for the ZBA is based on the realization that a single set of regulations cannot anticipate every potential condition related to individual properties and uses. The most common action by the board is the consideration of variances.

A **variance** is permission to waive or alter a requirement or limitation of the zoning ordinance. There are two types of variances.

A **use variance** permits a use of land that is otherwise not allowed in that district. A use variance is a modification of the literal provisions of the zoning ordinance that may be authorized by the board when strict enforcement of the ordinance would cause *unnecessary hardship* for the property owner due to circumstances unique to the property. To obtain a use variance, the applicant must demonstrate through review standards that the unnecessary hardship related to the use of the property exists. The community may choose to exclude the consideration of use variance in its zoning ordinance.

A **nonuse variance**, also known as a dimensional variance, is a modification of the literal provisions of the zoning ordinance that may be authorized by the board when strict enforcement of the ordinance would cause *practical difficulties* for the property owner due to circumstances unique to the property. Nonuse variance requests are typically associated with modifications of required yard setbacks, building heights, parking requirements, landscaping or buffering restrictions, and related building or facility placement matters and sizes.

Every person has the right to seek relief from a zoning ordinance requirement. If the standards used by the board are carefully considered and followed, the integrity of the ordinance will be maintained. But too often variances are granted because no one sees any harm in doing so, rather than carefully considering the ordinance standards. The board soon gains a reputation for not following its ordinance; one merely has to

go to the ZBA to obtain relief from the ordinance.

Eventually, the offhand granting of variances harms the community's ability to enforce the ordinance. Moreover, poorly supported decisions can, over time, have the effect of destroying the credibility of the zoning ordinance as well as the ZBA. It is up to the members to prevent this by strictly applying the review standards of the ordinance necessary to obtain a variance: variances create an exception from the ordinance, and should be exceptional, rather than routine.

Procedures and Processes

Foremost among today's planning and zoning issues is the need to have specific, written procedures for handling planning and zoning matters. The entire zoning process, from the time that a person first approaches the municipality to the issuance of the occupancy permit or possible sanction of violations, should be clearly understood by all parties involved. Some basic rules:

- Proper forms should be in place to document applications and permits;
- Meetings should be governed by consistent rules;
- All actions should be clearly and thoroughly documented;
- Applications should not be accepted if incomplete (inadequate site plan, fee unpaid, etc.);
- If required public notices were not sent or were published improperly, stop the process and start over; and
- Action on any application should be delayed until the applicant or a representative is present (unless legal time limits dictate otherwise).

Another important aspect is keeping good records. One test of record-keeping is the ability to pick any application that has been approved and constructed and be able to follow each step, from the first contact of the application to the last permit, by the records kept for that application. Project files should include, at a minimum:

- relevant pages of minutes at which the proposal was discussed,
- staff notes, meeting notes, correspondence, telephone conversation notes, etc.,
- copy of the application and supporting material, and
- approved/signed copy of the site plan.

Making Effective Decisions

Following an effective decision-making process is one of the most important methods of avoiding, or at least surviving, challenges to decisions. Careful consideration and support of decisions through the use of the standards of the zoning ordinance is important. These standards must be written into the ordinance and if all standards are met, the application must be approved.

If the decision is challenged, the importance of using the ordinance's standards becomes self-evident. A well-supported decision provides the background needed to build a solid legal foundation for the decision. The use of standards will help avoid the "arbitrary and capricious" label often given to zoning decisions that are not well supported.

The record must show sufficient facts to back up the findings made according to the ordinance standards. Some simple considerations:

- It is not enough to deny an application because of a vague notion that the use is not a "good idea," or that it will "harm the neighborhood;"
- The presence of a roomful of people opposing the project is not sufficient reason to deny an application;
- The past performance of the applicant should not be used as a basis for a denial. If there are doubts about performance, make proper use of conditional approvals, performance bonds, and proper documentation;
- Approvals and denials should each be thoroughly documented on the record, clearly stating how the ordinance standards were, or were not met; and
- Questions of doubt should be resolved before taking action; do not act hastily. Zoning decisions are permanent; take care that the decision is the best that can be made given the information available.

The Role of the Public

Having noted the need for objectivity, the question arises as to what role the public should play. Various zoning approvals require participation by the public in the decision-making process, usually in the form of public hearings. The dilemma in which most decision makers find themselves is trying to determine what weight to give the comments (and complaints) of the public.

People do not generally come to a meeting in support of a particular project; most have concerns that they wish addressed, many are simply opposed to what is proposed. The foremost concern that any decision maker should have is to ensure fairness for all concerned; the applicant as well as the public. To ensure fairness, keep some simple things in mind.

- Everyone must have the opportunity to speak and present evidence at public hearings. While some limitations may be placed on this right, no action should be taken that would deprive a person of their right to be heard.
- Most people are uncomfortable speaking in public. While the chair cannot make everyone effective speakers, he/she can make sure that meeting rules are followed and order maintained. Keeping a subtle balance between the degree of formality required, and the degree of informality that is sometimes needed is a learned art.
- Recognize emotional responses and treat them with concern and understanding. Land use issues can elicit strong emotions. Strong responses, within limits, should be expected and understood. Decision makers must learn to control their emotions, even when the comments get personal.
- The chair can help maintain order by following meeting rules and requiring

that comments are made only on the subject at hand. It is often helpful to point out what request is being made and to ensure that the public understands the limitations of the board or commission.

Enforcement

No matter how well written the zoning ordinance may be, it is essentially made meaningless unless the community has an effective enforcement process. Creating and maintaining an effective enforcement program requires a good COP (Commitment, Ordinances, Process):

Commitment: The community, including its enforcement officials, administration and legislative body, needs to have a firm commitment to the enforcement of its ordinances. This means providing the necessary resources to monitor and penalize. It also means ensuring that enforcement officials are not subject to interference from the administration and legislative body members.

Ordinances: Ordinances must be clearly written and be able to be reasonably monitored and enforced. Each time a new regulation is drafted, it would be useful to ask the enforcement officials how they may go about monitoring and implementing the various ordinance provisions. Ordinances that require unreasonable actions on the part of enforcement officers are less likely to be properly administered.

Process: Finally, it is important that there be a consistent, well documented enforcement process. For example, a follow up to a violation might be similar to this:

1. Verbal notification is sent to the property owner, followed up by a written notice.
2. If not corrected, a second notice (usually worded somewhat more forcefully) may be sent.
3. If not corrected after the second notice, a citation is issued.

(Note: The procedures for each community will be different, and may depend on whether the ordinance violation requires a civil or criminal action.)

How to Avoid Litigation

The short answer to avoiding litigation is simple. You can't! Governments are always open to lawsuits, regardless of the methods used to reach a decision. Disappointed applicants and neighbors far too often look to the courts to make a decision favorable to their position. However, there are some actions that you may take to strengthen your legal position.

The first way to avoid a legal challenge to your decisions is to follow the procedures and principles outlined in this chapter. As many members have already experienced, the zoning process involves a wide variety of technical, administrative, and discretionary factors. The technical factors may include compliance with the specific requirements of the zoning ordinance, such as setbacks, height, parking, etc. The administrative requirements may include ensuring that notices are mailed and published, meeting procedures followed, and other similar actions.

Finally, and probably most important, are the judgmental factors that are required in making effective zoning decisions. The standards provided in the zoning ordinance for various types of decisions are the clearest guide given to decision makers. All decisions should be based on these standards and the facts that are used to apply them.

Other factors that should be remembered:

- Keep the master plan and zoning ordinance up-to-date. A current plan and ordinance can bolster an effective defense. An outdated plan or ordinance is subject to attack as not relevant to today's conditions.
- Recognize the landowner's right to a reasonable rate of return, although that may not be the use that provides the highest profit or "highest and best use," not a term applicable to zoning.
- Do not exclude lawful land uses if there is a demand and an appropriate location in the community.
- Base decisions on the ordinances and facts rather than emotions or opinions of the applicant.

- Make decisions using the written standards of the zoning ordinance.
- Know the rules of procedure and follow them consistently.
- Resolve questions of doubt before taking action; do not act hastily. Zoning decisions are permanent; try to get it right the first time.
- Know the limits of the community's authority and act in good faith.
- Correct immediately any situations that could be/are found liable.
If sued, hire competent legal counsel familiar with the type of litigation involved.

Chapter based on materials provided by **Steve Langworthy**, retired partner with LSL Planning.

Section 3: Operations

Chapter 17: Selecting and Working with Consultants

Why Use a Consultant

Today, cities need to consider delivery options for information and services not even contemplated decades ago. Both small and large municipalities will find themselves in situations where, due to a lack of available personnel or to a lack of expertise in a specific area, they need to seek outside professional assistance. Often a consultant can provide the required staffing and knowledge.

Consultants are defined as those with training and experience in a specific field who offer others their expertise. Why, when and how a community retains a consultant is an important policy issue.

When to Use a Consultant

No one can be an expert in every aspect of local government. Consultants are typically retained for one of three reasons:

1. to provide specialized service not available through existing staff resources;
2. to supplement existing staff in completing projects and/or doing planned projects when the existing staff does not have time or the expertise to complete the project; and
3. to get a second opinion from an outside source on a possible project or to review, provide input, analyze data and conclusions reached by the cities through other studies.

Consultants are retained for many types of projects and services. For example:

- street construction;
- water, wastewater and storm sewer projects;
- information technology support;
- labor relations;
- master land use planning;

- grant application preparation and oversight;
- subdivision plan reviews;
- short and long term strategic planning; and
- recreation master planning.

Common Types of Consultants and Professional Services

The most common types of consultants are:

- engineers;
- planning consultants (land use and zoning);
- strategic planning consultants;
- attorneys—general counsel, labor/employee relations, environmental, insurance claims, bond counsel, litigation/special counsel (example: tax tribunal cases) and real estate transactions;
- human resources/training/safety consultants;
- property assessors;
- information technology experts;
- privatization of services consultants;
- auditors and financial advisors;
- pension plan administrators; and
- retired city/village management professionals.

Retired city and village managers are valuable resources for communities of all sizes. A municipality might call one for interim management services during recruitment of a new manager or to assist the staff in managing specific projects or functions.

How to Retain a Consultant

The first step in retaining a consultant is to establish criteria and guidelines. Items to consider in formulating your guidelines are:

- whether to designate an individual or committee to be responsible for retaining the consultant;
- who will be planning, monitoring, and scheduling the project or service;
- what the scope of the project or service will be; and
- what base qualifications will be required for firms or individuals to be considered.

These should include:

- professional and ethical reputation,
- professional standing of the firm's employees (registered, licensed, certified),
- ability to assign qualified personnel to the project and to complete it within the allotted time, and
- experience in providing the services or project development.

Selection Process

Michigan, unlike many other states, does not have a state law requiring local governments to establish procedures for purchasing of goods and services or the selection of consultants. Local charters and/or ordinances usually establish the consultant selection procedures. If the project will be funded in part or in full with state or federal monies, check the requirements for consultant selection procedures. Those responsible for the selection process need a working knowledge and familiarity with the purpose and general nature of the project to be performed.

Sole Source

If the city has experience with one or more consultants, preference may be given to continuing the professional relationship with these firms. If you are not required by jurisdictional policy or ordinance to send out requests for proposal or bids, you can hire the consultant directly. An agreement as to the scope and cost of the project is negotiated with this firm and the project proceeds.

Request for Proposals (RFP)

Under an RFP the city provides firms with a specific detailed description of the project

and requests that the firms submit a proposal addressing the manner in which the project would be completed and the cost of the project. From the responses, the local government selects the consultant based on two criteria: cost and responsiveness to the RFP.

The method for selecting a consultant using an RFP should follow many of the steps outlined below in the RFQ process.

Request for Qualifications (RFQ)

Unlike a RFP, the RFQ provides the opportunity to select a consultant based on the needs of the community and qualifications of the consultant, not low bid. In July 2002, the State of Michigan enacted legislation (2002 PA 504) requiring state agencies to use Qualification Based Selection (QBS) methods to select consultants. While this legislation does not apply to local governments, it emphasizes the advantages to using QBS in selecting consultants.

For more information on the QBS process, visit www.qbs-mi.org or call 517-332-2066.

In preparing the RFQ, the following elements should be included:

- a type of consultant being sought;
- a brief outline of services desired;
- date and time the sealed qualifications are to be submitted to the local government; and optional, but recommended, elements:
 - expected date of completion or length of contract, and
 - anticipated end product such as reports or designs.

These elements will help the consultant and local government determine the availability of resources.

There are three options for establishing the cost of services:

1. negotiating the cost with the consultant selected,
2. listing the anticipated range of fees in the QBS, and
3. having the consultant place the estimated fees in a separate envelope.

This envelope would only be opened if

the consultant were selected and would be used in contract negotiations. When the contract is signed with the successful firm the remaining fee envelopes should be returned unopened to the unsuccessful consultant firms.

The QBS process allows the local community to select one or a small number of consultants to interview. This selection should be based on the number of responses to the RFQ.

During the interview, ask who will be the key personnel assigned to your project. The proposed project manager should be in attendance at the interview. The scope of services should also be discussed in the interview, but fees should not.

After the interviews, check with recent clients of each firm and determine the quality of performance that each client has experienced. Try to include clients in addition to those specified by the firm.

After the interviews, rank the firms using criteria such as location, reputation, compatibility, experience, financial standing, size, personnel availability, quality of references, workload and other factors specific to the project. Decide which firm you consider to be best qualified, and initiate contract negotiations.

If an agreement cannot be reached with the first firm selected, notify them in writing to that effect. Meet with your second selection, going through the same process. When you and the consulting firm agree on all matters and charges for services, the selected firm should submit a written contract for both parties to sign. Make sure your attorney reviews the contract before the city signs the agreement.

A courtesy letter should be sent to each firm that expresses interest in the proposed project, informing them of the outcome of your decision.

Project management

Once you select a consultant, you need to design a process to manage the contract. These elements will help ensure the successful completion of the project:

- appoint a project manager,

- establish a work schedule (including milestones) for the project,
- cross-check the consultant's work, and
- determine and evaluate the final work product.

While these elements are components of good project management, the extent to which each element is used will depend on the magnitude and scope of the work. For example, a small project may only require a project manager and an evaluation of the final product, without a work schedule.

The project manager is essential to any consultant contract regardless of its size. This municipal representative administers the contract, including but not limited to monitoring the work, approving payments for the work and accepting the final work product. The project manager should be given enough authority to ensure that the city receives maximum benefit from the consultant's work.

Establishing milestones will tell the municipality when each stage of the project should be completed. Failure to meet these milestones could be an early indicator of possible delays and/or trouble with the consultant's work product. This gives the project manager an opportunity to correct the problem or it could serve as a reason to terminate the consultant's contract.

Identifying deliverables in conjunction with the milestones will provide the city with another tool to evaluate the consultant. Deliverables, for example, might include a draft chapter of a master plan, a grant application or securing certain permits. The type and extent of the deliverables depend on the size and scope of the project.

In addition to milestones and deliverables, monitoring the work can involve regular meetings with the consultant, visits to the consultant's office, telephone calls, emails, and faxes.

The larger the contract, the more likely there will be a need to amend the contract. In large projects, unforeseen delays can make it necessary to amend the contract. The contract amendment should be included in the original contract.

The success of any project is determined by the process and resources allocated to the effort. Using consultants can be a valuable tool in the management and delivery of services for our communities.

Chapter provided by Lou LaPonsie, city manager and past trustee of the League, and charter member of the village management

committee of the Michigan Local Government Management Association.

-and-

Reid S. Charles, who has served in various management and planning positions in local government, and lectured and taught courses on planning and municipal finance.

Section 4: Finance

Chapter 18: Authority and Internal Controls

Introduction

Oversight and governance of financial affairs is among the most important of the responsibilities of municipal elected officials. Inadequate oversight can lead to abuses such as embezzlement, misuse of and/or misappropriation of funds, and general loss of esteem for the municipality and its officials. Excessive control or oversight can render your city or village ineffective and incapable of delivering important services.

Local elected officials are given the responsibility and authority to establish financial policies for their municipality. For example, only the elected governing body of a municipality can levy property taxes, establish fees and charges for utility services, levy special assessments, incur debt, establish spending levels, and determine independent audit requirements. Appointed officials may recommend policies in these matters but the final authority to enact financial policy is reserved for the governing body of elected officials. They fulfill these responsibilities through their budgets, ordinances, and resolutions, all of which must be enacted by at least a majority vote of the body. (Check your charter for the vote requirement for your city or village.)

This chapter provides a brief overview of the very complex and pervasive subject of municipal finance in Michigan. It is essential that elected officials turn to the resources which are at their disposal (their manager, finance officer, assessor, treasurer, accountant, attorney, and independent auditor) in fulfilling their duties and responsibilities.

Limitations on Local Authority

Authority and responsibility for municipal financial policies are established by the Michigan Constitution, state statutes, federal

statutes, state and federal administrative codes, and city and village charters. These instruments, along with case law, grant certain authority on one hand and limit it on the other.

State Limitations

Municipal elected officials in Michigan have become acutely aware of the limits imposed by the Michigan electorate through constitutional provisions which limit the authority of local officials to levy property taxes.

Constitutional revisions adopted in the late 1970s (known as the Headlee Amendments) limited local authority by:

- requiring local voter approval for increasing tax rates above the rates then authorized by law or charter, and
- rolling back or decreasing millage rates so the total amount of taxes paid on existing property increases by no more than the rate of inflation during periods when property values increase by more than the rate of inflation.

If one class of property has declining or stagnant market values and another class has spiraling increases, the total roll for the taxing unit may not increase more than the rate of inflation. And, the taxing authorities are not required to reduce the millage rate. In many local units, residential property values have spiraled upward while other classes stagnated. As a result, residential taxpayers found little or no relief from the Headlee roll back requirements.

Again in 1994 the Michigan electorate amended the Constitution with Proposal A. This amendment defined a special class of property, *Homestead*, which is treated differently than the other classes of property (i.e., commercial, industrial, non-homestead residential, agricultural, etc.). Homesteads are exempt from the local school tax of 18 mills. No other class has this exemption.

Schools were provided with state funds, generated by the state sales tax, to offset this loss of revenue.

In addition, Proposal A requires each parcel to be taxed on the basis of its taxable value which is to be limited to an annual increase of "...the rate of inflation or five percent, whichever is less." This limitation is imposed for each parcel.

Prior to Proposal A, properties were taxed on the basis of their state equalized value which was set at 50 percent of market value and adjusted upward or downward as the market value changed.

The local assessor now maintains two columns on the tax roll: the state equalized value and the taxable value. Taxes are levied on the taxable value. As long as the property continues under the same ownership, the taxable value of the parcel may only increase at the rate of inflation or five percent, whichever is less. However, upon sale or transfer of the property to another owner, the state equalized value (SEV) becomes the new taxable value.

By shifting school financing from the property tax to the sales tax, the reduced potential captured revenue through tax increment financing has had a negative side effect on certain financing authorities for future programs. The full effect of Proposal A is still unknown. Some believe it has had an inflationary effect on home values. Others believe that the reverse will be true in the future when new owners find the accumulated state equalized value (SEV) entered into the roll of taxable value for their payment of taxes. It also remains to be seen what its full impact will be on local units of government

State Statutes

State statutes also limit the authority of local officials in administering their financial affairs in matters ranging from procedures to be followed by local governing bodies in advertising the annual budget hearing to the use of motor fuel taxes on local street systems; from debt limits to fidelity bonding requirements for local treasurers; from the annual audit to creating special financing

authorities. A listing of all controlling state statutes is not possible in this limited space. (See Appendix 2: Michigan Laws of Interest to Cities and Villages.)

State statutes control almost every aspect of municipal finance. Local elected officials should seek advice and counsel from their own local resources when embarking upon changes of policy and practices in the conduct of the financial affairs of their local government.

Case Law

Case law issuing from the judicial system also imposes controls and limitations on local elected officials. For example, a state court adjudicated a disputed special assessment which was levied upon owners of homes in a platted subdivision with streets emptying out into a major thoroughfare which was to be improved with special assessment financing. The court set aside the special assessment on the subdivision homeowners because in the opinion of the court:

- a. the benefit derived from the improvement was a general benefit to the community and not a special benefit to homes in the subdivision, and
- b. special assessments may only be levied for direct benefits (i.e., the street upon which their homes fronted) and such may not be levied for indirect benefits (for the major thoroughfare to which their frontage street connected). See *Jonson vs. Inkster*, 401-MICH-263, Michigan Supreme Court, 1977.

A second example has had perhaps an even greater impact on municipal finance.

On December 28, 1998, the Michigan Supreme Court ruled unconstitutional the city of Lansing's stormwater service "fee," declaring that the fee was actually a "tax" under the Headlee Amendment to the Michigan Constitution that required a vote of the city's electorate.

The ruling, in *Bolt v City of Lansing*, 459 Mich 152, 587 NW2d 264 (1998) could have significant implications for municipalities statewide. Bond counsel for cities and villages have expressed concern

that the ruling could impact the security of revenue bonds backed by user fees. (See CH 22 Special Assessments and User Fees for more information on *Bolt*.)

Case law in municipal liability has been a source of concern for the financial stability of municipal units of government. Indeed, creation of liability risk pools, including that of the Michigan Municipal League, is a response to case law.

Again, as municipal elected officials seek to establish policies affecting financial affairs of their local unit of government, they must heed advice of financial experts and their legal counsel.

Local Limitations

City and village charters, ordinances, and resolutions of policy are instructive to uninitiated elected officials. These local instruments often reflect provisions of the State Constitution, state statutes and other regulatory requirements of the higher levels of government. Indeed they must be in compliance with them. Careful review and drafting by legal counsel and financial administrators should assure compliance.

Local charters establish millage limits, debt limits, and the fiscal year. They often spell out purchasing and contracting authorities, budget requirements, audit requirements and reporting of financial condition on a regular basis. Duties and responsibilities for financial management of the unit of government are usually assigned by the all-important local charter.

Charters often spell out the minimum requirements for the annual budget document including:

- presentation of proposed revenues and expenses in detail sufficient to effectively control the financial management of the municipality;
- presentation of actual audited revenues and expenses for the last fiscal year;
- revenues and allocations for the current fiscal year and actual expenses to date;
- separate presentation of operating and capital budget accounts;
- procedure and deadline for adoption including (a) advertisement, (b)

opportunity for public review and (c) public hearing; and

- procedure for amendment and reallocation after adoption.

Purchasing and contracting requirements of charters usually include provisions that (a) limit authority to acquire without approval of the governing body, (b) require advertisement in approved publications, and (c) require receipt of sealed bids which are to be opened in public.

These are but two examples of charter limits and grants of authority. Ordinances and/or resolutions are often necessary to implement state statutory requirements and those of local charters.

City/village ordinances and/or resolutions limit and regulate financial management in more detail than is permitted or desirable by local charters. These are more easily amended than the local charter and greater detail can be accomplished.

Ordinances and resolutions may deal with such areas as administering blanket purchase orders, counter-signatures on checks, depositories for funds, and credit card control. Again, local ordinances can be instructive for the uninitiated. Although they have little of the appeal found in best seller novels, they should be regarded as required reading for the novice elected official. And, a refresher reading by seasoned officials is suggested. Although attention has been given to limitations on the authority of local governments and their elected officials in the foregoing, much still remains as discretionary authority to be exercised by them.

Financial Controls – Internal Management

After the city or village council has approved the annual budget and allocated funds for specific purposes, financial controls should be in place to assure compliance with the council's wishes, as well as compliance with laws, charters, and ordinances. These controls include an accounting system from which regular financial reports are extracted and transmitted to managers, administrative

officers, department heads, and the governing body for review and examination. Charters and ordinances of some units require monthly financial reports, others quarterly.

In reviewing these periodic reports, elected officials should first determine if the reports permit them to carry out their responsibilities. Does the report provide budget allocations as approved and expenses as they are incurred to date? Are any budget allocations over spent? Are there allocations not being used? Is it necessary to reallocate funds to provide services as planned? Is the rate of expenditures in some budgetary accounts such that they will be over expended by the end of the fiscal year?

Financial reports can also be used as strategic planning tools. They provide opportunities for mid-year budget reviews and planning sessions. As a starting point for the preparation of the next budget, councils can review progress of current projects and programs. They can also provide input for the planning and funding of projects in the next year of the capital improvement plan.

Finally, internal financial controls should reduce opportunities and temptations for fraud or embezzlement. Separating duties of employees and mid-level administrators is sometimes necessary. It is wise to have checks signed and counter-signed by persons from two separate lines of authority such as the treasurer and the clerk. Internal controls should be examined periodically by the independent auditor to keep systems updated with current technologies, especially in automated environments.

The Independent Audit

The annual report of the independent auditor is provided especially for the governing body of the local unit of government. It is intended to provide an independent review of financial management practices of the local unit by professional public accountants. The state requires an audit either annually or biannually, depending on the size of your municipality. Certain funding sources (e.g. federal funds, grants,

state money, etc.) may also require an annual audit.

The audit report provides opinions of the auditor as to whether:

- financial management practices are being conducted according to generally accepted accounting principles;
- financial reports are presented fairly and accurately; and
- financial management has complied with applicable laws and regulations.

The auditor may provide a management letter which provides opinions on potential problems with financial systems and controls. The letter may also provide suggested improvements. Comments on the opinions and suggested improvements by the chief administrative official or manager should be provided to the elected governing body. As part of the normal services of the independent auditor, tests of financial controls should be conducted to assure adherence to laws and regulations. Such tests should also be designed to uncover weak systems which may provide opportunity for fraudulent behavior including embezzlement.

It is impractical to pay for tests of all such control systems annually. It is suggested, however, that the auditor independently and without prior knowledge of municipal officials, select one or two aspects of the system to test. For example, the auditor may select to examine a random sample of all checks issued for purchases of items having a price range of \$1,000 to \$5,000 for compliance with purchasing regulations and ordinances. By annually selecting a limited number of test subjects in addition to those for which potential problems are apparent, continued improvements in these systems can be expected.

By now you have probably concluded that financial aspects of the tasks of local elected officials aren't getting any easier and they are growing in importance. Good financial planning and management is a way of life. Good, sound systems and practices are the product of a series of decisions over a period of years. They are not the product

of a short-term budget crunch or a financial crisis with quick-fix solutions. The task is to make thoughtful policy decisions with a view toward continual improvements over a period of time.

Local elected officials should always seek advice and counsel from their chief financial officer, assessor, manager and municipal attorney when embarking upon changes of policy and practices in the conduct of the financial affairs of their local government.

Chapter provided by **A. Frank Gerstenecker**, retired city manager and former consultant for the League's Executive Search Service.

And –

Reid S. Charles, who has served in various management and planning positions in local government, and lectured and taught courses on planning and municipal finance.

Section 4: Finance

Chapter 19: Budgeting

The annual budget is the most significant of all policy-making opportunities available to local officials. Used wisely, the budget process can achieve the goals and objectives of the city or village and assure the delivery of the services expected by the citizens.

Focusing on the budget as a policy document allows elected officials to avoid the temptation to deal only with those items with which they may feel most comfortable—line item details of office supplies, for example—and concentrate instead on basic policy issues.

Budgeting often takes two forms. The first is the operating budget dealing with short-term, year-after-year matters. The second is the capital budget for long-term, non-recurring expenses.

The Operating Budget – A Plan for Day-to-Day Operations

Section 15 of the Uniform Accounting and Budgeting Act requires cities and villages to adopt a balanced budget (expenditures cannot exceed revenues) prior to the beginning of each fiscal year. The Act, however, does not specify the format of the budget for either the general fund (operating budget) or any special or enterprises funds your community may use. Local governments are also required to set the millage rate required to cover the anticipated expenditures for the year, as well as to establish the necessary fees and charges for various services.

Common Budget Formats

There are several budget formats available for use by local governments. The most basic is the line item budget. Other budget formats have been developed to assist legislative bodies in establishing policies rather than counting paper clips, the most common being the program budget, program

performance budgeting (PPBS); management by objectives (MBO); and zero based budgeting (ZBB). It is also possible to combine one or more of these formats.

- **The line item budget** divides expenditures into administrative categories such as salaries, contractual services, office supplies, postage, etc. This type of budget is easy to prepare, but makes it difficult to determine if goals are achieved or if programs are adequately funded.
- **The program budget** presents expenditures by program along with a narrative description of the services to be provided. Each program budget is composed of line item amounts. For example, a municipality may decide to initiate a street sweeping program. The entire program is presented including line item allocation of the costs required to support the program. While a program budget is more complex to prepare, it allows the council to view and evaluate the merits and costs of each program.
- **The program performance budget (PPBS)** shows the relationship between the dollars spent and units of service performed to determine a cost per unit (e.g., cost per mile of street swept). This is the most complex of all types of budgets to prepare and unit costs for some services are difficult to measure (e.g. cost per crime prevented by a crime prevention bureau). However, it is useful in assessing the relative success of each program. Once again, line item allocations of the costs must be made.
- **The management by objectives budget (MBO)** allows the identification of specific programs or objectives to be accomplished during the budget year. This approach will allow the management to establish target dates

- and costs for specific objectives and provide a means for the legislative body to measure the performance of the various departments and the management structure.
- **Zero based budgets (ZBB)** require each department to examine its programs by requiring justification for every dollar requested. Because of its somewhat complicated nature, ZBB should only be used on a limited basis.
- Of the foregoing types of budgets, the program budget is often the most useful and practical for local officials. It clearly outlines the purposes for which funds are being proposed and it encourages a policy-making approach to budgeting. Many local governments will use parts of all the budgeting types, adapting each to the needs of the community. Regardless of the overall budget format used, it is necessary to prepare line item detail for each section.

Revenue Sources

An important step in the budget process is to determine, as accurately as possible, the amount of revenue available for the upcoming fiscal year. Revenue sources for the operating budget are closely regulated by state law and local charter. Special items of income vary among local units of government. Revenue sources for general operating budget purposes include:

- property taxes (controlled by law and charter);
- City income taxes;
- licenses and permits (building, plumbing, heating, electrical, air conditioning, occupancy, amusements, etc., controlled by ordinance);
- intergovernmental (state shared revenues, Act 51 monies, grants such as CBDG, Clean Michigan, etc.);
- charges for sales and services (engineering review fees, plan review fees, etc.);
- fines and forfeitures (drug forfeiture proceeds, library book fines, and penal fines);
- interest income; and
- miscellaneous.

Of those revenue sources on the list, local elected officials have much discretionary authority in all except property taxes, city income taxes, and intergovernmental revenue sources.

A city income tax is currently imposed in 22 Michigan cities, ranging in population from 1,884 (Grayling) to 713,777 (Detroit). Again, as is the case with property tax, state statutes closely control the creation of revenues from this source through the Uniform City Income Tax Act (1964 PA 284). As amended, the Act now provides:

- Newly imposed city income taxes must receive voter approval.
- The tax may be imposed on residents, non-residents earning income in the city and the income of corporations earned in the taxing city.
- Limits on the rate of taxation (percent of income) permitted based upon the size of the city and other criteria.
- Exclusion of certain types of income from the tax.

Intergovernmental revenues are a constant concern for local officials as the formula for the statutory portion of revenue sharing is subject to change by the state legislature and to reduction by executive order of the governor. The same is true for grants from both the state and federal government, as well as Act 51 monies.

Expenditures

Public expenditures are the amounts paid by the municipality for the services required by the residents and businesses of the city or village. Under state law, all public expenditures are to be only for public purposes. Generally, allowable expenditures fall into the following categories:

- general government (council, manager, finance, clerk, etc.);
- public safety (police, fire, code enforcement and inspections, etc.);
- public works (streets, drains, sidewalks, engineering, water and sewer, etc.); and
- leisure services (parks and recreation, library, museum, etc.).

The Capital Budget—A Longer View

The capital budget provides funding for non-recurring expenditures such as construction and acquisition of buildings, infrastructure, facilities, and equipment. These expenditures are “lumpy,” non-repetitive, and may span several years for project completion or acquisition.

The capital budget is another annual plan of revenues and appropriations. It is a document adopted by the local legislative body and having the force of law as a legally binding allocation of funds. It often represents the first year of a multi-year capital improvement program.

Revenue sources for the capital may include any of those for the operating budget plus other sources for long-term capital improvements:

- special assessments;
- fees charged for construction;
- major road funds, Act 51—gas and weight taxes,
- local road funds, Act 51—gas and weight taxes;
- enterprise fund allocations from water, sewer, and other utilities; and
- bond proceeds from issues by the local governing body and any of the authorities created by it (e.g., building authorities, downtown development authorities, housing authorities).

Capital budget expenditures for property acquisition, construction and equipment usually include allocations to provide facilities for the operating departments of the local unit. Most of these are easily recognizable:

- general public works (streets, drains, water, sewer, sidewalks, lighting, motor equipment pool);
- police (equipment, vehicles, facilities),
- fire (equipment, apparatus, station houses);
- parks (land acquisition, recreation centers, play fields, athletic equipment, nature trails, etc.); and
- library and museum (buildings, furnishings, and equipment).

When considering capital expenditures for new facilities, budget makers must keep in mind the need for operating funds to place the new building or facility into operation. The need for additional employees, costs for heat, lighting, water, telephones and so on are appropriate concerns of those with budget making authority.

The capital improvement program (CIP) is among the most important policy planning tool available to local budget makers.

The CIP provides a longer-range schedule for the community’s major capital projects year-by-year. The Michigan Planning Enabling Act of 2008 (MPEA) requires that the CIP must project at least six years into the future: the first year of the CIP should be the upcoming budget year for capital budget allocations. Each operating department is expected to be represented in the CIP, and the task of the budget makers is to make sure the year-to-year estimated costs are within the financial capacity of the local unit.

Used properly, the CIP provides a systematic approach to financial planning so that budget makers can weigh the relative priority of these projects, build up funds for plan ahead for major investments, or undertake multi-year projects. This planning may include:

- increases in operating costs for new facilities;
- acquisition of rights-of-way;
- contributions to other authorities;
- special assessment projects; and
- bond issuance planning.

The CIP can also provide opportunity for a systematic approach to preventive maintenance and the rebuilding of facilities and infrastructure. Scheduling of heavy preventive maintenance and rebuilding will often extend beyond the required 6-year CIP time span, making a longer planning horizon appropriate for some projects. For example:

- concrete streets—joint grouting and resealing plus selective slab replacement—seven-year cycle,
- concrete sidewalks—leveling and flag replacement—five-year cycle,

- water distribution system—system replacement—20 to 30 year cycle or
- public buildings—plumbing, heating, electrical system updates—20 to 30 year cycle.

Under the MPEA, the planning commission is responsible for preparing the CIP annually and submitting it to the legislative body for final approval, unless exempted by charter or otherwise. The planning commission should coordinate with the chief executive official (e.g. village president or manager) to compile projects from each department or operating unit within the village into the CIP. Each year, the CIP should be updated to maintain the minimum 6-year planning horizon, and to review and adjust the planned projects for each year based on changing budgetary conditions. This process provides an opportunity for the planning commission to consider projects against the adopted master plan for the village, ensuring that major investments best support the community's long-range goals.

Capital improvement programming is essential for the long-term wellbeing of the community. The importance of this part of municipal finance cannot be overstated.

For More Information

Sample budgets, budget policies and ordinances are available through the League's Resource Center, by emailing info@mml.org.

Chapter based on materials provided by **A. Frank Gerstenecker**, retired city manager and former consultant for the League's Executive Search Service.

Michigan Planning Enabling Act (ACT 33 of 2008) CIP requirements:

The capital improvements program shall show those public structures and improvements, in the general order of priority, that in the planning commission's judgment will be needed or desirable and can be undertaken within the ensuing 6-year period. The capital improvements program shall be based upon the requirements of the local unit of government for all types of public structures and improvements. Consequently, each agency or department of the local unit of government with authority for public structures or improvements shall upon request furnish the planning commission with lists, plans, and estimates of time and cost of those public structures and improvements. The planning commission, after adoption of a master plan, shall annually prepare a capital improvements program of public structures and improvements, (unless the planning commission is exempted from this requirement by charter or otherwise). If the planning commission is exempted, the legislative body shall either prepare and adopt a capital improvements program, separate from or as a part of the annual budget, or delegate it to the chief elected official or a non-elected administrative official, subject to final approval by the legislative body. (MCL 125.3865)

Section 4: Finance

Chapter 20: Purchasing

Introduction

Purchasing departments exist to help governments manage their finances by making the best expenditure decisions possible. Elected officials have an important responsibility to monitor the finances of their organizations, part of which includes approving purchase transactions. There are several ways that the legislative body can support purchasing activity. First, the council establishes the vision for the organization, setting the tone for the day-to-day activities, as well as the ethical standards for the organization. Elected officials can set meaningful rules regarding fairness and open competition and work to keep these rules current. Finally, councils can support professional development and technological improvements.

This chapter will provide an understanding of the public purchase process through a review of enabling legislation and a discussion of the day-to-day aspects of the operation.

State Statute

There are no longer any state statutes requiring public bids on municipal contracts. 1993 PAs 167 & 168 which required municipalities to seek competitive bids for purchases over \$20,000 in order to receive state shared revenue money, were repealed in 1996. The state has relegated the task of developing public purchasing guidelines to local governments.

Charter Provisions

Local government officials must look to their charter for purchasing guidelines and restrictions. A charter may establish who is responsible for purchasing (such as the manager or administrator) and also include the maximum dollar amount that can be appropriated before advertising for competitive bids. Other local control

mechanisms for the allocation of municipal funds are through ordinances and policies. In recent years, in order to set more realistic spending limits, some municipalities have amended their charters (which requires review by the governor and a vote of the electors) to allow the purchasing function to be legislated by local ordinance.

Local Ordinances

Legislation has a major impact on the services that can be provided to residents. The activities conducted in public procurement are restricted to those authorized by law. Therefore, many public entities have an ordinance that defines important parameters of the purchasing process. Well-written legislation will allow the purchasing department flexibility in using criteria in addition to price as evaluation tools. This ordinance may discuss how responsibility for the purchasing function flows. For example, the ordinance may state that the organization's executive branch (manager, mayor, administrator, etc.) may enter into contracts based on the recommendation of the purchasing director with approval of the legislative body for certain dollar limits.

Ordinances will vary in the level of detail included. Some will establish a dollar amount for obtaining both written bids and legislative approval for purchase transactions; advertising requirements; and outlining the circumstances in which competitive bidding is not required. Ordinances may further detail specific responsibilities of the purchasing function such as encouraging competition; promoting standardization in the use of like products throughout the organization; barring vendors from bidding opportunities; and disposal of obsolete property. Some organizations have socially motivated buying policies, such as local preferences or disadvantaged business

programs.

In these cases, authorization for such programs will often be addressed within this enabling legislation.

Cradle to Grave Philosophy

Professionally staffed purchasing departments follow the “cradle to grave” philosophy. In other words, a purchasing department is responsible for obtaining all of the products and services needed by the organization at the right time, for the right price and in the right quantity (*cradle*). Purchasing should redistribute property, equipment and other resources among departments when necessary (*mid-life*). Finally, purchasing is responsible for disposing of the organizations’ assets once they have become obsolete and of no further use (*grave*).

The purchasing process begins with the adoption of the budget, which is the organization’s fiscal plan for the year. The budget document provides purchasing with information about upcoming capital projects, equipment and service needs, as well as daily operating supply item needs. Purchasing uses this financial perspective to plan the timing of purchase transactions and to combine the needs of several departments with the overall goal of taking advantage of quantity discounts.

The budget document can be used by purchasing to prepare a procurement calendar. This calendar is a plan for bidding all capital and recurring operating supply needs. The calendar helps purchasing meet the entity’s needs using an organized approach. The purchasing calendar, in conjunction with the budget, permits the organization to spread its expenditures throughout the fiscal year.

The next step involves developing specifications or an exact description of the product or service needed. This may be done by the end user, the purchasing department, an outside consultant if the item is complex in nature, or it may be a group effort. Purchasing reviews the specifications for completeness and clarity, and makes sure this description is open to competition and

not restrictive in nature. Competitive bidding has long been recognized as one of the best avenues to insure a healthy and equitable public purchasing process (*Public Procurement Management, First Edition*, NIGP, Herndon, VA 2000).

The specifications are combined with the appropriate terms and conditions into a bid document and are advertised in the local press and distributed to suppliers that are able to respond. Advertising is an expense, which in lean economic environments, may be considered expendable. It is important to note that posting public notices of purchase transactions is an essential component of maintaining an exemplary and inclusive process.

Bidders are informed of the date, the exact location, and the time of day responses must be submitted (often referred to as the bid due date or bid opening date). This is critical information in that if this deadline is missed, bidders run the risk of their bids not being accepted. In general, bids are submitted to the clerk’s office or some other area independent of the purchasing or requesting department. They are time-stamped and held in a secure location until the time of the scheduled bid opening. Such precautions help protect the integrity of the bid process by reducing the possibility of bid tampering. Bid openings are conducted in public and vendors are encouraged to attend and take advantage of the opportunity to review the responses submitted by their competitors.

Companies and their respective responses are evaluated to determine the lowest responsive and responsible bidder. This allows for a review of the product, its pricing and compliance with the specifications (*responsive*), as well as the offering firm’s financial standing, references and experience (*responsible*). Although price is always of primary concern, a vendor that delivers a quality product on time may prove to offer a lower overall product cost.

After the evaluation process, the purchasing transaction will be submitted to the legislative body for approval in accordance with the dollar limits set within

the charter, ordinance, or policy. Transactions below the specified limit will be approved administratively.

Purchasing departments are typically responsible for disposing of the organization's obsolete assets. Property disposal can be handled as a trade-in allowance toward the purchase of a new piece of equipment, using a sealed bid process or by conducting a live auction often with a professional auctioneer. The evaluation standards work in reverse of the purchase process, i.e., the highest bidder is selected.

Purchasing as a Corporate Citizen

Purchasing has a responsibility to and relationship with both internal and external customers. It often functions as an ambassador to the business community while at the same time working to protect the organization's interests. The purchasing department has a responsibility to its suppliers to be fair, accessible and to conduct its business with integrity.

Its internal customers are the employees that rely on purchasing to acquire the products and services needed to carry out their work. Purchasing works closely with the corporation counsel to make sure that policies, procedures, contracts, etc. properly protect the organization while being fair to vendors. The department has an impact on the municipality's financial health by fostering competition and making sure it pays a fair price for products and services. These efforts serve to instill behaviors that project the organization as business-friendly and well managed.

Trends

As with other areas, the impact of technology on the public purchasing arena has been substantial. Purchasing has incorporated technology into its processes in several ways. First, it is common for purchase orders to be generated using a software package specifically designed for this purpose, automatically routed through the approval process, and sent to the vendor electronically.

Another example is the use of the internet. Purchasing professionals can research products, locate distributors, and receive timely information online. Many public organizations have a website which can be used as a mechanism to reach a wider pool of vendors. Information can be posted to the internet on doing business with the organization as well as a list of currently available bid opportunities. Websites can be used as an alternative bid document distribution method. Rather than incurring duplicating, envelope insertion, and postage costs, bids can be generated electronically and posted to the website. Interested vendors can print these documents as needed.

Some advanced technology applications allow vendors to submit bid responses to the organization electronically while still following the established bid security procedures. Some departments are moving away from the practice of maintaining vendor databases and are placing the responsibility of researching opportunities on the business community.

Cooperative purchasing arrangements are another emerging trend. The concept behind cooperative buying is to seek and obtain the best deal possible by buying in volume. These arrangements cover the spectrum from being formal, dues paying groups to having informal alliances that meet on an as-needed basis. In order to be successful, members must agree on the types of products that can be of use to the group and incorporate the flexibility for each organization to fine tune its needs into the specifications.

Conclusion

The public purchasing process is conducted in accordance with the organization's enabling legislation, in an open, accessible, and competitive manner. Technology should be used to expedite the process, enhance the routine aspects of the operation and to conduct research.

A well run, professional purchasing operation reflects positively on the entire organization. As an elected official, you can encourage suppliers to contact the

purchasing department knowing they will be treated fairly. Taxpayers can be informed that their money is being handled responsibly.

Chapter provided by **Rae Townsel**,
purchasing agent for the city of Southfield..

Section 4: Finance

Chapter 21: Financing Capital Improvements

Few municipalities have cash resources to finance facilities with large price tags and long life, such as a new municipal office, a new water treatment facility, a new civic center, or other long term capital improvements. Most must incur debt in the form of a bond issue to finance such improvements and facilities, similar to the home buyer who must incur debt in the form of a mortgage.

The incurring of debt by a municipality should be considered among the most serious of all courses of action available to a village council. Indeed, state statutes and administrative regulations require local authorities to follow certain procedures and processes prior to issuance of most debt.

Bond Issuance and Notes—Incurring Debt

Notes

Notes are instruments of debt having shorter duration than the term of bonds. Notes may be issued for bridging short lapses of time between the date of need for an expenditure and the date when budgeted revenues are available.

The most common of these are tax anticipation notes (TANs) which may be issued for operating or capital improvement purposes. These notes are essentially a promise to pay the lender, usually a local bank, from tax revenues anticipated during the current or next succeeding fiscal year.

Amendments to the Municipal Finance Act (2001 PA 34) have provided cities and villages with additional tools and allow the issuance of short-term debt for the planning and engineering costs for capital improvements. As a result of these amendments, cities, villages, counties, and townships are able to issue bond anticipation notes (BANs), grant anticipation notes (GRANs) and revenue anticipation notes (RANs) in anticipation of funds from these bonds, grants, and revenue sharing, respectively. However,

there are limitations on the amount of short-term debt that can be issued in relationship to the amount of the grant, revenue sharing, or bond issue. Prior to the issuance of these notes, the municipality is encouraged to contact its financial advisor and/or bond counsel to insure compliance with state law.

Energy conservation notes may be approved for issuance for periods not to exceed ten years. Use of proceeds from such notes is limited to financing improvements resulting in energy conservation.

Installment sales contracts are permitted by 1933 PA 99 (Purchase of Lands and Property for Public Purpose) for installment periods not exceeding 15 years or the useful life of the property being acquired, whichever is shorter. Installment contracts may be used for acquisition of land, equipment or property. Approval by the Michigan Department of Treasury and vote of the electorate are not required.

Bond Issuance

Long term municipal debt is most often incurred in the form of bond issues. Most are issued as tax exempt bonds but municipalities may be, under certain circumstances, required to issue taxable bonds. Interest income received by the buyer or holder of the tax-exempt bond is not subject to federal, state, or local income taxes. This creates a higher demand for tax-exempt bonds and issuing municipalities realize great savings in interest costs. This also reduces income tax revenues returned to the various units of government.

Financial experts and statutes have given titles to various types of bond issues which reflect the quality of the issue.

General obligation (GO) bonds are the highest quality because they pledge the taxing capacity of the municipality to retire the bonds and pay the interest on them. There are two

types of GO bonds, discussed below. Revenue bonds on the other hand, have a lower quality because only the revenues from service fees and charges for use of the system (e.g. water, sewer, electric, parking, etc.) are available to pay principal and interest on the issued bonds.

Unlimited tax general obligation (UTGO) bonds, or voted GO bonds are bonds for which the electorate has pledged to tax themselves an amount which is sufficient to retire the bonds and pay interest on all that are outstanding. That is, the local taxing authority is not limited in the amount of taxes that can be levied to retire the bonds and pay interest in any year. The electorate must vote to approve the issue prior to the issuance of the debt.

Limited tax general obligation (LTGO) bonds or non-voted GO bonds are bonds for which the authority to raise taxes to pay principal and interest with bonds is limited to the maximum amount of taxes that the municipality is permitted to levy by state law and the local charter. The electorate has not approved the issue nor given specific authority to be taxed above the level authorized by law or charter to pay principal and interest on the issue.

With special assessment district (SAD) bonds, payment of principal and interest is assured by pledging revenues from collection of special assessments and interest thereon.

Revenue bonds are used to finance municipal operations which are characterized as being self-supporting and having their own revenue source such as service fees (e.g., sewer and water systems, golf courses and recreation facilities, parking garages, and auditoriums). Revenue bonds are retired with revenue produced from the facility or other service fees.

Villages may issue **Michigan Transportation Fund bonds** and pledge a portion of their statutory share of transportation funds to pay principal and interest on the bonds.

A city or village may issue **intergovernmental contracts and authority bonds** if they enter contracts with counties and authorities to have a facility (water system, sewer system) built and leased to the operating city or village, which pays rent on the facility in sufficient amount to pay debt service costs on the bonds issued by the county or authority. Local building authorities, which will be

discussed later in this chapter, provide an example of such an authority.

The county drain commission may issue **county drain bonds**—bonds for drain and sanitary sewer system improvements and apportion the cost for debt service among the cities, villages, and townships which benefit.

Tax increment bonds—Tax increment financing (TIF) through the creation of TIFAs, LDFAs, and DDAs which may issue TIF bonds, are discussed in depth later in the chapter.

Amendments to the Municipal Finance Act also created **capital improvement bonds**, which may be issued for any “depreciable asset” as Limited Tax General Obligations (LTGOs) of the issuing municipality. This type of bond issue is subject to the right of referendum, as are several of the other types of bond issues discussed above, and is payable from the general taxing powers, subject to statutory and charter limitations, of the issuing municipality and/or other revenue sources.

There are pitfalls in incurring bonded indebtedness. Scarce resources are consumed by interest and principal costs and the cost of issuance. For example, debt service costs over a 15-year bond issue could be more than double the cost of the facility. Costs over a 30-year issue could be more than triple the initial cost of the facility or project. And, as infrastructure and facilities age, costs of repair and maintenance accelerate. Continuing debt service costs mitigate against the allocation of sufficient funds for current maintenance requirements.

Special Financing Tools for Development/Redevelopment

Cities and villages are the crucible for fostering development and redevelopment. Realizing this, the state legislature has enacted permissive legislation to assist cities and villages with this purpose.

- **Housing authorities** and building authorities are possibly the oldest of these special development entities, having been created by legislation in 1933 and 1948, respectively. Housing authorities were permitted for the purpose of eliminating detrimental housing conditions through acquisition, construction, and ownership of

housing. Municipalities may create housing authorities and incur debt for housing purposes.

- **Building authorities** may, among other things, acquire, own, construct, operate, and maintain buildings, recreational facilities, parking garages, and so on for any legitimate public purpose of the municipality. They can incur debt through bond issues and lease the resultant facility back to the municipality with rental income to pay the principal and interest on the bonds. Upon final retirement of the bonds, the authority would convey the property to the municipality. Michigan cities and villages have made widespread use of this financing technique. However, it should be noted that the capital improvement bonds discussed above could eliminate the issuance of building authority bonds.

Special Financing for Economic Development

Cities and villages often need special financing tools to complete projects designed to preserve their economic health. Several Michigan statutes allow municipalities to create specialized organizations for use as economic development tools. The chart the end of this chapter compares these organizations.

Four of these organizations are able to use tax increment financing revenues (TIF). In the simplest terms, TIF is the capture of the increase in property tax revenue in a defined district to fund capital improvements in that area.

- **A downtown development authority (DDA)** may be created to halt property value deterioration, to increase property tax valuation in the business district, to eliminate the causes of deterioration, and to promote economic growth.
- **A tax increment finance authority (TIFA)**, available prior to 1989, has been replaced by the LDFA; no new TIFA may be created, and the boundaries for an existing TIFA cannot be expanded. As of 2011, transit-oriented development and transit-oriented facilities are allowable activities by TIFA's.

- **A local development financing authority (LDFA)** may be created to encourage local development, to prevent conditions of unemployment, and to promote growth. In 2011, transit-oriented development and transit-oriented facilities became allowable activities by LDFA's.
- **A brownfield redevelopment authority (BRA)** may be created to clean up contaminated sites, thus allowing the property to revert to productive economic use. In 2011, transit-oriented development and transit-oriented facilities became eligible to be used by BRA's.
- **A corridor improvement authority (CIA)** may be created to redevelop a commercial corridor and to promote economic growth. In 2011, transit-oriented development and transit-oriented facilities became eligible to be part of CIA's. In addition, municipalities can now set up transit TIF districts that do not require a community to wait for opt-outs of tax capture from other governmental units (counties, libraries, community colleges, etc.).

Three other types of organizations your community may find useful, although they cannot use tax increment financing revenues, are:

- **An economic development corporation (EDC)** may be created to alleviate and prevent conditions of unemployment and to assist industrial and commercial enterprises. In 2011, transit-oriented development and transit-oriented facilities are now part of the list of enterprises for which a project may be undertaken in the Act.
- **A principal shopping district (PSD)** may be created to develop or redevelop a principal shopping area and to collect revenues, levy special assessments, and issue bonds to pay for its activities.
- **A business improvement district (BID)** may be created to develop a more successful and profitable business climate in a defined area, and to collect revenues, levy special assessments and issue bonds to pay for its activities.

Tax Abatement Programs

In 1974, the Legislature decided to encourage economic development by providing for reduced property tax assessments for specifically selected business projects which were yet to be

developed. The Legislature adopted 1974 PA 198 (Plant Rehabilitation and Industrial Development Districts Act), which

Summary of Economic Development Tools

	DDAs	TIFAs	LDFAs	BRAs	EDCs	CIA	PSDs	BIDs
Authorized municipalities	Cities, villages and townships	Cities	Cities, villages and urban townships	Cities, villages and townships	Cities, villages and townships	One or more cities, villages, and townships	Cities with designated principal shopping district(s)	One or more cities with an urban design plan
Limitations	One per municipality	No new areas established after 1989	One per municipality	Industrial or commercial property	Industrial area	Established commercial district adjacent to arterial or collector road with size and use restrictions	Commercial area with at least 10 retail businesses	Commercial or industrial area with boundaries established by city resolution
Requirements	Deteriorating property values	Deteriorating property values	Industrial area	Environmental contamination	Industrial or 501(c)(3) nonprofit	10 contiguous parcels or 5 acres; mixed-use; water and sewer available	Designated as a principal shopping area in master plan	Designated as a BID by one or more cities by resolution
Eligible projects	Located in DDA district with approved DDA/TIF plans	Within defined TIFA area	Public facility to benefit industrial park	Environmental cleanup	Issue bonds for private industrial development	Improvement of land and to construct, rehabilitate, preserve, equip or maintain buildings or facilitate transit in the area	Improve highways and walkways; promotion; parking, maintenance, security or operation	Improvement of highways and walkways; promotion; parking, maintenance, security or operation
Funding sources	TIF from District; millage	TIF from plan area	TIF on eligible property	TIF; Revenue Bonds	Tax exempt bonds	TIF, special assessments, bonds, fees, donations	Bonds, special assessments	Bonds, special assessments, gifts, grants, city funds, other

was the first of three acts enabling abatement of part of the tax burden for impending business investments in facilities and equipment.

PA 198 provides for a reduction of the assessed value of qualifying projects for up

to 12 years at the discretion of local governing bodies.

The cost of renovations or rehabilitation may be entirely exempt from increases in assessed value for property tax purposes. Thus, taxes on costs of renovation or

rehabilitation could receive abatement of 100 percent. Taxes on new building and equipment could be abated no more than 50 percent. Personal property and real property, excluding land, are eligible for abatement if the intended use is for manufacturing, research and development, parts distribution and warehousing.

Abatements for commercial property, granted by 1978 PA 288, became very controversial, and by act of the Legislature no new commercial abatements were permitted after December 31, 1985.

Stimuli for development of high technology enterprises attracted legislative interests and in 1984 PA 385 (Technology Park Development Act) enabled municipalities to create one “technology park district” having a minimum of 100 acres of vacant land near a public university. Like the preceding Acts, abatement could not exceed 50 percent for a maximum of 12 years.

PA 266 of 2003 allows for creation of Tool and Die Renaissance recovery zones, where eligible businesses can be granted virtually tax free status for up to 15 years. The state is responsible for designating the zones, but local governments must approve them.

Briefly, the abatement process involves creation of a district, receipt of applications in a form acceptable to the State Tax Commission, local approval of the exemption certificate and state approval of the exemption certificate.

Some of the foregoing development/redevelopment initiatives provide financing through the issuance of tax-exempt bonds discussed earlier.

Chapter provided by **Robert C. Bendzinski**, president of Bendzinski & Co., Municipal Finance Advisors, established to provide financial advisory services to municipalities since 1977.

Portions of this chapter are adapted from materials prepared by **A. Frank Gerstenecker**.

Section 4: Finance

Chapter 22: Special Assessments and User Charges

Municipalities often raise funds for special purposes by imposing special assessments or user charges as an alternative to imposing a tax. All three financing mechanisms have elements in common, and distinguishing one from the other is not always a simple matter. Any assessment or user charge not properly imposed, however, will be construed as a tax, which must satisfy different requirements for validity.

While a *special assessment* bears some of the characteristics of a tax, it differs in that a special assessment may be levied only on land and may be imposed only to pay the cost of an improvement or service by which the assessed land is specially (as opposed to generally) benefited.

In contrast, a broadly imposed *tax* yields a general benefit to the community with no particular benefit to any person or parcel.

Generally, a *user charge* is the price paid for a service provided based directly on the value of the individual use of the service or benefit. Although a municipality may impose a *tax* whether or not the taxpayer particularly benefits from the purposes served by the tax, and may *specially assess* parcels which do particularly benefit from an improvement, it may impose a *user charge* only on individuals actually served. While the improvements made with a special assessment generally must increase or maintain the value of the lands specially benefited, the services which are the subjects of rates and charges do not necessarily have that effect. The value to one user may be greater than another depending on individual needs and consumption.

In *Bolt v City of Lansing*, the Michigan Supreme Court developed a test for user charges. In order to avoid classification as a

tax, a user charge must “serve a regulatory purpose rather than a revenue-raising purpose.”

Rates and charges must also bear a direct relation to the cost of providing the service to the ratepayer. A fee designed to raise revenue for general public services in addition to covering the cost of providing the service which is the subject of the fee is actually a tax. A fee designed to raise revenue from a broad range of users of a system to pay the cost of an improvement to a discrete part of the system which will benefit only a smaller group of users may also be considered a tax.

Revenues derived from user charges (or assessments) must be segregated from other municipal funds and applied solely to the expenses of providing the service or the improvement. The expenses of providing the service may include some indirect costs of providing the service.

Special Assessments

Authority

To impose a special assessment, a municipality must first have the statutory authority to make the improvement or provide the service for which the assessment will be imposed. Second, the municipality must have the statutory authority to assess for that type of improvement or service.

Special assessments may be imposed for many types of improvements and even services for which specific statutory and other local implementing authority is found. Typical subjects of special assessments are street improvements, including paving, curb, gutter and sidewalk improvements, and water and sewer improvements. In addition to statutory authorities, city and village charters and special assessment ordinances,

if any, should be reviewed as sources of authority.

Where statutory authority exists, municipalities will often finance an improvement through the issuance of bonds in anticipation of special assessments, secured primarily by the assessments and secondarily by the general fund of the municipality.

Basic Requirements

The lands proposed to be specifically assessed comprise a special assessment district. The assessments are apportioned among the landowners in the district. Assessments may be required to be paid in a single payment or in multiple installments. Interest may be charged on unpaid installments.

An improvement which reduces property value may not be specially assessed. Further, the benefit conferred by the improvement may not be disproportionate to the cost of the improvement, i.e. the cost of the improvements may not exceed the anticipated increase in the value of the property resulting from the improvement. Although this proportionality may “not require a rigid dollar-for-dollar balance,” the cost of the improvement must reasonably relate to the increase in value in order to avoid an unconstitutional taking of property.

No specific method of apportioning the cost of an improvement is required, provided that the method selected is fair, just, equal and proportionate to the benefits conferred.

Key Procedures

Procedural requirements vary widely depending on the particular statute, charter or ordinance involved. The following are key elements to any assessment process:

1. petitions,
2. hearings on necessity and the apportionment of the assessment, and
3. notice
 - content
 - nature, location, cost of improvements

- apportionment of cost
- opportunity to object and appeal
- dissemination
 - publication and mailing
 - timing.

Enforcement

Once confirmed, assessments may become a lien on the assessed property.

User Charges

Subjects and statutory authority

The Revenue Bond Act of 1933, provides the principal statutory authority for the imposition of rates and charges for the “service, facilities and commodities furnished by... public improvements.” It authorizes any public corporation to purchase and acquire one or more public improvements; to own, operate and maintain the same; to furnish the services of such public improvement to users within or without its corporate limits; to establish by ordinance such rates for services furnished by the public improvement as are necessary to provide for the payment of administration, operation and maintenance of the public improvement so as to preserve it in good repair and working order; and to provide for the debt service, if any, on bonds issued to finance the improvement providing the service.

Other statutes and local charters provide additional authority. Municipalities regularly impose rates and charges for a variety of services.

Rate Ordinances

Municipalities impose user charges by adopting a rate ordinance governing a particular service or range of services. The ordinance should set forth the purpose of the ordinance, the service provided, the rates to be imposed and the various classifications of users, the timing and method of billing and payment, penalties for nonpayment and other enforcement provisions. To meet the *Bolt* standard described below, the ordinance should make a serious attempt, to relate the user charge to a regulatory scheme.

Ordinances may also address a broader and

more detailed range of subjects, including regulations governing the use or provision of the service and licensing issues. Various grant making and regulatory authorities may require the use of a particular form of rate ordinance as a condition for approval.

Standards in Ratemaking: The *Bolt* Test

The Michigan Supreme Court's decision in *Bolt* turned ratemaking on its head. In *Bolt*, the court articulated a new three-part test for determining whether a charge is validly characterized as a fee:

1. it must serve a regulatory purpose,
2. it must be proportionate to the necessary costs of the service, and
3. the user must be able to refuse or limit use of the commodity or the service for which the charge is imposed.

These three criteria are not to be considered in isolation "but rather in their totality, such that a weakness in one area would not necessarily mandate a finding that the charge at issue is not a fee." *Graham v Township of Kochville, supra*, 236 Mich App 141 (1999).

As indicated in *Graham*, voluntariness may be less significant where the elements of regulation and proportionality are strong. Conversely, where the regulatory aspect of the fee is less obvious, the voluntary use of the system may assume more importance.

The method selected for calculating rates and charges must be reasonable and may not be arbitrary and capricious. Substantial evidence preferably set forth in the rate ordinance itself should justify the charges made and the method used.

The *Bolt* court held that user charges must reflect "the actual costs of use, metered with relative precision in accordance with available technology...."

The rates and charges for municipal services must be applied to similarly situated users in a similar way. It is appropriate to distinguish among different classes of users and to apply different rate schedules to each class.

The requirement that rates be uniformly applied is an extension of the overall requirement that charges be proportional to

the value of the services rendered and the cost of providing the service. *Alexander v Detroit* 392 Mich 30 (1974).

Enforcement and Collection

In general, statutes authorizing user charges for services provide that the charges become a lien on premises served. Statutes also commonly allow the municipality to discontinue service for non-payment of the charges.

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Section 4: Finance

Chapter 23: Limits of Municipal Expenditures

Municipalities are frequently requested to make donations to various worthy private organizations. Such organizations include chambers of commerce; hospitals; museums; veterans' organizations; community funds; Boy Scouts, Red Cross; and other educational, promotional, or benevolent associations. Frequently, it is difficult for the legislative body of a municipality to refuse such requests. However, it appears clear from Michigan law that such donations are questionable expenditures of public funds.

Generally, a municipality's power to spend money is derived from the state through the Michigan Constitution and state laws. In addition to specific grants of power, cities and villages with home rule authority are also able to rely on the applicable provisions in the Constitution and statutes for the power to spend on municipal concerns. Regardless of the authority, it is generally held, however, that municipalities have the power to expend funds only for a public purpose.

One test for determining a public purpose is whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public. It should be noted that the public purpose test has also been limited to the provision of services for which municipalities exist and the powers they have authority to exercise. With respect to the question raised, neither the Michigan Constitution nor state law grants to municipalities the power to spend public money on employee parties, gifts, etc. Nor can a good argument be made that the expenditures are for a public purpose. Absent a grant of spending authority, and no clear public purpose defined, the expenditure is most likely illegal. Simply put, a municipality cannot give public funds away.

What Is a Public Purpose?

The Michigan Supreme Court has defined the objective of a public purpose:

Generally a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose....The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private. (*Hays v City of Kalamazoo*, 316 Mich 443, 453-454 (1947))

The following questions may be helpful in determining whether an expenditure is appropriate:

1. Is the purpose specifically granted by the Michigan Constitution, by statute, or by court decision?
2. Is the expenditure for a public purpose?
3. Is the municipality contracting for services that the municipality is legally authorized to provide?
4. Is the operation or service under the direct control of the municipality?

If you can answer "yes" to these questions, the expenditure is most likely appropriate.

Michigan Constitution of 1963

The following provisions of the Michigan Constitution are the basis for municipal expenditures:

Article 7, Sec. 26.

Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose.

Article 9, Sec. 18.

The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution. (Note: This applies to all political subdivisions of the state. *Black Marsh Drainage District v Rowe*, 350 Mich 470 (1958)).

Private Purpose Decisions

Expending public funds for a private purpose under Michigan law is illegal. For over a century, the Michigan Supreme Court has considered the limitations on expending public funds and has been consistent in its rulings. Most involve the relationship of a municipality with private businesses.

1. A contract in which the village of Fenton proposed to expend \$1200 to drain a marsh, improve a highway, and construct a dock in order to induce a certain firm to establish a stave mill in the village, was held invalid. *Clee v Sanders*, 74 Mich 692 (1889).
2. Money from a bond issue could not be spent if it appeared that the purpose of the bond issue was actually to provide a fund for paying bonuses to industry for locating in the city. *Bates v Hastings*, 145 Mich 574 (1906).
3. A city-owned building, which was occupied by a manufacturing company, burned down. The city agreed to pay the insurance proceeds to the manufacturer if it would rebuild the building and occupy it for a term of years. The rebuilding, however, was not done on the city-owned property. It was held that payment of the \$5,000, even though not raised by tax money, was unlawful. *McManus v Petoskey*, 164 Mich 390 (1911).

Public Purpose—but Outside Municipal Control

Most of the above cases involve a purpose which is worthy, but private in nature. There is another line of cases that involves an additional concern. If the purpose for which the funds are expended is

public in nature, *but the operation is not under the control of the city or village which is making the contribution*, it may nonetheless still be an illegal expenditure.

In *Detroit Museum of Art v Engel*, 187 Mich 432 (1915) the Supreme Court ruled that Detroit could not pay the salary of the museum director, even though the city had title to the real estate on which the museum was located and had minority representation on its board of directors. One sentence of the opinion which has been much quoted is:

The object and purpose of relator is a public purpose in the sense that it is being conducted for the public *benefit*, but it is not a public purpose within the meaning of our taxing laws, unless it is managed and controlled by the public.

In more recent cases the *Art Museum* doctrine has been applied on a limited basis. *Hays v City of Kalamazoo*, 316 Mich 443 (1947) involved the validity of the payment of membership fees by Kalamazoo to the Michigan Municipal League. The court distinguished the *Art Museum* case by saying that, contrary to the payment of dues to the League, the transaction with the Museum did not “involve the right of a municipality to avail itself of, and to pay for, information and services of benefit to the city in its governmental capacity.”

In 1957, the Michigan Supreme Court held that Detroit could properly transfer to Wayne County certain city park land to facilitate the construction of a home for neglected and abandoned children. In sustaining the right of the city to assist the project in the manner indicated, the court noted that two-thirds of the population of the county resided in the city of Detroit, and that the proposed institution would provide care for children from within the city. The court held that the city was aiding in the accomplishment of a purpose that it might itself have accomplished directly under its charter. *Brozowski v City of Detroit*, 351 Mich 10 (1957).

Opinions of the Attorney General

There are numerous opinions by the Attorney General regarding municipal expenditures. The following are offered as examples.

- Money raised under the special tax for advertising can be used to advertise the city's advantage for factory location, but not to buy land to be given for a factory, to build a factory for sale or rent, or to give a bonus for locating a factory in the city (1927-28 AGO p. 672).
- In a park owned by the American Legion which had installed a lighting system and held ball games open to the public, it would be unlawful for a village to assume the cost of the electricity used by the park up to \$100 per year, even though the majority of the village taxpayers had signed a petition requesting such payment (1935-36 AGO p. 5).

Expansion of Public Purpose

The Attorney General has said that a county may not use federal revenue sharing funds to make a grant to a private nonprofit hospital (1973 AGO No. 4851). The Attorney General concluded that since it could not expend its own funds as contemplated, it could not disburse federal funds for that purpose. The Attorney General suggested that the county might obtain social service and medical service needs by contract. In a later opinion the Attorney General concluded a county could not expend federal revenue sharing funds for loans to private businesses unless the federal statute expressly authorized such expenditure (1987 AGO No. 6427).

Considerable use has been made of the authority to contract with private nonprofit agencies to perform services on behalf of a city or village. 1977 AGO No. 5212 specifically recognized the validity of this procedure. The state legislature subsequently amended section 3 (j) of the Home Rule City Act as follows:

In providing for the public peace, health, and safety, a city may expend funds or enter into contracts with a

private organization, the federal or state government, a county, village, township, *or* another city for services considered necessary by the municipal body vested with legislative power. Public peace, health, and safety services may include, but shall not be limited to, the operation of child guidance and community mental health clinics, the prevention, counseling, and treatment of developmental disabilities, the prevention of drug abuse, and the counseling and treatment of drug abusers. 1978 PA 241.

In addition, there have been other expansions of a municipality's spending power with respect to a downtown development authority, MCL 125.1651 et seq. (1975 PA 195); public economic development corporation, MCL 125.1601 et seq. (1974 PA 338); empowerment zone development corporation, MCL 125.2561 et seq. (1995 PA 75); enterprise community development corporation, MCL 125.2601 et seq. (1995 PA 123); and brownfield redevelopment financing, MCL 125.2651 et seq. (1996 PA 381). Each law allows money and resources to be used for economic growth under the control or oversight of the municipality's governing body.

Specific Authorizations Granted by Law

As a public decision maker, you have a legal duty to make sound financial decisions.

Whenever a question arises that does not easily match statutory law, or meet the public purpose analysis, the expenditure is likely improper. Remember, if the question cannot be resolved, your village attorney is the best resource for legal advice. You may also wish to consult the state of Michigan Department of Treasury website (treas.state.mi.us/localgov/Audit/lawfulex.htm) for guidelines.

Statutory Authorizations for Expenditure

Listed below are several specific statutory authorizations for public expenditures:

- Cultural activities (Home Rule City Act). MCL 117.4k.
- Water supply authority. MCL 121.2.

- Public utility. MCL 123.391.
- Exhibition area. MCL 123.651.
- Memorial Day/Independence Day/Centennial celebrations. MCL 123.851.
- Band. MCL 123.861.
- Publicity/Advertising. MCL 123.881.
- Principal shopping district. MCL 125.981.

Appendix 1: Glossary

Annexation – The incorporation of a land area into an existing city or village with a resulting change in the boundaries of that unit of local government.

Bond – A certificate or instrument certifying the existence of a debt. Local units of government only have those powers to borrow monies expressly granted by law. Municipal obligations are generally classified as either general obligation or special obligation bonds. A special obligation bond is payable from a specially identified source; a general obligation bond is payable without reference to a specific source.

Charter – The basic laws of a municipal corporation describing the powers, rights, and privileges which may be exercised within a political or geographic area by that municipal corporation and its officers. A charter is similar to a constitution on the state and federal levels of government.

Budget – Under the Michigan Uniform Budgeting and Accounting Act (MCL 141.421 et. seq.), *budget* means a plan of financial operation for a given period of time, including an estimate of all proposed expenditures from the funds of a local unit and the proposed means of financing the expenditures. It does not include a fund for which the local unit acts as a trustee or agent, an intragovernmental service fund, an enterprise fund, a public improvement or building fund or a special assessment fund.

Conditional Transfers of Land – A potential alternative to annexation. Public Act 425 of 1984 (MCL 124.21 et seq.) allows the conditional transfers of land from one local unit of government to another for a period of not more than 50 years for the purpose of economic development. The conditional transfer must be evidenced by a written contract which must include certain

conditions including the manner and extent to which taxes and revenues are shared, the duration of the agreement, methods by which a participating unit may enforce the contract and designation of which local unit has jurisdiction upon the expiration or termination of the contract.

Consolidation – The formation of a new city boundary through consolidation of any of the following:

- a. two or more cities or villages;
- b. a city and one or more villages; or
- c. one or more cities or villages together with additional territory not included in any incorporated city or village.

A new village boundary may be created by the consolidation of two or more villages.

Council – A legislative, executive, advisory, or administrative governmental body whose elected or appointed members are assigned certain duties and responsibilities by law such as a city/village council or a citizens advisory council.

Enterprise Fund – A fund established to finance and account for the acquisition, operation and maintenance of governmental facilities and services which are entirely or predominantly self-supporting by user charges. Examples of enterprise funds are those for water, gas and electric utilities, sports facilities, airports, parking garages and transit systems.

Franchise Agreement – As used in local government, it is a negotiated contractual agreement between a utility provider and a government agency authorizing the provider to build and operate a utility system or conduct business within a given geographical area.

Franchise Ordinance – Unilateral action taken by the legislative body of a local unit of government to establish the non-negotiable terms of obtaining the permission to transmit and distribute a public utility system or to conduct business of a public utility within a given geographical area.

General Fund – A fund used to account for all transactions of a governmental unit which are not accounted for in another fund. The general fund is used to account for the ordinary operations of a governmental unit which are financed from taxes and other general revenues.

General Law Village – Villages incorporated under the General Law Village Act, MCL 61.1 et seq. General law villages are subject to legislative amendments to the General Law Village Act, including the major re-write of the Act in 1998. Under provisions of the Home Rule Village Act (MCL 78.1 et seq.), all villages incorporated after 1909 must be incorporated as home rule villages.

Governmental Immunity – Doctrine, the basis of which may be statute or court decision, that protects or insulates a governmental agency from tort liability when engaged in a governmental function, subject to certain exceptions. Governmental agency employees also enjoy broad immunity protection when the agency is engaged in a governmental function.

Home Rule – The authority of local governments to frame, adopt or change their own charter and to manage their own affairs with minimal state interference.

Incorporation – The formation of a new village or city governed by the State Boundary Commission Act, the Home Rule Village Act and the Home Rule City Act, from:

- a. unincorporated territory; or
- b. one village or city and contiguous unincorporated territory; or

- c. an incorporated village without change of boundaries

Mayor – An elected official who serves as chief executive, chair or nominal head of a city council or commission. Under the “weak mayor” form of government, the mayor’s administrative powers are limited and the mayor is chief executive in name only. Under the “strong mayor” form of government, the mayor does not hold membership on council, but exercises veto power. The “strong mayor” holds executive power while council holds legislative power.

Municipal Bond – A security issued by, or on behalf of, a political subdivision, the interest on which is generally exempt from federal income tax.

Municipal Corporation – A voluntary public corporation which is established by state law as a result of the incorporation of an aggregate of citizens residing within a certain area, place or district. Historically, a municipal corporation in Michigan has been limited, in definition, to cities and villages. The 1963 Michigan Constitution eliminated the phrase *municipal corporation* as it appeared in article X of the 1908 Constitution and replaced it in article IX with *city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by general law*. Generally, a municipal corporation operates for the express purpose of promoting public health, safety, and welfare.

Ordinance – A law or an order enacted by the legislative body of a local unit of government, usually pertaining to a specific subject. An **ordinance code** is a systematic integration of all municipal ordinances into a single book, organized by subject matter, tied together by a common numbering system and indexed.

President – The chief executive officer of a village. The president is elected and is a voting member of the council.

Property Tax – A tax based on the assessed value of a property, either real or personal. Tax liability falls on the owner of record as of tax day. Real property includes all lands, buildings, and fixtures on the land. Personal property is generally movable and not affixed to land. It includes equipment, furniture, electric and gas transmission, and distribution equipment, etc.

Public Act (PA) – Legislation passed by both the state House and Senate and signed by the Governor. When legislation is signed into law, it becomes a public act, assigned a number and is denoted by PA and the year it became law.

Resolution – Official action of a legislative body, primarily administrative or ministerial in nature.

Request for Proposal (RFP) – Document issued outlining the format of bids, deadlines, minimum requirements, and general guidelines for potential purchase of products or services.

Revenue – For revenues recorded on the accrual basis, the term designates additions to assets which:

1. do not increase any liability;
2. do not represent the recovery of an expenditure;
3. do not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets; and
4. do not represent contributions of fund capital in enterprise and intragovernmental service funds.

The same definition applies to those cases where revenues are recorded on the modified accrual or cash basis, except that additions would be limited partially or entirely to cash.

Revenue Bond – A bond payable from revenues secured from a project which is financed by charging use or service charges. The primary authority for revenue bonds is the Revenue Bond Act of 1933 (MCL

141.101 et seq.) The bonds may be used for a variety of public improvements including airports, bridges, electric and gas utilities, garbage facilities, hospitals, housing, parking facilities, pollution control, recreation facilities, sewer and water facilities, etc.

Revenue Sharing – A state program to share tax revenues with all eligible units of government, but particularly local government in accordance with a method of distribution, as by formula or per capita. The term refers to revenues collected by the state and shared with municipalities. These include revenues from the sales tax.

Site Plan – A plan, prepared to scale, showing accurately and with complete dimensions, the boundaries of a site and the location of all buildings, structures, uses and principal site development features proposed for a specific parcel of land.

Special Assessment – A method of raising funds for special purposes available to municipalities as an alternative to imposing a tax. A special assessment may only be levied on land and may only be imposed to pay the cost of an improvement or service by which the assessed land is specially (as opposed to generally) benefited. To impose a special assessment, a municipality must first have the statutory authority to make the improvement or provide the service for which the assessment will be imposed and, second, the statutory authority to assess for that type of improvement or service.

Special Permit or Use – Authorization allowing a use of property if specific conditions are met as permitted by a zoning ordinance or regulation.

Tax Exemption – The exclusion from the tax base of certain types of transactions or objects. Property which is exempt or free from taxation is usually the property of a charitable, public service, educational or other governmental institution.

Tax Rate – The amount of tax applied to the tax base. The rate may be a percentage of the tax base, as in the case of the sales and income taxes. In the case of the property tax, rates are expressed in cents (such as \$.45 per \$100 of taxable value) or as a millage rate (such as 30 mills) where one mill equals one-tenth of a cent.

Tax Roll – The end product of the assessment phase that lists the owners of each property, each property’s legal description as well as its taxable value and the liability of each owner.

Taxing Powers – The basis for levying taxes. Local governments rely on taxing

powers granted by state law to levy property and other taxes.

Variance – Authorization for the construction of a structure or for the establishment of a use which is prohibited by a zoning ordinance. Generally, a variance may not be granted unless the literal enforcement of the zoning ordinance would cause a property owner “practical difficulties or unnecessary hardship.”

Zoning – Division of a municipality into districts, the regulation of structures according to their construction, nature, and extent of use, and the regulation of land according to use.

Appendix 2: Michigan Laws of Interest to Cities and Villages

Public Acts are available for free on the Michigan Legislature website (legislature.mi.gov).

Conflict of Interest and Incompatible Public Offices

Conflict of Interest of Legislators and State Officers Act, 1968 PA 318, MCL 15.301 et seq. Prohibits legislators and state officers from having an interest in any contract with the state or any political subdivision which would cause a substantial conflict of interest.

Contract of Public Servants with Public Entities Act, 1968 PA 317, as amended, MCL 15.321 et seq. Regulates contractual conflicts of interest.

Incompatible Public Offices Act, 1978 PA 566, MCL 15.181 et seq., as amended. Encourages the faithful performance of official duties by prescribing standards of conduct for public officers and employees and prohibiting the same person from holding incompatible offices simultaneously.

Political Activities by Public Employees Act, 1976 PA 169, MCL 15.401 et seq. Regulates political activity by public employees.

Standards of Conduct and Ethics Act, 1973 PA 196, MCL 15.341 et seq. Prescribes standards of conduct for public officers and employees.

Economic Development

Downtown Development Authority, 1975 PA 197, as amended, MCL 125.1651 et seq. Provides for creation of an authority to correct and prevent deterioration in business districts. The authority can capture tax

increment revenue and levy a tax on property within the district.

Local Development Financing Act, 1986 PA 281, as amended, MCL 125.2151 et seq. Provides for creation of an authority to prevent conditions of unemployment and promote economic growth in the authority district. The authority can capture tax increment revenue.

Plant Rehabilitation and Industrial Development Districts Act, 1974 PA 198, as amended, MCL 207.551 et seq. Provides for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; provides for the exemption from certain taxes.

Principal Shopping Districts and Business Improvement Districts, 1961 PA 120, as amended, MCL 125.981 et seq. Authorizes the creation of certain boards and the collection of revenue and bonding for the redevelopment of principal shopping areas and business improvement districts of certain cities.

Tax Increment Finance Authority, 1980 PA 450, as amended, MCL 125.1801 et seq. Provides for the creation of Tax Increment Finance Authorities (TIFAs) to capture tax increments which may be spent or pledged to make improvements within the TIFA district. Tax increment revenue is produced by applying existing tax levies to the difference between the taxable value of property after improvements have been made in the TIFA district where the property is located over the taxable value of that property fixed on the date a tax increment financing plan is adopted.

Technology Park Development Act, 1984

PA 385, as amended, MCL 207.701 et seq. Provides for the establishment of technology park districts in local government units; provides for exemption from certain taxes and levying of specific tax on owners of certain facilities.

Finance

Budget Hearings of Local Governments, 1963 PA 42, (2nd Ex. Sess), MCL 141.411 et seq. Requires public notice and hearing on annual proposed budget.

General Property Tax Act, 1893 PA 206, as amended, MCL 211.1 et seq. Provides the primary but not exclusive source of statutory law concerning property taxation. All property, except that which is expressly exempt, is taxable. The Act also provides for collection of delinquent property taxes by providing for the sale and redemption to collect tax liens on such property.

Local Development Financing Act, 1986 PA 281, as amended, MCL 125.2151 et seq. Provides for the creation of Local Development Finance Authorities (LDFAs) to capture tax increments which may be spent or pledged to make improvements within the district.

Local Improvement Revolving Fund, 1957 PA 57, as amended, MCL 141.371 et seq. Authorizes cities and villages to raise money by taxes or bond issue within certain limits for the purpose of establishing a local improvement revolving fund.

Revenue Bond Act of 1933, 1933 PA 94, as amended, MCL 141.101 et seq. Provides for the issuance of revenue bonds to finance public improvement which are self-supporting through use or service charges.

Surplus Funds Investment Pool Act, 1982 PA 367, as amended, MCL 129.111 et seq. Provides authority for the investment of surplus funds of a local unit in an investment pool by a financial institution.

Tax Increment Finance Authority, 1980 PA 450, as amended, MCL 125.1801 et seq. Provides for the creation of Tax Increment Finance Authorities (TIFAs) to capture tax increments which may be spent or pledged to make improvements within the TIFA district. Tax increment revenue is produced by applying existing tax levies to the difference between the taxable value of property after improvements have been made in the TIFA district where the property is located over the taxable value of that property fixed on the date a tax increment financing plan is adopted. (After 1989, a new district could not be created or the boundaries expanded.)

Tax Tribunal Act, 1973 PA 186, as amended, MCL 205.701 et seq. Creates the Michigan Tax Tribunal to hear appeals related to the assessment and collection of taxes.

Truth in Budgeting Acts, 1995 PA 40, as amended, MCL 141.412; 1995 PA 41, as amended, MCL 141.436 & 141.437; 1995 PA 42, as amended, MCL 211.24e. Permits a local unit of government to combine the “notice of public hearing” on the unit’s budget with a notice stating that the property tax millage to be levied will be a subject of the hearing. This eliminates the need to publish a notice of increasing property taxes and hold a public hearing pursuant to the Truth in Taxation Act.

Truth in Taxation Act, 1982 PA 5, as amended, MCL 211.24e et seq. Provides that no local unit of government may levy an *ad valorem* property tax for operating purposes in excess of the base tax rate, as defined in the act, without first holding a public hearing pursuant to notice which contains the proposed additional millage rate and percentage increase in operating revenue which would be generated from the levy. A truth in taxation hearing is not necessary if the local unit complies with section 16 of the Uniform Budgeting and Accounting Act.

Uniform Budgeting and Accounting Act, 1968 PA 2, MCL 141.421 et seq. Requires local governments to comply with the uniform charts of accounts prescribed by state treasurer, to file an annual financial report, to be audited periodically and to formulate and adopt an annual budget.

Historic Preservation

Local Historic Districts Act, 1970 PA 169, as amended, MCL 399.201 et seq. Provides for the establishment of historic districts and acquisition of resources for historic preservation purposes.

Municipal Historical Commissions, 1957 PA 213, as amended, MCL 399.171 et seq. Authorizes cities, villages, townships, and counties to create historical commissions and prescribes their functions, to issue revenue bonds, and to appropriate money for activities and projects.

Housing

Allowances for Moving Personal Property from Acquired Real Property, 1965 PA 40, as amended, MCL 213.351 et seq. Authorizes and requires public agencies to pay allowances for the expense of moving personal property from real property acquired for public purposes.

Blighted Area Rehabilitation, 1945 PA 344, as amended, MCL 125.71 et seq. Authorizes counties, cities, villages, and townships to adopt plans to prevent blight and to adopt plans for the rehabilitation of blighted areas and authorizes assistance to acquire, improve, and dispose of real property in blighted areas.

General Property Tax Act, 1893 PA 206, as amended, MCL 211.1 et seq. Provides the primary but not exclusive source of statutory law concerning property taxation. All property, except that which is expressly exempt, is taxable. The act also provides for collection of delinquent property taxes by

providing for the sale and redemption to collect tax liens on such property.

Housing Cooperation Law, 1937 PA 293, as amended, MCL 125.601 et seq. Authorizes cities, villages, and other public bodies to aid housing projects of housing authorities and the like by furnishing parks, playgrounds, streets, and other improvements and facilities.

Housing Facilities, 1933 PA 18 (Ex. Sess.), as amended, MCL 125.651 et seq. Authorizes a city, village, or other unit of government to purchase, acquire, maintain, and operate housing facilities, to eliminate detrimental housing conditions and to create a commission with power to effectuate such purposes.

Housing Law of Michigan, 1917 PA 167, as amended, MCL 125.401 et seq. Promotes health, safety, and welfare by regulating the maintenance, safety, and improvement of dwellings, establishes administrative requirements, prescribes procedures for maintenance, improvement, or demolition of certain commercial buildings.

Neighborhood Area Improvements, 1949 PA 208, as amended, MCL 125.941 et seq. Authorizes cities, villages, and townships to designate neighborhood areas for the purpose of planning and carrying out local public improvements for the prevention of blight, to carry out such plans by acquiring and disposing of real property and providing for the establishment of local assessment districts.

State Housing Development Authority Act, 1966 PA 346, as amended, MCL 125.1401 et seq. Creates a state housing development authority, defines the powers and duties of the authority, establishes a housing development revolving fund and land acquisition and development fund and provides tax exemption.

The Uniform Condemnation Procedures Act, 1980 PA 87, as amended, MCL 213.51 et seq. Provides procedures for condemnation of real or personal property by public agencies or private agencies.

Utilization of Public Facilities by Physically Limited, 1966 PA 1, as amended, MCL 125.1351 et seq. Provides for the accessibility and utilization by physically limited persons of public facilities, prescribes for the creation of a barrier free design board with duties and powers, and prescribes powers and duties of other state and local authorities.

Intergovernmental Relations

Contracts for Assessing Services, 1961 PA 37, as amended, MCL 123.621. Permits cities, villages, and townships to contract for assessing services.

Emergency Services to Municipalities, 1988 PA 57, as amended, MCL 124.601 et seq. Provides for the incorporation of an authority by 2 or more municipalities (cities, villages & townships) for the purpose of providing emergency services, provides for powers and duties of authorities, and provides for the levy of property taxes for certain purposes.

Intergovernmental Conditional Transfer of Property by Contract (Act 425), 1984 PA 425, as amended, MCL 124.21 et seq. Permits the conditional transfer of property by contract between certain local units of government, provides for permissive and mandatory provisions in the contract and conditions upon termination.

Intergovernmental Contracts Between Municipal Corporations Act, 1951 PA 35, as amended, MCL 124.1 et seq. Authorizes intergovernmental contracts between municipal corporations, contracts with a third party to furnish municipal services to property outside the corporate limits, contracts between municipal corporations and with certain non-profit public

transportation corporations to form group self-insurance pools.

Intergovernmental Transfers of Functions and Responsibilities, 1967 PA 8 (ex sess), as amended, MCL 124.531 et seq. Provides for intergovernmental transfers of functions and responsibilities.

Interlocal Tax Agreements, 1995 PA 108, as amended, MCL 124.502 and 124.505a. Provides for interlocal agreements for sharing revenue derived by and for the benefit of local government units.

Joint Public Building, 1923 PA 150, as amended, MCL 123.921. Authorizes cities, villages, and other units of local government to acquire, singly or jointly, public buildings for the purpose of housing governmental offices or any other public uses and purposes.

Metropolitan Councils Act, 1989 PA 292, as amended, MCL 124.651 et seq. Authorizes local governmental units to create metropolitan councils under certain circumstances, prescribes the powers and duties, and authorizes councils to levy a property tax.

Mutual Police Assistance Agreements, 1967 PA 236, as amended, MCL 123.811 et seq. Authorizes cities, villages, and other units to enter into mutual police assistance agreements and provides for the compensation of units of local government entering into such agreements.

Police and Fire Protection, 1951 PA 33, as amended, MCL 41.801 et seq. Provides police and fire protection for certain cities, villages, and other units, authorizes contracts for protection and purchase of equipment, authorizes creation of special assessment districts and creation of administrative boards and authorizes collection of fees for such services.

Recreation and Playgrounds, 1917 PA 156, as amended, MCL 123.51 et seq.

Authorizes cities and villages and other units to operate systems of public recreation and playgrounds.

Urban Cooperation Act of 1967, 1967 PA 7 (Ex. Sess.), as amended, MCL 124.501 et seq. Provides for interlocal public agency agreements and permits allocation of certain taxes received from tax increment financing plans as revenues, permits tax sharing, and provides for additional approval for agreements.

Local Government Powers, Duties, and Responsibilities

Allowances for Moving Personal Property from Acquired Real Property Act, 1965 PA 40, as amended, MCL 213.351 et seq. Authorizes and requires public agencies to pay allowances for the expense of moving personal property from real property acquired for public purposes.

Building Authorities, 1948 PA 31 (1st Ex. Sess.), as amended, MCL 123.951 et seq. Provides for the incorporation of authorities to acquire and maintain buildings, parking lots, transit-oriented developments, transit-oriented facilities, recreational facilities, and stadiums for the use of local units of government and the issuance of bonds for such authorities.

Compulsory Arbitration of Labor Disputes in Police and Fire Departments (Act 312), 1969 PA 312, as amended, MCL 423.231 et seq. Provides for compulsory arbitration of labor disputes in municipal police and fire departments and prescribes procedures and authority.

County Departments and Board of Public Works, 1957 PA 185, as amended, MCL 123.731. Establishes the department and board of public works in counties and outlines the duties of municipalities subject to the Act.

Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 et seq.

Regulates and requires disclosure of public records to the public by all public bodies in the state.

General Law Village Act, 1895 PA 3, as amended, MCL 61.1 et seq. Provides for the government of certain villages (statutory charter for general law villages). Provides for powers and duties of village council and officers; the authority to levy tax, borrow money, issue bonds; alter boundaries by annexation; adopt ordinances; and disincorporation.

General Property Tax Act, 1893 PA 206, as amended, MCL 211.1 et seq. Provides the primary but not exclusive source of statutory law concerning property taxation. All property, except that which is expressly exempt, is taxable. The Act also provides for collection of delinquent property taxes by providing for the sale and redemption to collect tax liens on such property.

Home Rule City Act, 1909 PA 279, as amended, MCL 117.1 et seq. Provides for the incorporation of cities and for revising and amending their charters; provides for certain powers and duties; and provides for the levy and collection of taxes, borrowing of money, and issuance of bonds.

Home Rule Village Act, 1909 PA 278, as amended, MCL 78.1 et seq. Provides for the incorporation of villages and for revising and amending their charters; provides for the levy and collection of taxes, borrowing of money, and issuance of bonds.

Incompatible Public Offices Act, 1978 PA 566, MCL 15.181 et seq., as amended. Encourages the faithful performance of official duties by prescribing standards of conduct for public officers and employees and prohibiting the same person from holding incompatible offices simultaneously.

Michigan Campaign Finance Act, 1976 PA 388, as amended, MCL 169.201 et seq.

Regulates political activity, campaign financing, campaign contributions and expenditures, campaign advertising and creates state campaign fund.

Michigan Liquor Control Act, 1933 PA 8, as amended, MCL 436.1 et seq. Creates liquor control commission and prescribes its powers, duties and limitations.

Open Meetings Act, 1976 PA 267, as amended, MCL 15.2621 et seq. Requires public bodies (legislative or governing body including boards, commissions, committees, subcommittees, authorities or councils which are empowered to perform governmental or proprietary functions or a lessee thereof performing an essential public purpose pursuant to a lease) to conduct nearly all business at open meetings.

Political Activities by Public Employees Act, 1976 PA 169, MCL 15.401 et seq. Regulates political activity by public employees.

Public Employment Relations Act, 1947 PA 336, as amended, MCL 423.201 et seq. Prohibits strikes by certain public employees, provides review from disciplinary action, mediation of grievances and protects rights and privileges of public employees.

Purchase of Lands and Property for Public Purpose, 1933 PA 99, as amended, MCL 123.721 et seq. See also Municipal Finance Act, 1943 PA 202, as amended, MCL 133.1. Authorizes incorporated villages, townships and cities to enter into contracts for the purchase of lands, equipment for public purposes.

State Boundary Commission Act, 1968 PA 191, as amended, MCL 123.1001 et seq. Creates the State Boundary Commission and prescribes its powers and duties with respect to municipal incorporation, consolidation and annexation.

Uniform Condemnation Procedures Act, 1980 PA 87, as amended, MCL 213.51 et seq. Provides procedures for condemnation of real or personal property by public agencies or private agencies.

Miscellaneous

Armistice, Independence and Memorial Day Expenditures, 1905 PA 170, as amended, MCL 123.851 et seq. Authorizes townships, cities and villages to appropriate money to defray the expenses of observance of Armistice, Independence and Memorial Day or for the observance of a diamond jubilee or centennial.

Bands, 1923 PA 230, as amended, MCL 123.861 et seq. Authorizes villages and townships and cities with a population not exceeding 50,000 to levy a tax for the maintenance and employment of a band for musical purposes for the benefit of the public provided that a special question is subjected to the voters and agreed to by a majority vote.

Bidders on Public Works, 1933 PA 170, as amended, MCL 123.501 et seq. Regulates the practice of taking bids and awarding contracts on public work construction and maintenance (except public buildings).

Garbage Disposal Plants, 1917 PA 298, as amended, MCL 123.261. Authorizes three mill garbage tax for cities and villages.

Gifts from Municipal Utilities, 1969 PA 301, as amended, MCL 123.391. Authorizes the giving of gifts or contributions from the operating revenues of any municipality owning or operating any public utility as determined by its governing board.

Gifts of Property to Local Government, 1913 PA 380, as amended, MCL 123.871 et seq. Regulates gifts of real and personal property to cities, villages, townships, and counties.

Municipal Water and Sewage System Liens, 1939 PA 178, as amended, MCL 123.161 et seq. See also Revenue Bond Act, 1933 PA 94, as amended, MCL 141.121. Provides for the collection of water or sewage system rates and assessment charges, and provides for a lien for nonpayment for services furnished by municipalities.

Prohibited Taxes by Cities and Villages, 1964 PA 243, as amended, MCL 141.91. Prohibits the imposition, levy or collection of taxes other than ad valorem property taxes by cities and villages except as otherwise provided by law.

Resignations, Vacancies and Removals, R.S. 1846, ch. 15, as amended, MCL 201.1 et seq. Provides for procedures regarding resignations, vacancies and removals from public office and for filling vacancies.

Special Tax for Advertising, 1925 PA 359, as amended, MCL 123.881. Empowers the council or corporate authorities of any city or village to levy a special tax to be used for advertising the industrial, commercial, educational, or recreational advantages of the city or village and to establish recreational and educational projects for the purpose of encouraging growth or trade of the city or village.

Utilization of Public Facilities by Physically Limited Persons, 1966 PA 1, as amended, MCL 125.1351 et seq. Provides for the accessibility and utilization by physically limited persons of public facilities, creates the barrier for the design board with duties and powers, prescribes powers and duties of other state and local authorities.

Water Furnished Outside Territorial Limits, 1917 PA 34, as amended, MCL 123.141 et seq. Authorizes municipal corporations having authority by law to furnish water outside their territorial limits, to sell water to other municipal corporations,

contract with individuals, firms or corporations regarding the construction of water mains, sale of water, to construct water mains through the highways outside territorial limits with the consent of appropriate authorities.

Youth Center, 1967 PA 179, as amended, MCL 123.461. Authorizes tax levy of 1.5 mills for 20 years for operation of a youth center.

Organization, Governmental Forms and Dissolution

Disconnection of Land from Cities and Villages, 1949 PA 123, as amended, MCL 123.31 et seq. Provides a mechanism by which an owner of farmland may have it disconnected from a city or village if the land is: (1) 10 or more acres; (2) is not subdivided; (3) is located on a border or boundary and the disconnection will not isolate any part of the city or village from the remainder of the city or village; and shall have been used for only agricultural purposes for the three years preceding the filing of the petition to disconnect.

General Law Village Act, 1895 PA 3, MCL 61.1 et seq. Provides for the government of certain villages (statutory charter for General Law Villages). Provides for powers and duties of village council and officers, the authority to levy tax, borrow money, issue bonds, alter boundaries by annexation or disconnection, adopt ordinances and disincorporate.

Home Rule City Act, 1909 PA 279, as amended, MCL 117.1 et seq. Provides for the incorporation of cities and for revising and amending their charters; provides for certain powers and duties; and provides for the levy and collection of taxes, borrowing of money, and issuance of bonds.

Home Rule Village Act, 1909 PA 278, MCL 78.1 et seq. or section 17 (MCL 78.17) with reference to the authority of general law villages to amend the statutory charter (1895 PA 3) locally.

Personnel & Employment

Bullard-Plawecki Employee Right to Know Act, 1978 PA 397, MCL 423.501 et seq. Permits employees to review personnel records; provides criteria for review; and prescribes what information may be contained in personnel records.

Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq. Defines civil rights, prohibits discriminatory practices and prescribes the powers and duties of the civil rights commission.

Fire Department Hours of Labor, 1925 PA 125, as amended, MCL 123.841 et seq. Regulates the hours of labor of employees in municipal fire departments.

Persons With Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101 et seq. Prohibits an employer from discriminating against a qualified individual with a disability in regard to application procedures, hiring, promotion, termination, compensation, job training and other terms, conditions, and privileges of employment if the applicant or employee can perform the essential functions of the position, with or without an accommodation.

Preference in Employment (Veterans), 1897 PA 205, as amended, MCL 35.401 et seq. Provides for preference of honorably discharged members of the armed forces of the U.S. for public employment. Applicable to discipline public employees who are veterans.

Whistle Blowers Protection Act, 1980 PA 469, as amended, MCL 15.361 et seq. Provides protection to employees who report a violation or suspected violation of state, local or federal law and also protection for employees who participate in hearings, investigations, etc.

Planning & Zoning

Condominium Act, 1978 PA 59, MCL 559.101 et seq. Provides for condominium

projects; prescribes powers and duties of Department of Consumer and Industry Services; and provides protection for certain tenants, senior citizens, etc.

Land Division Act (formerly Subdivision Control Act of 1967), 1967 PA 288, as amended, MCL 560.101 et seq. Regulates the division of land, provides for proper ingress to and egress from lots and parcels, establishes procedures for vacating, correcting and revising plats, and related issues.

Michigan Planning Enabling Act, 2008 PA 33, MCL 125.3801 et seq. Codifies the previously separate planning acts for counties, townships, cities, and villages into one act to provide for the creation, organization, powers, and duties of local planning commissions; to provide for the powers and duties of certain state and local governmental officers and agencies; to provide for the regulation and subdivision of land.

Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 et seq. Codifies the previously separate County Zoning Act, Township Zoning Act and City and Village Zoning Act into one act regulating the development and use of land; provides for the adoption of zoning ordinances; provides for the establishment in counties, townships, cities, and villages of zoning districts.

Mobile Home Commission Act, 1987 PA 96, as amended, MCL 125.2301 et seq. Creates a mobile home commission and prescribes its powers and duties in those of local governments; provides for mobile home code, licensure and regulation.

Natural Beauty Roads, 1970 PA 150, as amended, MCL 247.381 et seq. Designates certain roads as Michigan Natural Beauty Roads, provides certain powers and duties and also provides for the development of guidelines and procedures.

Neighborhood Area Improvements Act, 1949 PA 208, as amended, MCL 125.941 et seq. Authorizes cities, villages and townships to designate neighborhood areas for the purpose of planning and carrying out local public improvements for the prevention of blight, to carry out such plans by acquiring and disposing of real property and providing for the establishment of local assessment districts.

Sunshine Laws (Right to Know/Open Government)

Bullard-Plawecki Employee Right to Know Act, 1978 PA 397, MCL 423.501 et seq. Permits employees to review personnel records; provides criteria for review; and

prescribes what information may be contained in personnel records.

Freedom of Information Act, 1976 PA 442, MCL 15.231 et seq. Regulates and requires disclosure of public records to the public by all public bodies in the state.

Open Meetings Act, 1976 PA 267, MCL 15.261 et seq. Requires public bodies (legislative or governing body including boards, commissions, committees, subcommittees, authorities or councils which are empowered to perform governmental or proprietary functions or a lessee performing an essential public purpose pursuant to a lease) to conduct nearly all business at open meeting.

Appendix 3: Overview of the Michigan Open Meetings Act

1976 PA 267

Basic Intent

The basic intent of the Michigan Open Meetings Act is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

Key Definitions

“Public body” means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, which is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

“Meeting” means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

“Closed session” means a meeting or part of a meeting of a public body which is closed to the public.

“Decision” means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Coverage

The coverage of the law is very broad, including the State Legislature as well as the legislative or governing bodies of all cities, villages, townships, charter townships, and all county units of government.

The law also applies to:

- local and intermediate school districts;

- governing boards of community colleges, state colleges and universities; and
- special boards and commissions created by law (i.e., public hospital authorities, road commissions, health boards, district library boards, and zoning boards, etc.).

The Act does not apply to a meeting of a public body which is a social or chance gathering not designed to avoid the law.

Notification of Meetings

The law states that within 10 days of the first meeting of a public body in each calendar or fiscal year, the body must publicly post a list stating the dates, times, and places of all its regular meetings at its principal office.

If a public body does not have a principal office, the notice would be posted in the office of the county clerk for a local public body such as a village council or the office of the Secretary of State for a state public body.

If there is a change in schedule, within three days of the meeting in which the change is made, the public body must post a notice stating the new dates, times and places of regular meetings.

Special and Irregular Meetings

For special and irregular meetings, public bodies must post a notice indicating the date, time, and place at least 18 hours before the meeting in a prominent and conspicuous place at both the public body’s principal office and, if the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of the public meeting agendas or minutes, on a portion of the website that is fully accessible to the public.

Note: A regular meeting of a public body, which is recessed for more than 36 hours, can only be reconvened if a notice is posted 18 hours in advance.

Emergency Meetings

Public bodies may hold emergency sessions without a written notice or time constraints if the public health, safety, or welfare is imminently and severely threatened and if two-thirds of the body's members vote to hold the emergency meeting.

Individual Notification of Meetings by Mail

Citizens can request that public bodies put them on a mailing list so that they are notified in advance of all meetings. Section 6 of the law states that:

“Upon the written request of an individual, organization, firm or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail, a copy of any notice required to be posted....”

In addition, upon written request, public bodies are required to send free notices of meetings to newspapers, radio, and television stations at the same time that they are required to post those notices.

Closed Meetings

The basic intent of the OMA is to ensure that public business is conducted in public. The act states “all meetings of a public body shall be open to the public and shall be held in a place available to the general public” (MCL 15.263). However, the act does provide for closed meetings in a few specified circumstances.

For instance, a closed meeting **may** be called by a **2/3 roll call vote** of members elected or appointed and serving for the following purposes:

- to consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained;

- to consult with its attorney about trial or settlement strategy in pending litigation, but only when an open meeting would have detrimental financial effect on the public body's position;
- to review the contents of an application for employment or appointment to a public office if the candidate requests the application to remain confidential. However, all interviews by a public body for employment or appointment to a public office have to be conducted in an open meeting pursuant to this act; and
- to consider material exempt from discussion or disclosure by state or federal statute.

In addition, a closed meeting **may** be called by a **majority vote** of members elected or appointed and serving for these purposes:

- to consider the dismissal, suspension or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual if the person requests a closed hearing;
- for strategy and negotiation sessions necessary in reaching a collective bargaining agreement if either party requests a closed hearing. The purpose for which a closed meeting is being called must be entered into the minutes at the meeting at which the vote was taken.

Minutes of a Meeting

Minutes must be kept for all meetings and are required to contain:

1. a statement of the time, date, and place of the meeting;
2. the members present as well as absent;
3. a record of any decisions made at the meeting and a record of all roll call votes; and
4. an explanation of the purpose(s) if the meeting is a closed session.

Except for minutes taken during a closed session, all minutes are considered public

records, open for public inspection, and must be available for review as well as copying at the address designated on the public notice for the meeting.

Proposed minutes must be available for public inspection within eight business days after a meeting. Approved minutes must be available within five business days after the meeting at which they were approved.

Corrections in the minutes must be made no later than the next meeting after the meeting to which the minutes refer.

Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Explanation of Minutes of Closed Meeting

Minutes of closed meetings must also be recorded although they are not available for public inspection and would only be disclosed if required by a civil action. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

Enforcement of the Act

Under the law, the attorney general, prosecutor, or any citizen can challenge in

circuit court the validity of a decision of a public body to meet in closed session made in violation of its provisions. If the body is determined to be in violation of the law and makes a decision, that decision can be invalidated by the court.

In any case where an action has been initiated to invalidate a decision of a public body, the public body may reenact the disputed decision in conformity with the Act. A decision reenacted in this manner shall be effective from the date of reenactment and will not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Penalties under the Act

The first time a public official intentionally breaks this law, he or she can be punished by a maximum fine of \$1,000. For a second offense within the same term of office, the official can be fined up to \$2,000, jailed for a maximum of one year or both. A public official who intentionally violates the Act is also personally liable for actual and exemplary damages up to \$500, plus court costs and attorney fees.

Appendix 4: Overview of the Michigan Freedom of Information Act

1976 PA 442

Public Act 563 of 2014 made significant changes to FOIA concerning fees; the receipt, processing, and denial of requests; and civil actions and appeals brought under the Act. The new law goes into effect on July 1, 2015. Please visit mml.org for our FOIA Resource Packet detailing these numerous changes.

Basic Intent

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all “public bodies” in the state.

Key Definitions

“Freedom of Information Act Coordinator” means an individual who is a public body or an individual designated to accept and process requests for public records.

“Public body” means:

- a state officer, employee, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor or employees thereof;
- an agency, board, commission, or council in the legislative branch of the state government;
- a county, city, township, village, intercounty, intercity or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof; or
- any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

“Public record” means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.

Coverage

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all “public bodies” in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered. Any program primarily funded by the state or local authority is also covered.

Public Records Open to Disclosure

In general, all records except those specifically cited as exemptions are covered by the Freedom of Information Act. The records covered include working papers and research material, minutes of meetings, officials’ voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules and other written statements which implement or interpret laws, rules, or policy, including but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions.

It does not matter what form the record is in. The Act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying, and every

other means of recording. It includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

Public Records Exempt from Disclosure

A public body may (but is not required to) withhold from public disclosure certain categories of public records under the Freedom of Information Act. The following categories of information may be withheld:

- specific information about an individual's private affairs, if the release of the information would constitute a clearly unwarranted invasion of the person's privacy;
- investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
 - interfere with law enforcement proceedings,
 - deprive a person of the right to a fair trial or impartial administrative adjudication,
 - constitute an unwarranted invasion of personal privacy,
 - disclose law enforcement investigative techniques or procedures,
 - disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the court of a criminal investigation, disclose confidential information furnished only by a confidential source or
 - endanger the life or physical safety of law enforcement personnel;
- public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this Act outweighs the public interest in non-disclosure;
- a public record or information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable;
- trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy;
- information or records subject to attorney-client privilege;
- information or records subject to other enunciated privileges such as physician-patient and those recognized by statute or court rule;
- A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.;
- appraisals of real property to be acquired by a public body until either of the following occurs:
 - An agreement is entered into.
 - Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- test questions and answers, scoring keys and other examination instruments or data used to administer a license, public

- employment, or academic examination;
- medical counseling or psychological facts which would reveal an individual's identity;
- internal communications and notes between the public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. (Factual materials in such memoranda are open records and must be separated out and made available upon request even if the other material is not.);
- law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in non-disclosure;
- public records of a law enforcement agency, the release of which would do any of the following (unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance):
 - identify an informer,
 - identify a law enforcement undercover officer or agent or a plain clothes officer,
 - disclose the name, address, or telephone numbers of family members of law enforcement officers or agents,
 - disclose operational instructions for law enforcement officers or agents,
 - reveal the contents of law enforcement officers or agents' staff manuals,
 - endanger the life or safety of law enforcement officers or agents and their families or those who furnish information to law enforcement agencies or departments,
 - identify a person as a law enforcement officer, agent or informer,
 - disclose personnel records,
 - identify residences that law enforcement agencies are requested to check in the absence of their owners or tenants;
- information pertaining to an investigation or a compliance conference conducted by the department of consumer and industry services under article 15 of the public health code, Act No. 368 of the Public Acts of 1978. Except records pertaining to the fact that an allegation has been received and is being investigated or the fact that an allegation was received and a complaint was not issued and the allegation was dismissed,
- records of a public body's security measures;
- records or information relating to a civil action to which the requesting party and the public body are both parties; and
- information that would disclose the social security number of any individual.

Availability of Public Records

This section of the Act has changed significantly. Please refer to the League's FOIA Resource Packet

Fees for Public Records

This section of the Act has changed significantly. Please refer to the League's FOIA Resource Packet

Denial of a Record

This section of the Act has changed significantly. Please refer to the League's FOIA Resource Packet.

Appendix 5: Sample Council Rules of Procedure

Council rules of procedure for home rule cities and villages are generally authorized by city/village charter. Rules of procedure help a council to run an efficient meeting and to deal with the public and the media in a positive manner.

The council should review its rules of procedure at its first meeting after councilmembers have been elected, have taken office and when a quorum is present. Following discussion and any amendments, the council should adopt the rules of procedure. This sample provides suggestions on what can be included in the rules of procedure. It may be modified locally as appropriate.

Author's notes are contained within brackets.

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Council rules of procedure

A. Regular and special meetings

All meetings of the city/village council will be held in compliance with state statutes, including the Open Meetings Act, 1976 PA 267 as amended, and with these rules.

1. Regular meetings

Regular meetings of the city/village council will be held on _____ of each month beginning at ____ p.m. at the city/village office unless otherwise rescheduled by resolution of the council. Council meetings shall conclude no later than ____ p.m., subject to extension by the council.

2. Special meetings

A special meeting shall be called by the clerk upon the written request of the mayor/president or any three members of the council on at least 24 hours' written notice to each member of the council served personally or left at the councilmember's usual place of residence. Special meeting notices shall state the purpose of the meeting. No official action shall be transacted at any special meeting of the council unless the item has been stated in the notice of such meeting.

3. Posting requirements for regular and special meetings

- a. Within 10 days after the first meeting of the council following the election, a public notice stating the dates, times and places of the regular monthly council meetings will be posted at the city/village offices. [Villages without a principal office must post in the county clerk's office.]
- b. For a rescheduled regular or a special meeting of the council, a public notice stating the date, time and place of the meeting shall be posted at least 18 hours before the meeting at the city/village office. [Villages without a principal office must post in the county clerk's office.]
- c. The notice described above is not required for a meeting of the council in emergency session in the event of a severe and imminent threat to the health, safety or welfare of the public when two-thirds of the members of the council determine that delay would be detrimental to the city/village's efforts in responding to the threat.

4. Minutes of regular and special meetings

- a. The clerk shall attend the council meetings and record all the

proceedings and resolutions of the council in accordance with the Open Meetings Act. In the absence of the clerk, the council may appoint one of its own members or another person to temporarily perform the clerk's duties.

- b. Within 15 days of a council meeting, a synopsis showing the substance of each separate decision of the council or the entirety of the council proceedings shall be prepared by the clerk and shall indicate the vote of the councilmembers.
- c. A copy of the minutes of each regular or special council meeting shall be available for public inspection at the city/village offices during regular business hours.

5. Study sessions

Upon the call of the mayor/president or the council and with appropriate notice to the councilmembers and to the public, the council may convene a work session devoted exclusively to the exchange of information relating to municipal affairs. No votes shall be taken on any matters under discussion nor shall any councilmember enter into a formal commitment with another member regarding a vote to be taken subsequently.

B. Conduct of meetings

1. Meetings to be public

All regular and special meetings of the council shall be open to the public, and citizens shall have a reasonable opportunity to be heard in accordance with such rules and regulations as the council may determine, except that the meetings may be closed to the public and the media in accordance with the Open Meetings Act.

All official meetings of the council and its committees shall be open to the media, freely subject to recording by radio, television, and photographic services at any time, provided that such

arrangements do not interfere with the orderly conduct of the meetings.

2. Agenda preparation

An agenda for each regular council meeting shall be prepared by the mayor/president with the following order of business:

- a. Call to order and roll call of council
- b. Public hearings on ordinances under consideration
- c. Brief public comment on agenda items
- d. Approval of consent agenda
- e. Approval of regular agenda
- f. Approval of council minutes
- g. Submission of bills
- h. Communications to the council
- i. Reports from council committees
- j. Reports from officers as scheduled, e.g. manager, attorney, etc.
- k. Unfinished business
- l. New business
- m. Announcements
- n. Adjournment

Any councilmember shall have the right to add items to the regular agenda before it is approved.

3. Consent agenda

A consent agenda may be used to allow the council to act on numerous administrative or non-controversial items at one time. Included on this agenda can be non-controversial matters such as approval of minutes, payment of bills, approval of recognition resolutions, etc. Upon request by any member of the council, an item shall be removed from the consent agenda and placed on the regular agenda for discussion.

4. Agenda distribution

[This section should explain when and how councilmembers will receive their agendas.]

5. Quorum

[Add the language from your charter on what constitutes a quorum in your city or village].

6. Attendance at council meetings

Election to a city/village council is a privilege freely sought by the nominee. It carries with it the responsibility to participate in council activities and represent the residents of the city/village. Attendance at council meetings is critical to fulfilling this responsibility.

The council may excuse absences for cause. If a councilmember has more than three unexcused successive absences for regular or special council meetings, the council may enact a resolution of reprimand. In the event that the member's absences continue for more than three additional successive regular or special meetings of the council, the council may enact a resolution of censure or request the councilmember's resignation or both. [Add the provision from your charter on absences, if you have such a provision].

7. Presiding officer

The presiding officer or chair shall be responsible for enforcing these rules of procedure and for enforcing orderly conduct at meetings. The mayor/president is ordinarily the presiding officer. The council shall appoint one of its members mayor pro tempore or president pro tempore, who shall preside in the absence of the mayor/president. In the absence of both the mayor and the mayor pro tempore or the president and the president pro tempore, the member present who has the longest consecutive service on the council shall preside.

8. Disorderly conduct

The presiding officer may call to order any person who is being disruptive by speaking out of order, failing to speak

on matters germane to city/village business, speaking longer than the allotted time, or otherwise disrupting the proceedings. Such person shall be seated until the chair determines whether the person is in order.

If the person so engaged in presentation is called out of order, he or she shall not be permitted to continue to speak at the same meeting except by special leave of the council. If the person shall continue to be disorderly and disrupt the meeting, the chair may order the sergeant at arms to remove the person from the meeting. No person shall be removed from a public meeting except for an actual breach of the peace committed at the meeting.

[It is suggested that there be an ordinance governing disruption of public meetings, prepared with advice of the municipal attorney and the municipal liability insurance carrier on the risks, limits and force allowed to eject members. This ordinance should stipulate the procedure to be followed and the resource to be used for the sergeant-at-arms function, e.g. local police, county sheriff, etc. By planning in advance how to handle attempted disruptions, you can keep the meeting in order.]

C. Closed meetings

1. Purpose

Closed meetings may be held only for the reasons authorized in the Open Meetings Act, which include the following:

- a. To consider the dismissal, suspension, or discipline of, or to hear complaints or charges brought against a public officer, employee, staff member or individual agent when the named person requests a closed meeting. (majority vote)
- b. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement when either

negotiating party requests a closed hearing. (majority vote)

- c. To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained. (2/3 roll call vote)
- d. To consult with the municipal attorney or another attorney regarding trial or settlement strategy in connection with specific pending litigation, but only when an open meeting would have a detrimental financial effect on the litigating or settlement position of the council. (2/3 roll call vote)
- e. To review the specific contents of an application for employment or appointment to a public office when a candidate requests that the application remain confidential. (2/3 roll call vote). However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting.
- f. To consider material exempt from discussion or disclosure by state or federal statute. (2/3 roll call vote)

2. Calling closed meetings

At a regular or special meeting, the council may call a closed session under the conditions outlined in Section 1 above. The vote and purpose(s) for calling the closed meeting shall be entered into the minutes of the public part of the meeting at which the vote is taken.

3. Minutes of closed meetings

A separate set of minutes shall be taken by the clerk or the designated secretary of the council at the closed session. These minutes will be retained by the clerk, shall not be available to the public, and shall only be disclosed if required by a civil action, as authorized by the Open Meetings Act. These minutes may be destroyed one year and one day after approval of the minutes of

the regular meeting at which the closed session was approved.

D. Discussion and voting

1. Rules of parliamentary procedure.

The rules of parliamentary practice as contained in the latest edition of [*Robert's Rules of Order* or an alternative source of procedural rules] shall govern the council in all cases to which they are applicable, provided that they are not in conflict with these rules, city/village ordinances or applicable state statutes. The mayor/president may appoint a parliamentarian.

The presiding officer shall preserve order and decorum and may speak to points of order in preference to other councilmembers. The presiding officer shall decide all questions arising under this parliamentary authority, subject to appeal and reversal by a majority of the councilmembers present.

Any member may appeal a ruling of the presiding officer to the council. If the appeal is seconded, the member making the appeal may briefly state the reason for the appeal and the presiding officer may briefly state the ruling. There shall be no debate on the appeal and no other member shall participate in the discussion. The question shall be, "Shall the decision of the presiding officer be sustained?" If the majority of the members present vote "aye," the ruling of the presiding officer is sustained; otherwise it is overruled.

2. Conduct of discussion

During the council discussion and debate, no member shall speak until recognized for that purpose by the presiding officer. After such recognition, the member shall confine discussion to the question at hand and to its merits and shall not be interrupted except by a point of order or privilege raised by another member. Speakers should address their remarks to the

presiding officer, maintain a courteous tone and avoid interjecting a personal note into debate.

No member shall speak more than once on the same question unless every member desiring to speak to that question shall have had the opportunity to do so.

The presiding officer, at his or her discretion and subject to the appeal process mentioned in Section D.1., may permit any person to address the council during its deliberations.

3. Ordinances and resolutions

No ordinance, except an appropriation ordinance, an ordinance adopting or embodying an administrative or governmental code or an ordinance adopting a code of ordinances, shall relate to more than one subject, and that subject shall be clearly stated in its title.

A vote on all ordinances and resolutions shall be taken by a roll call vote and entered in the minutes unless it is a unanimous vote. If the vote is unanimous, it shall be necessary only to so state in the minutes, unless a roll call vote is required by law or by council rules.

4. Roll call

In all roll call votes, the names of the members of the council shall be called in alphabetical order. [Names may be called with all names in alphabetical order or alphabetical order with the mayor/president voting last or the council may select another system.]

5. Duty to vote

Election to a deliberative body carries with it the obligation to vote. Councilmembers present at a council meeting shall vote on every matter before the body, unless otherwise excused or prohibited from voting by law. A councilmember who is present and abstains or does not respond to a roll call vote shall be counted as voting

with the prevailing side and shall be so recorded, unless otherwise excused or prohibited by law from voting.

Conflict of interest, as defined by law, shall be the sole reason for a member to abstain from voting. The opinion of the city/village attorney shall be binding on the council with respect to the existence of a conflict of interest. A vote may be tabled, if necessary, to obtain the opinion of the city/village attorney.

The right to vote is limited to the members of council present at the time the vote is taken. Voting by proxy or by telephone is not permitted.

All votes must be held and determined in public; no secret ballots are permitted.

6. Results of voting

In all cases where a vote is taken, the presiding officer shall declare the result.

It shall be in order for any councilmember voting in the majority to move for a reconsideration of the vote on any question at that meeting or at the next succeeding meeting of the council. When a motion to reconsider fails, it cannot be renewed.

E. Citizen participation

1. General

Each regular council meeting agenda shall provide for reserved time for audience participation. If requested by a member of the council, the presiding officer shall have discretion to allow a member of the audience to speak at times other than reserved time for audience participation.

2. Length of presentation

Any person who addresses the council during a council meeting or public hearing shall be limited to ___ minutes in length per individual presentation. The clerk will maintain the official time and notify the speakers when their time is up.

3. Addressing the council

When a person addresses the council, he or she shall state his or her name and home address. Remarks should be addressed to the presiding officer. No person shall have the right to speak more than once on any particular subject until all other persons wishing to be heard on that subject have had the opportunity to speak.

F. Miscellaneous

1. Adoption and amendment of rules of procedure

These rules of procedure of the council will be placed on the agenda of the first meeting of the council following the seating of the newly elected councilmembers for review and adoption. A copy of the rules adopted shall be distributed to each councilmember.

The council may alter or amend its rules at any time by a vote of a majority of its members after notice has been given of the proposed alteration or amendment.

2. Suspension of rules

The rules of the council may be suspended for a specified portion of a meeting by an affirmative vote of two-thirds of the members present except that council actions shall conform to state statutes and to the Michigan and the United States Constitutions.

3. Bid awards

Bids will be awarded by the council during regular or special meetings. A bid award may be made at a special meeting of council if that action is announced in the notice of the special meeting.

4. Committees

- a. The city/village shall have the following standing committees of council:

[Committees should be listed by name and with a definition of their purposes and scopes.]

- b. Special committees may be established for a specific period of time by the mayor/president or by a resolution of the council which specifies the task of the special committee and the date of its dissolution.
- c. Citizen task forces may be established by a resolution of the council which specifies the task to be accomplished and the date of its dissolution. Members of such committees will be appointed by the mayor/president, subject to approval by a majority vote of the council and must be residents of the city/village. Vacancies will be filled

by majority vote of the council in the same way appointments are made.

5. Authorization for contacting the city/village attorney

The following officials (by title) are authorized to contact the city/village attorney regarding municipal matters:

We highly recommend that you consult your municipal attorney for assistance in modifying these rules to suit your municipality's individual needs.

Sample Budget Ordinance

We strongly recommend that you consult with your municipal attorney to appropriately modify this sample ordinance to meet your municipality's needs.

AN ORDINANCE to establish a budget system for the City/Village of (Name of City/Village) to define the powers and duties of the city/village officers in relation to that system; to provide that the chief administrative officer shall be furnished with information by the departments, boards, commissions, and offices relating to their financial needs, receipts and expenditures, and general affairs; to provide for an annual budget resolution; to prescribe a disbursement procedure; and to provide penalties for refusal or neglect to comply with the requirements of this ordinance.

The Council of the City/Village of (Name of City/Village) ordains:

Section 1. Title

This ordinance shall be known as the City/Village of (Name of City/Village) Budget Ordinance.

Section 2. Fiscal year

The fiscal year of the City/Village of (Name of City/Village) shall begin on (date) in each year and close on the following (date).

Section 3. Chief administrative officer and fiscal officer

[If the city/village has a manager, the following language can be used.]

The manager shall be the chief administrative officer referred to in this ordinance and shall be responsible for the performance of the duties of that officer enumerated in this ordinance. The manager may appoint a fiscal officer and delegate to that officer any or all of the budgeting duties specified in Sections 5 through 8. The fiscal officer shall be responsible to the chief

administrative officer for the performance of budgetary duties.

[If the city/village does not have a manager, the following language can be used.]

The mayor/president shall be the chief administrative officer referred to in this ordinance and shall be responsible for the performance of the duties of that officer enumerated in this ordinance. The mayor/president may appoint a fiscal officer and delegate to that officer any or all of the budgeting duties specified in sections 5 through 8. The fiscal officer shall be responsible to the chief administrative officer for the performance of budgetary duties.

Section 4. Budget policy statement

No later than (date) of each year, the chief administrative officer shall send to each officer, department, commission and board of the city/village a budget policy statement for the use of those agencies in preparing their estimates of budgetary requirements for the ensuing fiscal year.

Section 5. Budget estimates required

Any officers, elected or appointed, departments, commissions, and boards of the city/village financed in whole or in part by the city/village shall, on or before (date) of each year, transmit to the chief administrative officer their estimates of the amounts of money required for each activity in their agencies for the ensuing fiscal year. They shall also submit any other information deemed relevant by the chief administrative officer.

Section 6. Budget forms

The chief administrative officer shall prescribe forms to be used in submitting budget estimates and shall prescribe the procedures deemed necessary for the guidance of officials in preparing such budget estimates. The chief administrative officer may also require a statement of the purposes of any proposed expenditure and a justification of the services financed by any expenditure.

Section 7. Department budget review

The chief administrative officer shall review the department estimates with a representative from each department. The purpose of the review shall be to clarify the estimates, ensure their accuracy, and determine their adherence to the policies enumerated by the chief administrative officer pursuant to Section 4.

Section 8. The budget document

The chief administrative officer shall prepare a budget, which shall present a complete financial plan for the ensuing year, utilizing those estimates received from the various agencies. The budget will be prepared in such a manner that shall assure that the total of estimated expenditures including an accrued deficit in any fund does not exceed the total of expected revenues including an unappropriated surplus.

The budget shall consist of the following parts:

- a. Detailed estimates of all proposed expenditures for the ensuing fiscal year for each department and office of the city/village showing the expenditures for corresponding items for the current and last preceding fiscal year.
- b. Statements of the bonded and other indebtedness of the city/village, showing the debt redemption and interest requirements, the debt authorized and unissued, and the condition of sinking funds, if any.
- c. An estimate of the amount of surplus expected in the current fiscal year.

- d. An estimate of all anticipated revenues of the city/village which will be necessary to meet the proposed expenditures and commitments during the ensuing fiscal year. This should include:

1. sources other than taxes,
2. income from borrowing,
3. current and delinquent taxes, and
4. bond issues.

Included in this estimate shall be corresponding figures for the current and preceding fiscal year.

- e. Such other supporting schedules as the council may deem necessary.
- f. An informative summary of projected revenues and expenditures of any special assessment funds, public improvement or building and site funds, intragovernmental service funds or enterprise funds, including the estimated total cost and proposed method of financing each capital construction project, and the projected additional annual operating cost and the method of financing the operating costs of each capital construction project for three years beyond the fiscal year covered by the budget.

Section 9. Transmittal of budget to city/village council

No later than (date) of each year, the chief administrative officer shall transmit the budget to the council. The budget shall be accompanied by:

- a. A draft resolution for adoption by the council, consistent with the budget, which shall set forth the anticipated revenue and requested expenditure authority for the ensuing fiscal year in such form and in such detail deemed appropriate by the chief administrative officer, provided that it is consistent with the uniform chart of accounts prescribed by the State of Michigan. No budget resolution shall be submitted to the council in which estimated total expenditures, including an accrued deficit, exceed estimated total revenues, including an available surplus.

- b. A budget message which shall explain the reason for increases or decreases in budgeted items compared with the current fiscal year, the policy of the chief administrative officer as it relates to important budgetary items, and any other information that the chief administrative officer determines to be useful to the council in its consideration of the proposed budget.

Section 10. Consideration of budget by council

The council shall fix the time and place of a public hearing to be held on the budget and proposed budget resolution. The clerk shall then have published in a newspaper of general circulation with the city/village, notice of the hearing and an indication of the place at which the budget and proposed budget resolution may be inspected by the public. This notice must be published at least seven days before the date of the hearing.

The council may direct the chief administrative officer to submit any additional information it deems relevant in its consideration of the budget and proposed budget resolution. The council may conduct budgetary reviews with the chief administrative officer for the purpose of clarification or justification of proposed budgetary items.

The council may revise, alter or substitute for the proposed general budget resolution in any way, except that it may not change it in a way that would cause total appropriations, including an accrued deficit, to exceed total estimated revenues, including an unappropriated surplus. An accrued deficit shall be the first item of expenditure in the general appropriations measure.

Section 11. Passage of the budget resolution

No later than (date) the council shall pass a resolution providing the authority to make expenditures and incur obligations on behalf of the city/village.

The council may authorize transfers between appropriation items by the chief

administrative officer within limits stated in the resolution. In no case, however, may such limits stated in the resolution or motion exceed those provided for in section 16 of this ordinance.

The city/village budget may include information concerning the amount of tax levy expected to be required to raise those sums of money included in the budget resolution. In conformance with state law, and at such times as the council shall determine to be appropriate, the council shall order to be raised by taxation those sums of money necessary to defray the expenditures and meet the liabilities of the city/village for the fiscal year. The council may take such action after the value of the property in the village as finally equalized has been determined.

Section 12. Procedure for disbursements

No money shall be drawn from the village treasury unless the council has approved the annual budget.

Each warrant, draft, or contract of the village shall specify the fund and appropriation, designated by number assigned in the accounting system classification established pursuant to law, from which it is payable and shall be paid from no other fund or appropriation.

Expenditures shall not be charged directly to any contingent or general account. Instead, the necessary amount of the appropriation from such account shall be transferred pursuant to the provisions of this ordinance to the appropriate general appropriation account and the expenditure then charged to the account.

Section 13. Limit on obligations and payments

No obligation shall be incurred against, and no payment shall be made from, any appropriation account adopted by the budget resolution unless there is a sufficient unencumbered balance in the account and sufficient funds are or will be available to meet the obligation.

Section 14. Periodic finance reports

The chief administrative officer may require the appropriate agencies to prepare and transmit to him or her monthly a report of city/village financial obligations, including, but not limited to:

- a. a summary statement of the actual financial condition of the general fund at the end of the previous month.
- b. a summary statement showing the receipts and expenditures and encumbrances for the previous month and for the then current fiscal year to the end of the previous month.
- c. a detailed listing of the expected revenues by major sources as estimated in the budget, actual receipts to date for the current fiscal year, the balance of estimated revenues to be collected in the current fiscal year and any revisions in revenue estimates occasioned by collection experience to date.
- d. a detailed listing for each organizational unit and activity of the amount appropriated, the amount charged to each appropriation in the previous month and for the current fiscal year to date, and the unencumbered balance of appropriations, and any revisions in the estimate of expenditures.

The chief administrative officer shall transmit the above information to the council on a monthly basis.

Section 15. Transfers

Transfers of any unencumbered balance, or any portion, in any appropriation amount to any other appropriation account may not be made without amendment of the budget resolution as provided in this ordinance, except that transfers within a fund and department may be made by the chief administrative officer within limits set by the budget resolution.

Section 16. Supplemental appropriations

The council may make supplemental appropriations by amending the original budget resolution as provided in this ordinance, provided that revenues in excess

of those anticipated in the original resolution become available due to:

- a. an unobligated surplus from prior years becoming available.
- b. current fiscal year revenue exceeding original estimates in amounts great enough to finance the increased appropriations.

The council may make a supplemental appropriation by increasing the dollar amount of an appropriation item in the original budget resolution or by adding additional items. At the same time, the estimated amount from the source of revenue to which the increase in revenue may be attributed shall be increased or a new source and amount added in a sum sufficient to equal the supplemented expenditure amount. In no case may such appropriations cause total estimated expenditures, including an accrued deficit, to exceed total estimated revenues, including an unappropriated surplus.

Section 17. Appropriation adjustment required

Whenever it appears to the chief administrative officer or the council that actual and probable revenues in any fund will be less than the estimated revenues upon which appropriations from such fund were based, the chief administrative officer shall present to the council recommendations which, if adopted, will prevent expenditures from exceeding available revenues for the current fiscal year. Such recommendations shall include proposals for reducing appropriations, increasing revenues, or both.

Within 15 days of receiving this information the council shall amend the budget resolution by reducing appropriations or approving such measures as are necessary to provide revenues sufficient to equal appropriations or both. The amendment shall recognize the requirements of state law and collective bargaining agreements. If the council does not make effective such measures within this time, the chief administrative officer shall, within the next five days, make adjustments in

appropriations in order to equalize
appropriations and estimated revenues and
report such action to the council.

Yeas:

Nays:

Ordinance Declared Adopted_____

City/Village Clerk

Effective Date_____

Questions and Answers

Budgets and Budgeting

Q1 What budget procedures should we have in place?

The budget process is a complicated and involved procedure. A chapter of this handbook is devoted exclusively to financial management and budgeting details. The Uniform Budgeting and Accounting Act (1968 PA 2) as amended, spells out the procedures and requirements of the budgeting process and the accounting function for municipalities.

A public hearing is required prior to adopting the budget. (1963 PA 43). Remember that someone must be responsible for budget preparation and execution. The legislative body must annually adopt a budget (spending and revenue plan) for the city or village and must make amendments when necessary. Proper procedures must be followed in setting the millages. (See CH 19: Budgeting, for further information.)

Q2 Do we need to have a public hearing before adopting the budget?

Yes, according to the Budget Hearings of Local Governments Act (1963 PA 43), which requires all local units to hold a public hearing on a proposed budget. Notice must be published at least six days prior to the hearing in a “newspaper of general circulation” and must include a statement, printed in 11-point boldfaced type, stating **“The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing.”** Budget hearings held in accordance with the provisions of the local charter and/or ordinance will meet this requirement. This hearing will also fulfill the requirement for a “truth in taxation” hearing.

Q3 Is a public hearing necessary to amend the budget?

No. However, the budget should be amended before you overspend, not after.

Q4 If our city has not adopted a budget and the new fiscal year has begun, is it legal to pass a monthly appropriation bill to pay the bills?

Your city charter may address this issue. Some charters provide for an “interim authority” stating that if the council fails to adopt a budget ordinance before each new fiscal year, the council, on written request of the mayor, may make an appropriation for a department’s current expenses in an amount sufficient to cover the minimum necessary expenses of the affected department(s) until the appropriation ordinance is in force.

Q5 Is there a “rule of thumb” for a fund balance amount?

Operating fund balances should be maintained at levels sufficient to absorb unpredictable revenue shortfalls and to insure desired cash flow levels. Local officials must balance financial stability against an excessive fund balance. You should adopt a policy regardless of the amount that you decide is necessary. A typical policy is one to three months operating expenditures or five to twenty percent of annual budgeted expenditures.

Q6 We would like to start a capital project in five years and add a little to our reserves every year until we have enough to fund the project. How do we budget for this?

For five years, you should have excess revenues over expenditures. The excess revenue should end up in your fund balance. You may want to place the excess revenue in a restricted “capital improvement fund” to avoid the temptation to use the funds to

cover budget shortfalls while you are saving for your capital project. The year that you incur expenses on the capital project, you will need to use your fund balance to offset your capital project expenditures in order to balance the budget.

Consultants

Q7 How do we find a consultant and/or other services and products for municipalities?

The Municipal Yellow Pages, in which consultants can advertise, are currently online at mml.org.

The *Directory of Michigan Municipal Officials*, published annually by the League also contains the Municipal Yellow Pages. In addition, consultants also advertise in the League's magazine, *The Review*. Through its Municipal Consulting Services, the league offers a wide range of management consulting projects with a primary focus on human resources. Specifically, we offer classification and compensation systems, benefits analysis, personnel policies review and development, HR systems audits, performance evaluation systems, and executive search services.

You can also ask other municipalities of a similar size in your region if they are using a consultant in the field in which you are looking. Or, post a question to the village listserv. Find out what others' experience has been with consultants.

In addition, there is an online directory of more than 120 companies enrolled in the League's Business Alliance Program (BAP). Go to mml.org and on the home page, left bottom column—click Business Alliance. Companies are listed alphabetically or by service category (See also Chapter 17: Selecting and Working with Consultants).

Q8 What is the maximum amount for which we can write a contract without going out for public bids under state law?

There is no state law requiring public bids on municipal contracts. However, many cities and home rule villages have such a requirement written into their charter and

other cities and villages have ordinances or policies establishing a threshold amount over which contracts must be bid. Even if your municipality does not have such a requirement, it is often prudent to solicit bids on large projects.

Council/Staff Relationships

Q9 What constitutes appropriate contact between individual councilmembers and city staff? Some of our councilmembers ask staff (other than the city manager) directly for information they desire. This causes problems because information may be given to one council member and not to others, thus putting the manager in an awkward position.

Direction on appropriate council action with respect to city staff can be incorporated into council rules or ethics policies. Manistee covers the issue in their council rules and encourages council members to work through their city managers for information from city staff.

Downtown Development Authorities

Q10 Does the DDA budget have to go to the city council for approval?

Yes. MCL 125.1678 (1975 PA 197) states "Before the budget may be adopted by the board it shall be approved by the governing body of the municipality."

Email

Q 11 Is email a public record?

Email messages are public records if they are created or received as part of performing a public employee's official duties.

The Michigan Freedom of Information Act (FOIA) (1976 PA 442, as amended) defines a public record as "a writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

Q 12 I sometimes use my home computer and personal email account to conduct government business. Am I creating public records?

Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer resources.

Q13 Does all email have the same retention period?

No. Just like paper records, email records are used to support a variety of business processes. Email messages must be evaluated for their content and purpose to determine the length of time the message must be retained in accordance with the appropriate Retention and Disposal Schedule.

Elections

Q14 How many home rule cities and home rule villages have non-partisan elections?

A check of the MML charter database shows an overwhelming majority (over 90 percent) of home rule cities conduct elections on a non-partisan basis. The Election Consolidation Act of 2005 required all village elections to be non-partisan.

Q12 Our clerk administers the oath of office to the mayor, commission members and appointed officials. Who swears in a new city or village clerk?

The county clerk or any notary public can administer the oath of office to a newly elected or appointed clerk.

Q15 Our council has voted to place a millage increase on the ballot at the next election. We understand there has been a change in the required ballot wording. What additional information do we need to include?

Previously, state law required only that the “ballot state the amount of the millage

increase proposed and...an estimate of the revenue increase the taxing unit will collect...during the first calendar year.” 1999 PA 248 amends section 24f of the General Property Tax Act (MCL 211.24f) to require that the following information be provided on the ballot:

1. the millage rate to be authorized,
2. the estimated amount of revenue that will be collected in the first year that the millage is authorized and levied,
3. the duration of the millage in years,
4. a clear statement of the purpose for the millage, and
5. a clear statement indicating whether the proposed millage is a renewal of a previously authorized millage or the authorization of a new additional millage.

Fortunately, this is not quite as complicated as it sounds and could be something as simple as:

Shall the [municipality] continue to levy a total of [one] mill (\$[1.00] per \$1,000.00) on taxable value of property located in the [municipality] for [five] years beginning with the [2000] tax levy year and running through [2004] tax levy year (inclusive), which will raise in the first year of such levy an estimated revenue of [twenty thousand two hundred fifty six dollars (\$20,256.00)] to be used for the specific purpose of [operation, maintenance and/or improvements of the Community Center building and grounds]? If approved this would be a renewal of a previously authorized millage.

Q16 Are there any new requirements for ballot language authorizing the issuance of bonds?

Yes. MCL 211.24f of the General Property Tax Act also requires a ballot to state:

1. the principal amount to be borrowed,
2. the maximum number of years the bonds may be outstanding, exclusive of any refunding, and
3. a clear statement of the purpose for which the bonds proceeds will be used.

If the bonds are to be paid from a separate revenue source or from taxes levied in less than the whole city or village, you must indicate the estimated millage to be levied for the bonds in the first year and an estimated annual millage required to retire the debt, as well as the source of revenue to be used to pay off the indebtedness.

Q17 Is a councilmember who was appointed to fill a vacancy subject to a recall?

Yes. This is still an elected position even though the trustee was appointed. According to the State Elections Bureau, MCL 168.951 of the state elections statute applies to all officials in elected positions. It states that a person cannot be recalled in the first six months of office (from the time he or she is sworn-in) nor in the last six months of office, but can be recalled at any time in between. In fact, except under truly extraordinary circumstances, this is the only way to remove an elected official from office.

Fees and Permits

Q18 One of the churches in our community is preparing to add a new wing to its building. This will require not only a building permit, but also a special use permit. I know churches are tax exempt, but are they exempt from fees also?

Churches are exempt only from ad valorem and sales tax. They are still required to pay for permits and fees.

Finance - Bonds

Q19 Can sewer revenues be used to retire sewer bonds?

Yes, however, the municipality should call its bond counsel to find out if there are any penalties or other requirements.

Finance- Expenditures

Q20 Can the village/city make donations to local service organizations?

Under Michigan law, municipalities have the power to expend public funds only for public purposes. Authorized by the Michigan constitutions or by statute, Michigan courts have ruled that gifts or donation of money or property is a violation of state law. (Chapter 26 of this book covers the topic of municipal expenditures).

Q21 Can a city or village use public funds for employee picnics, retirement dinners, flowers for sick employees, etc.?

It is quite difficult to meet the standard of “public purpose” for these expenditures. The Michigan Supreme Court has held that an improper “lending of credit” occurs when a municipality gives something of value without getting something of specific value in return. For more information, see CH 23: Limits on Municipal Expenditures.

Q22 Our library asked for a donation in order to match outside funding but we told them that we couldn’t contribute to a private nonprofit organization.

A public library is not a private nonprofit organization. Chapter 397 of the Michigan compiled laws, sets out the forms of libraries, including city and village libraries. If a library is established, the budget should not show a disbursement as a donation but as a line item like any other department. A municipality can hire a private nonprofit agency to perform a service that it might otherwise have performed.

Finance - Payment in lieu of taxes

Q23 Can a municipality require payments in lieu of taxes from state and county government agencies?

No. You cannot require payment in lieu of taxes, but you can try to negotiate an agreement with them.

Finance - Purchasing

Q24 Can municipalities use credit cards?

There are two public acts that allow municipalities to use credit cards for procurement (1995 PA 266, MCL 129.241 et seq.) and for accepting payments (1995 PA 280, MCL 129.221 et seq.). Both require some type of action by the local legislative body. To use credit cards for procurement, a written policy is required. The Act lists what must be included in the policy. An authorizing resolution is required to accept payments by credit cards. There are other requirements and restrictions as well. Sample policies are available on our website, mml.org.

Finance - Revenues

Q25 Can a municipality use Act 51 local street dollars for sidewalk construction?

According to the Michigan Department of Transportation (MDOT), municipalities cannot use local street dollars for sidewalk construction but can use them for sidewalk repair and replacement if necessitated by street work.

Q26 Are we supposed to match Act 51 local street dollars for local street construction?

Yes. Local road construction must have matching dollars from the general fund in order to use Act 51 dollars. However, matching funds are not required for the use of Act 51 funds for routine maintenance.

Finance - Special Assessments

Q27 In a special assessment district, are tax-exempt properties subject to special assessment?

Federal and state governmental entities are exempt from special assessment districts. School districts can agree to pay assessments (MCL 380.1141). According to the Citizens Research Council, the courts have consistently ruled that property normally exempt from property taxes (such as that owned by religious and charitable

organizations) is not exempt from special assessments.

Q28 Can we levy a special assessment based on the value of a property?

Special assessments are levied only on real property, based on some measure of how that real property benefits from the special assessment, such as front footage for sidewalks. There are a few special assessments that statutorily authorize ad valorem special assessments such as the Police and Fire Protection Act, 1951 PA 33 (MCL 41.801 and 41.851).

Q29 Are special assessments subject to the Headlee amendment?

Special assessments are not subject to constitutional and statutory general ad valorem property tax restrictions such as the Headlee Amendment and Proposal A of 1994.

Q30 Must we hold a hearing on a special assessment?

You will need to check your charter. Many charter provisions require public hearings for special assessments. The procedure can also be set by ordinance.

Legislation

Q31 I am interested in receiving copies of new bills introduced in the legislature. Is there any way to get on the legislature's mailing list?

The Michigan legislature maintains an interactive, user friendly website: michiganlegislature.org. You can search for a bill by number, by sponsor or by text. The website is updated frequently and gives the current language of the bill, as well as its current status. If you don't have Internet access at home, your local library may have computers available.

Meetings, Minutes, etc.

Q32 Can a councilmember abstain from voting without disclosing the reason? Is the abstention counted as a yea or nay?

It depends. State law does not require village or city councilmembers to declare the reason for an abstention. However, many charters require the councilmember to do so. An abstention is neither a yea or nay vote, and therefore, not counted. It upholds the will of the majority. If the member does not leave the council chamber, they are included in the quorum count.

Q33 How does one go about making changes to minutes?

The Michigan Open Meetings Act (1976 PA 267, MCL 15.261 et seq.) requires that corrections in the minutes must be made no later than the next meeting to which the minutes refer. Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Q34 What is the difference between a public hearing and a special meeting?

A *public hearing* is that portion of a meeting designed specifically to receive input from the public on a single issue. It may be required by ordinance or statute. The time, place, and subject of the hearing must be posted as required by the ordinance or statute and only the posted subject can be discussed. The hearing may be before, during or after a regular meeting or may be at a special meeting called specifically for that purpose.

A *special meeting* is any meeting of the governing body other than those called for by the charter. It may be a meeting of the full body or just a subcommittee. Your charter will outline the process for calling a special meeting and the Open Meetings Act requires the date, time, and place of the meeting be posted at least 18 hours before the meeting.

Q35 Can the council discuss an item not on the agenda?

There is no law prohibiting discussion of an item not on the agenda. The Open Meetings Act outlines the time required for proper notice of regular and special meetings. Although it specifies that the name, address and telephone number of the public body be included in the notice, it does not require a listing of specific items to be discussed. However, a number of cities and villages, either through their charter or their council rules, have agreed that items not on the agenda may not be considered by the council. Some permit the agenda to be amended during the meeting. Your city clerk and/or your city attorney will be able to guide you as to your requirements.

Q36 How long can the public speak during the public comment portion of a council meeting?

It is up to the council to determine the policy. Some communities limit each person to two minutes; in other communities the limit is five minutes. Some municipalities set aside a total of 15 minutes for proponents, and 15 minutes for opponents on a specific issue. One community even sets a timer, and when it goes off, the citizen must quit speaking. The length of time for public commentary should be established in your council rules.

Q37 Do council meeting minutes have to be published?

Check your charter for your municipality's requirements. Some examples of the differing charter requirements are: within 15 days of the meetings, within 20 days of the meeting, and another requires within 45 days after the meeting.

Q38 Is there a requirement regarding the length of time a public hearing has to be kept open? We often hold a public hearing during the regular council meeting. If no one appears to speak at the scheduled time, how long must we wait before proceeding with the remainder of our agenda?

Unless you have something established in your council rules or charter, we know of nothing in state law that sets a specific amount of time. Normally the mayor gavels the public hearing open and asks if there is anyone who wishes to speak. If no one does, the hearing is declared closed. Public hearings are often held during council meetings. You do need to make sure the hearing is open at the time advertised. Again, you need to check your charter and any rules the council may have adopted.

Q39 What can be done about a councilmember not attending meetings?

If you want to deal with council absences, you can enact a provision in your council rules to address it or amend your city (or home rule village) charter to address it. The policy can say something like this:

A. Council Rules

No city councilmember shall miss three (3) consecutive, unexcused regular meetings in a twelve (12) month period. Any violation of this provision shall result in the matter being reviewed by the Board of Ethics for appropriate action, including but not limited to removal from the city council. This provision recognizes the duty of city councilmembers to be in attendance to represent the citizens in matters concerning the city. An absence shall be excused only upon a quorum vote by the present city council.

B. Charters

Most city charters contain a provision dealing with council absences. The most common is: four unexcused absences or missing 25 percent of meetings in a year results in a councilmember getting removed

from office. Variations include three consecutive absences or 25 percent; 30 percent in a year; or seven consecutive meetings in a year. The League's charter database has a listing of all the city charters and what method they use. It is available at mml.org.

Q 40 Is it possible for a councilmember to participate in a council meeting by phone or Skype?

The Open Meetings Act (OMA) regulates meetings of public bodies in Michigan. Most Michigan cities and villages do not allow councilmembers to vote unless they are physically present at council meetings. The Legislature proposed adding an amendment to the OMA to specifically prohibit participation in a council meeting by Skype or teleconferencing. However, this legislation while passing the House, is still in committee as of this writing. Please seek the advice of your municipal attorney on using Skype or teleconferencing to participate in meetings. [In *Goode v. Michigan Department of Social Services*, 143 Mich App 756 (1985), teleconferencing of social services hearings were found to comply with the OMA; and Michigan Attorney General Opinion #6835 of 1995 concluded that an intermediate school district representative could participate in a meeting through interactive television and comply with the Open Meetings Act.]

Q41 I think the council as a body is operating under questionable legal and ethical practices. Is there an organization or agency that has oversight over the council?

No, there is no oversight agency. The municipal attorney should be alerted to questionable legal or ethical practices. As a councilmember, you might suggest the council attend training seminars on the Open Meetings Act, the Freedom of Information Act or other seminars that the League offers.

Open Meetings Act

Q42 Is it a requirement to post a schedule of the regular meetings of the council?

Yes, according to Michigan's Open Meetings Act, (1976 PA 267, MCL 15.261 et seq.). MCL 15.265 (2) provides, "For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, time, and places of its regular meetings." If there is a change in the schedule, the changes must be posted within three days after the meeting at which the change is made.

Q43 Can we go into a closed meeting in order to discuss selling a piece of property?

No. This is not permitted under the Michigan Open Meetings Act. However, you can go into closed session to consider purchase or lease of real property up to the time an option to purchase or lease that property is obtained.

Q44 What can we discuss in a closed meeting?

Every councilmember should be familiar with the Michigan Open Meetings Act. The intent of the Act is for a public body to conduct its business in the open. There are only a few circumstances where a closed meeting is allowed. These include discussion of employee or officer discipline, etc. when the employee or officer requests a closed meeting; consideration of purchase of property; consultation with the municipal attorney on pending litigation and review of an employment application upon request of the applicant. The statute states how to go into closed session and how to record the proceedings. You cannot conduct interviews in closed session. You cannot go into closed session to avoid discussing issues in front of citizens.

Q45 Our village would like to have a joint meeting with the adjacent township. Is there anything to prevent us from holding this meeting outside the village limits?

There is nothing in the Open Meetings Act that prevents your council from meeting outside the corporate limits. However, don't forget the posting requirements. This type of meeting, close to the village boundaries, should pose no political problems because the citizens can easily attend if they so desire. But, if your council ever considers a meeting at a remote location from the village, you'll need to factor in the reactions of the village constituents. There are benefits and drawbacks to meetings like this and all aspects need to be considered, not just the legal aspects.

Training and conferences

Q46 Can appointed clerks and treasurers participate in the Elected Officials Academy?

They are welcome to attend the classes, but they are not eligible to graduate from the different levels. However, *elected* clerks and treasurers may earn credits and graduate from the Academy levels. If a person is appointed to fill an elected position, then he/she is eligible to participate in the Elected Officials Academy. See the Education Calendar section of our website for a list of upcoming classes and check the program descriptions for details of Elected Officials Academy credits.

Uniform Traffic Code

Q47 We note a new Uniform Traffic Code has been promulgated. Do we need to adopt a new traffic ordinance?

Probably. As a matter of fact, unless you have adopted the Michigan Vehicle Code (MVC) as your primary code, you will need to adopt that first. The League has a One Pager *Plus* Fact Sheet with a sample ordinance adopting the MVC by reference and a sample ordinance adopting the Uniform Traffic Code (UTC) by reference. You can obtain copies from either the MML

website at mml.org or by emailing info@mml.org.

Utilities

Q48 Our city is in the process of setting water and sewer rates. Can we use rates from neighboring communities as the basis for our rates?

The setting of utility rates is a complicated matter that needs to include substantial input from your city attorney, engineer and your water and sewer department. In the past, many municipalities set their water and sewer rates based on the rates charged by their neighbors and/or other comparable communities. However, in *Bolt v. City of Lansing* 459 Mich. 152 (1998), the Michigan Supreme Court ruled that there are legal differences between a tax and a fee. The Court said that a fee must serve a regulatory purpose, be proportionate to the necessary cost of the service and be voluntary.

As a result, the methods used by many municipalities prior to the *Bolt* decision (i.e. determining rates based on comparable rates in other cities and villages) may no longer be valid. Because of the potential impact on any municipality's utility revenues, most rate ordinances should be reviewed by your municipal attorney for legal compliance with *Bolt*. (See Chapter 22: Special Assessment and User Charges for further discussion on *Bolt*).

Q49 Do any municipalities have an ordinance providing for multiple water meters – for instance, to measure water used for lawn sprinkling separately from water used indoors?

Hancock provides separate water meters for a supply of water that will not be discharged into the sanitary sewer system. This includes lawn and garden sprinkling, commercial bottling of beverages and flooding of ice rinks. Tecumseh permits separate water metering systems for residential lawn sprinkling only under certain conditions, including the residential property owner being responsible for installation costs.

Q50 Can unpaid utility bills be added to tax bills as a lien against the property?

1939 PA 178 (MCL 123.161 et seq.) as security for collection of water or sewage system rates, assessments, charges, or rentals and states, provides for a lien for water or sewage system charges which accrues to the property at the time the service is furnished by municipalities.

Weddings

Q51 Our mayor has been asked to perform several wedding ceremonies this summer. Who decides how much the mayor should charge?

The law giving a mayor the authority to perform marriage ceremonies (MCL 551.7(3)) states the mayor shall charge and collect a fee. The amount is to be determined by the city council and paid to the city treasurer to be deposited in the general fund of the city at the end of the month. In general, a fee of \$25-50 has been approved in many cities.

For More Information

General (available at mml.org)

Inquiry Service. As one of the oldest League benefits, the Inquiry Service provides member officials with answers to questions on a vast array of municipal topics. Member officials may request information and/or material on any municipal issue. The League has many sample documents available:

- Ordinances
- Policies
- Programs
- Articles
- Charters
- Referrals
- Regulations
- Feasibility Studies

Send your municipal inquiries to info@mml.org.

Structure of Local Government in Michigan (available at mml.org)

Nature and Purpose of a Home Rule Charter. Published jointly by Citizens Research Council of Michigan, Michigan Municipal League, Michigan Association of Municipal Attorneys, 1993.

Organization of City and Village Government in Michigan. (Municipal Report). Michigan Municipal League; 1994, 2005, 2011.

One Pager Plus Fact Sheets:

- *Elected/Appointed Official—in Default*
- *Email and Retention of Records*
- *Ethics—*
 - *Contracts of Public Servants with Public Entities*
 - *Incompatible Public Offices*
 - *Misconduct in Office*
 - *Standards of Conduct for Public Officers/Employees*
- *Freedom of Information Act—*
 - *General Questions*

- *Policy and Definitions*
- *Responding to Requests*
- *Statutory Exemption*
- *Open Meetings Act—*
 - *Calling Closed Meetings*
 - *Closed Meeting Minutes*
 - *Definitions and Requirements*
 - *Posting Requirements*
- *Public Hearings*
- *Work Sessions: Use By Legislative Bodies*

Meetings: Agendas and Minutes. A guide to recording minutes and organizing meetings. Michigan Municipal League electronic book (e-book), 2005.

MML Legal Defense Fund. The League's Legal Defense Fund and its resources are available incases which would have a considerable impact on Michigan municipal law or positively affect the organization, operation, powers, duties, or financing of Michigan's cities and villages. Legal Defense Fund resources and services are available to League members which are also members of the Fund. Dues are based on member population and range from \$100 to \$1,000.

The typical form of assistance is the filing of an *amicus* brief to support the legal position of the city or village involved in the case. Most often this is in the Michigan Court of Appeals or Michigan Supreme Court. The Legal Defense Fund is financed by voluntary dues of member cities and villages. Forms to make a request for assistance are available at mml.org.

Legislative Issues (available at mml.org)

The League's advocacy team researches legislative issues of importance to municipalities; through their research, they develop issue papers and legislative briefs that provide the framework for the League's

efforts to represent municipalities' best interests at the state and federal level.

- **Issue Papers**
 - *Revenue Sharing Fact Sheet*
 - *Home Rule in Michigan—Then and Now*
- *Legislative Briefs*
- *Prosperity Agenda*
- *Inside 208 blog*
- *League Position on Current Legislative Bills*

Placemaking (available at placemaking.mml.org)

The League identified eight essential assets that make communities vibrant places in the 21st century: physical design & walkability; green initiatives; cultural economic development; entrepreneurship; welcoming; messaging & technology; transit; and education. Helping Michigan's leaders grow these assets in their own communities serves as the focus of the League. Research continues to show that "placemaking" matters more than ever, as an increasingly mobile workforce seeks out neighborhoods before finding jobs and opening up businesses.

League Case Studies:

Physical Design & Walkability

- **Boyne City Main Street**—A group of volunteers organized to improve, promote, and create greater vitality around the Boyne City downtown.
- **Downtown: The Heart & Soul of a Community**—Business owners in West Branch brought together local officials and residents to start "Fabulous Fridays" to create a more fun, viable downtown in the summer.
- **Heart of Downtown: Sundquist Pavilion in Riley Park**—Farmington transformed a parking lot into an attractive landscaped park with a pavilion that now serves as the focal point for numerous community events.
- **Live Midtown**—To boost the number of homeowners and renters in Detroit's

Midtown, a nonprofit organized a live-where-you-work incentive program.

- **Main Street Community Partnership**—A group of Adrian residents and leaders, inspired to invest in their own community, chipped in to buy and rehab a historic structure on Main Street.

Green Initiatives

- **Dequindre Cut**—A 1.35-mile recreational path that offers a pedestrian link between the Detroit Riverfront, Eastern Market, and many residential neighborhoods.
- **Recycle Here**—A creative approach turned a traditional drop-off center into a community gathering place and a showcase for artists and musicians.

Cultural Economic Development

- **The Alley Project**—Professional artists, teens, and neighbors built infrastructure for creative expression and community responsibility.
- **Artist Village Detroit**—A once-abandoned commercial strip serves as a creative hub for artists, students, business owners, and neighbors in the heart of Old Redford.
- **Growing the Economy through Arts and Culture**—Ludington was poised to celebrate its past and future, bringing art, nature and history together, and provide an impetus for future development.
- **St. Joseph Public Art**—Fills downtown with unique sculptures from the area's artists and has helped turn the community into a tourist destination.

Entrepreneurship

- **Hatch Detroit**—Promotes a vibrant urban community by awarding money and empowering local entrepreneurs with capital and support to succeed and grow.
- **Mark's Carts - Ann Arbor**—Capitalizing on a national food cart trend, Mark's Carts offers local food and communal seating, in a once empty downtown lot.

- Ponyride - Detroit—Subsidizing shared workspace, Ponyride provides cheap space for artists and entrepreneurs to work and share know-ledge, resources, and networks.
- Rust Belt Market—Features artists, collectors, local food products, musicians, and community events in a re-purposed big box commercial building in Ferndale.

Welcoming to All

- Detroit City Futbol League—A recreational, adult, co-ed neighborhood soccer league that brings people together while marketing different areas of the city.
- Detroit Soup—A grassroots initiative to bring neighbors together to build relationships, share ideas, and raise money for community projects.

Messaging & Technology

- Hubbard Farms Emergency Alert System - Detroit—Frustrated by slow police response times, residents used a free cell phone texting system to alert neighbors of crimes.
- Love Muskegon—A group of young professionals in Muskegon started an online branding and marketing campaign to promote their city.

Education

- Clark Park Coalition - Detroit—This grassroots, nonprofit coalition has grown to offer positive activities for nearly a thousand neighborhood youth each year.
- Frankfort Historic Landmarks Arts Center—A re-purposed Coast Guard Station that serves as a popular community hub for residents and visitors.

Transit

- Tour de Troit—A small group of people exploring Detroit by bike has grown into Michigan's largest bike ride, promoting safer streets for non-motorized users.

Operation of Village Government

Finance

One Pager *Plus* Fact Sheets:

- *Adopting the Budget*
- *Economic Development—*
 - *Corridor Improvement Authority*
 - *Downtown Development Authority*
 - *Financing Tools*
 - *Local Development Financing Authority*
 - *Neighborhood Improvement Authority*
 - *Waterfront Tax Increment Financing*
- *Investment Policies for Surplus Funds*
- *Municipal Expenditures*

Reference Packets. Compiled by the Michigan Municipal League.

- DDAs (Downtown Development Authorities)

Michigan Department of Treasury

Manuals: (available at michigan.gov/treasury)

- *Bulletin for Audits of Local Units of Government.* 2012.
- *Uniform Accounting Procedures Manual.* Michigan Department of Treasury, Local Audit & Finance Division, Bureau of Local Government Services, 2007.
- *Uniform Budget Manual for Local Units of Government in Michigan.* Michigan Department of Treasury, Local Audit & Finance Division, Bureau of Local Government Services, 2001.
- *Uniform Chart of Accounts for Counties and Local Units of Government,* Michigan Department of Treasury, Local Audit & Finance Division, Bureau of Local Government Services, 2002.

Outline of the Michigan Tax System. The Citizens Research Council of Michigan, Detroit, MI. 2014. Updated biennially. (available at: cremich.org.)

Risk Management

The League's Risk Management Services Division administers two statewide municipal insurance programs: the Michigan Municipal League Workers' Compensation Fund and the Michigan Municipal League Liability and Property Pool.

The mission of Risk Management Services is to provide a long-term, stable, cost-effective insurance alternative for members and associate members of the Michigan Municipal League.

Member Services

- Expert Governmental Claims Handling
- Personalized Loss Control Services & Resources
- Law Enforcement Specialists
- Reduced Rates at Related League Training Events, Conventions & Conferences

Websites:

michigan.gov/wca

Workers' Compensation Agency.

michigan.gov/difs/

Department of Insurance and Financial Services.

primacentral.org

Public Risk Management Association (PRIMA).

Additional information

Websites

mml.org.

Michigan Municipal League.

nlc.org

National League of Cities.

michigan.gov

State of Michigan.

legislature.mi.gov

Michigan Legislature.

census.gov

U.S. Census Bureau.

Michigan Municipal League publications:

The Review. The official magazine of the Michigan Municipal League. Published six

times a year. It serves as a medium of exchange of ideas and information for the official of Michigan cities and villages.

The Directory of Michigan Municipal Officials. Published yearly and distributed to your village office.

One-Pagers Plus Fact Sheets. One-page summaries on a variety of municipal topics, many with a "plus" attached—a sample ordinance, resolution, policy, form, etc. These may be downloaded from mml.org. Here is a complete list of our current titles:

Act 312 Compulsory Arbitration of Labor Disputes in Police & Fire Departments
Act 425 Conditional Land Transfers
Adopting the Budget
Charter Amendment: HRC Initiatory Petition
Charter Amendment: HRC Legislative Body Resolution
Charter Amendment: HRV Initiatory Petition
Charter Amendment: HRV Legislative Body Resolution
Commercial Redevelopment Act
Commercial Rehabilitation Act
Complete Streets
Default: Elected/Appointed Officials
Economic Development: Corridor Improvement Authority
Economic Development: Downtown Development Authority
Economic Development: Financing Tools
Economic Development: Local Development Financing Authority
Economic Development: Neighborhood Improvement Authority
Economic Development: Waterfront Tax Increment Financing
Election Law Amendments - City
Election Law Amendments - Village
Ethics: Contracts of Public Servants with Public Entities
Ethics: Incompatible Public Offices
Ethics: Misconduct in Office by Public Officers
Ethics: Standards of Conduct for Public Officers/Employees

E-mail and Retention of Records
Freedom of Information Act:
 General Questions
Freedom of Information Act:
 Policy and Definitions
Freedom of Information Act:
 Responding to Requests
Freedom of Information Act:
 Statutory Exemptions
Fuel Excise Tax Refunds
Headlee Rollback and Headlee Override
Investment Policies for Surplus Funds
Land Division Act
Liquor Licenses for Redevelopment:
 Background and How to Apply
Master Plan: 5 Year Review
Master Plan: Mastering the Updating
 Process
MISS DIG Underground Facility Damage &
 Prevention Safety Act
Mobile Home Rental Housing Inspections
Municipal Civil Infractions
Municipal Expenditures
Municipal Liens
Open Meetings Act: Calling Closed
 Meetings
Open Meetings Act: Closed Meeting
 Minutes
Open Meetings Act: Definitions and
 Requirements
Open Meetings Act: Posting Requirements
Public Hearings
Rental Housing Inspection Law
Residency Act
Residency Requirements and the Planning
 Commission
Revenue Sharing Fact Sheet
Right to Work
Social Security Number Privacy Act
State Single Construction Code Act
Supportive Housing Properties
Urban Cooperation Act/Service Sharing and
 Labor Agreements
Vehicle Code and Uniform Traffic Code
 (Michigan)
Water and Sewer Liens
Work Sessions – Use by Legislative Bodies
Zoning: Basic Questions
Zoning: Nonconforming Buildings and Uses

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Meetings: Agendas and Minutes

A handbook for municipal officials



michigan municipal league

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Introduction

This handbook is part of the Michigan Municipal League's effort to improve the quality of local government through effective communication.

One responsibility of an elected body is to communicate clearly with its constituents. The Michigan Open Meetings Act requires clear, prompt notification of official meetings and actions of local government bodies. It also requires an accurate written record of those meetings.

This handbook is a guide to assist in complying with the sections of the Michigan Open Meetings Act (MCL 15.261 et seq.) which deal with recording the minutes of public meetings. Throughout the handbook, where the guidelines require compliance with specific sections of the Michigan Open Meetings Act, those sections are noted for easy reference.

Our thanks go to Wells F. Cook Ph.D., a professor at Central Michigan University and Professional Registered Parliamentarian, for developing the basic text for this handbook.

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I. Rules of Procedure

This publication deals specifically with governmental bodies elected to serve their constituents. City and village councils should adopt rules of procedure designed to expedite business and provide fair and open deliberation. Rules of procedure describe the processes for councils, clerks, and managers/administrators to bring matters before the council. Of special note is the General Law Village Act (MCL 61.1 et seq.)—which requires that the council “**shall** prescribe rules of its own proceedings.” (MCL 65.5) To access the sample rules of procedure drafted by the League, please click on the link in the Table of Contents.

The Sample Rules of Procedure that follow contain suggestions for items that **may** be included in your city’s or village’s rules of procedure. However, you may have rules that vary from those that are suggested. Your governing document, whether a charter or the General Law Village Act, should be the basis for your municipality’s rules of order. Home rule cities and home rule villages may have charter provisions that regulate special meetings or compulsory attendance, for instance. General law villages do not have a home rule charter, but operate under the General Law Village Act (MCL 61.1 et seq.). The General Law Village Act requires the council to hold at least one meeting in each month (MCL 65.4), and provides that special meetings may be called by the president or three trustees (MCL 65.4).

Rules of procedure may cover preparation of agendas, the order of business, methods for processing communications, conducting appeals and hearings, the length of discussion, and conduct in the council chambers. Rules of procedure are determined by the local governing body, and cannot contradict the provisions of the charter (of home rule cities and home rule villages) or the General Law Village Act (general law villages).

General Law Village Act MCL 65.5

(1) The council shall prescribe the rules of its own proceedings, and shall keep a record of those proceedings. A majority of the members of council shall be a quorum for the transaction of business.

Home Rule Cities and Home Rule Villages – check local rules.

II. Setting the Agenda

An agenda is a guide for conducting an official business meeting of a duly constituted body. Generally, the person who sets the agenda is the presiding officer (the mayor or president) in consultation with the recorder (clerk). The recorder (clerk) is generally the person who sends out the agenda along with supporting information.

In parliamentary procedure, the presiding officer would be advised to set a deadline before each meeting to receive agenda items. The deadline should allow enough time before the meeting for an agenda to be produced and supporting information and documents to be mailed or delivered to the members. In local government, this time for receiving an agenda item is set by local rule—usually council rules of procedure. Trustees/councilmembers/commissioners should have enough time before the meeting to read and digest the information. Allowing time for the members to prepare will help the meeting proceed at a more efficient pace. The council rules should also describe how the agenda items are brought to the presiding officer’s attention and the timeline for doing so.

III. Recording Minutes

See Michigan Open Meetings Act, MCL 15.269(1)

Minutes are required under Michigan's Open Meetings Act (OMA). Minutes are recorded to provide an accurate, written history of the proceedings of a council, board, commission, or committee meeting. Specifically, under section 9(1) of the OMA, the record must include those official actions taken by the group of persons legally charged with conducting the business of the organization. The minutes must also contain the purpose or purposes for which a closed meeting is held.

Identification

See Michigan Open Meetings Act MCL 15.269 (1)

The minutes must include the following information:

- Date, time, place, members present, members absent, any decisions made at the meeting, the purpose(s) for which a closed session is held, and all roll call votes.

City of Green Valley

Regular Council Meeting, City Hall Council Chambers

Wednesday, March 8, 2017 7:00 p.m.

The councilmembers present and absent should be listed alphabetically immediately under the applicable heading. It is suggested that in the minutes of the first official meeting of the council for each year, the full name of the councilmembers should be listed. After the first mention of names in those minutes and in minutes of later meetings, only the last names need be used.

***Present:** Bry, Dickenson, Heide, Krone, Lagus, Mohles, Padree, Pikk, Walper, Woorra*

One way to obtain the names of those attending the meeting is to have them sign in as they enter the room and indicate if they desire to speak on a particular topic—however, a person may speak even if he or she has not signed in. This procedure will help the presiding officer and the clerk.

Open Meetings Act 15.269

(1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting.

Body of Minutes

See Michigan Open Meetings Act MCL 15.269(1)

Minutes must record all official actions once the meeting is called to order. Each official action taken by the board should be numbered for ease of locating.

1. *The Pledge of Allegiance was lead by councilmember Mohles.*
2. *The minutes of the Regular Council Meeting of March 8,2017 were presented.*

Open Meetings Act MCL 15.269

- (1) *Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting.*

- (2) *Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4. The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.*
- (3) *A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.*

Motions

The only action that must be recorded in the minutes is when a motion is made, seconded, and voted upon in some way. Motions that are withdrawn or not seconded are **NOT** recorded.

The record of each motion must include the name of the person making the motion, but does not need to include the name of the seconder. The record must, however, include the fact that the motion was seconded, and it may be politically prudent to include the seconder's name. The minutes must also indicate the action taken on the motion, generally "carried" or "defeated." For ease of reading, the minutes should state the mover's name first, then the word, "moved;" followed by the seconder's name and the word, "seconded;" followed by the action of the motion in all capital letters; and finally the motion itself.

3. *Krone moved, Lagus seconded, CARRIED, to approve the minutes of February 8, 2017, as corrected.*

Votes – Roll Call and Division of the House

See Michigan Open Meetings Act MCL 15.269(1)

All roll call votes must be recorded by name. They may be recorded in one of two ways:

1. Record a list of those who voted "aye," and a list of those who voted "no."

Aye: Bry, Heide, Krone, Lagus, Mohles, Padree

No: Pikk, Walper, Woora

Or

2. Record the name of each individual and how he or she voted:

Bry, aye; Heide, aye; Krone, aye; Lagus, aye; Mohles, aye; Padree, aye; Pikk, no; Walper, no; Woora, no

Most recorders prefer the first method. When a member of the council calls for a division of the house after the presiding officer has declared the motion as passed or defeated, the presiding officer then asks the voting members to raise their hands or to stand up. The chair counts the number for and against the motion. The number of persons voting each way must be recorded.

Aye: 6 No: 3

Amendments

Amendments to motions are entered in the order in which they are made. They must be voted on in reverse order with the last amendment being voted on first. Then when the first amendment is voted on, it includes amendments made after it. After all amendments have been voted on, the main motion is voted on “as amended.” The entire motion, including all of the amendments passed, must be voted on as a total unit.

Points of Order and Appeals

Under parliamentary procedure (Robert’s Rules of Order), when a board member thinks that the rules of procedure are being violated, he or she can ask for a point of order or for a point of information or clarification. The member calls upon the presiding officer for a ruling and an enforcement of the rules of procedure. If the presiding officer rules against a member who raises a point of order, that person, or any other person, may appeal the chair’s decision to the council as a whole. Points of order and appeals are not recorded in the minutes. Robert’s Rules of Order are only binding on a local government council/commission if the body has adopted them.

Highlights of Discussion

The highlights of the discussion after a motion has been made and seconded do not have to be recorded. However, many recorders find it appropriate for future reference as well as politically practical to record both the points in favor of and against a motion. The best rule to follow in recording discussions is to put in as little as possible. It is prudent to address in your council rules of procedure whether or not discussion is to be recorded in your meeting minutes.

When the pros and cons are recorded, the discussion should be summarized and the minutes should reflect the amount of discussion on each side, both in content and length. The recorder should not attempt to record remarks exactly as stated. The record should reflect what was said without bias, prejudice, or opinion of the recorder. Retaining objectivity is probably the most difficult part of taking minutes.

Reports

Boards, commissions, and committees generally should present written reports. A reference should be made that the written report is attached to the minutes or may be found in a particular folder in the files. The minutes should indicate the name and official office of the person who made the report on behalf of the board, commission, or committee. The minutes should then indicate what action the council took to dispose of the report. If an action is to be taken, the minutes should reflect who is going to do what and when it is to be done. This should be described in the record of the motion made.

Councils often move to receive reports. This means only that the report is going to be filed. It is not necessary to have such a motion. If something is going to be done as a result of the report, then a motion to that effect will have to be made later. *Receiving* a report does not mean, or imply, that the council agrees with or endorses the report or its recommendations. However, *accepting* or *adopting* a report does mean that the council accepts or endorses the report’s contents. Reports from individuals, such as the organization’s attorney, are handled the same way as reports from boards, commissions, and committees. Generally, a brief description of the report is recorded along with the disposition of the report by the council.

Communications Received

Pertinent communications received by officials on the council/commission are read by the official. The communications are recorded with a brief statement that identifies the author and a summary of the topic or main idea. Generally, it is understood that the communication will be filed unless a councilmember moves to do something about the item. Junk mail should not be mentioned, as it takes up valuable time.

Appointments of Committees

A record should be kept of all individuals appointed to committees. Indicate the committee, the individual's appointment and the term of office. If the committee is a new one, the minutes should indicate the purpose of the committee and the time-frame within which the committee is to work and report back, if required. The minutes should also indicate whether the committee is a standing committee or an ad hoc committee.

Consent Agenda

A consent agenda contains routine items which do not need further discussion. The whole group of items is approved in one motion and one roll call vote. In the minutes, the actions passed in the consent agenda are recorded individually and in full. If discussion of an item is desired, it can be removed from the consent agenda and discussed immediately after approval of the consent agenda or in its normal sequence on the agenda.

The printed agenda should contain a consent agenda definition like the one below:

All matters listed under Item 7, Consent Agenda, are considered routine by the council and will be enacted by one motion. There will be no separate discussion of these items. If discussion of an item is required it will be removed from the consent agenda and considered separately.

Adjournment and Signature

The motion to adjourn should be recorded like all other motions. A motion to adjourn is not, however, required. The chair may declare the meeting adjourned, unless there are objections, when all of the business on the agenda has been covered. The exact time of adjournment should be recorded. A meeting may not be adjourned before the full agenda is finished, unless a motion to do so has passed. Remaining items are to be covered at the next meeting under "Unfinished Business." After indicating that the meeting was adjourned, the recorder's name and title should follow. The minutes are then signed in black or blue ink.

*Meeting adjourned at 9:30 p.m.
Thomas Hightower, Clerk, City of Green Valley*

Tape Recordings, Videotaping, Telecasting, Media

See Michigan Open Meetings Act MCL 15.262(1)

A tape recording of the proceedings will help the recorder prepare the minutes. Announce that the proceedings are being recorded before the meeting is officially called to order. This tape recording is not the official record of the meeting. The formally approved/accepted hard (written) copy of the minutes is official. Audiotapes of regular meetings are considered public records, and under an approved record retention schedule, may be erased after the minutes are transcribed and approved.

According to the OMA, the right of a person to attend a public meeting includes the right to tape record, videotape, or telecast the proceedings. However, the council may establish reasonable rules so that the meeting is not unduly disrupted. It is a good idea to provide the press with an agenda, a seating place from which the council can be seen and heard and a table on which to write. If the press can follow the proceedings, the reading public can as well. Adequate press coverage can be a tool by which the public is informed of public actions.

Open Meetings Act MCL 15.263

1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

Corrections

See Michigan Open Meetings Act MCL 15.269(1)

According to the OMA, corrections in the minutes shall be made not later than the regular meeting after the one in which the minutes in question were recorded. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction. A suggested method of correcting the minutes is to write the corrections in black or blue ink in the outside margins of the minutes when there are many corrections. If the correction is only one word, then it may be written in above the original word, with that word being crossed off. The corrections should be indicated in the next meeting's minutes, and it should be indicated that the minutes were approved with corrections.

Open Meetings Act 15.269(1)

...The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. The public body shall make corrected minutes available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

Approval

Once the minutes have been approved, generally at the next regular meeting of the organization, the motion will appear in the minutes of that meeting; but a notation should be made near the signature of the recorder on the previous minutes with the following information: *“Approved (date and initials)”* or *“Approved as corrected (date and initials).”*

Open Meetings Act MCL 15.269(3)

A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.

Publication

See Michigan Open Meetings Act MCL 15.269(1)-15.269(3)

According to the OMA, the unofficial minutes must be ready for the public to see within eight (8) business days after the meeting. Within five (5) business days after the minutes have been approved, the official minutes must be ready to be viewed by constituents. Publication of minutes is subject to the statute authorizing your form of government or your local charter.

Open Meetings Act MCL 15.269

(2) Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4. The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.

(3) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.

General Law Village Act MCL 65.5(3):

Within 15 days after a meeting of the council, a synopsis or the entirety of the proceedings, including the vote of the members, prepared by the clerk and approved by the president showing the substance of each separate decision of the council shall be published in a newspaper of general circulation in the village or posted in 3 public places in the village.

Home Rule Cities and Home Rule Villages – check local rules

Closed Meeting Minutes

See Michigan Open Meetings Act MCL 15.267(2)

A two-thirds roll call vote is required to call a closed session, except for certain exceptions. A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at a closed session. These minutes shall be retained by the clerk of the public body. They shall not be available to the public for inspection and would be disclosed only if required by a civil action or court order. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the motion to hold the closed session was approved, under an approved records management schedule. If an audiotape was made of the closed meeting, it must also be retained for a year and a day. Refer to the Open Meetings Act, MCL 15.268, below, for situations in which closed meetings of public bodies are allowed.

Open Meetings Act MCL 15.267 Closed sessions; roll call vote; separate set of minutes.

(1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a) and (c). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

Open Meetings Act MCL 15.268 Closed sessions; permissible purposes.

A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(h) To consider material exempt from discussion or disclosure by state or federal statute.

MML publications:

[Fact Sheet: Calling Closed Meetings](#)

[Fact Sheet: Closed Meeting Minutes](#)

IV. Sample Agenda Outline

A sample agenda from a fictional government body follows. Refer to your city or village charter and codes to clarify what discussion, topics, etc. are allowed before your council, boards, and commissions.

1. Call to Order (Pledge of Allegiance, if there is to be one)
2. Roll Call
3. Approval of (regular/special) minutes of the last meeting
4. Approval of Agenda
5. Public Comments - Reserved Time (for items listed on this agenda)
6. Petitions and Communications
7. Consent Agenda
8. Introduction and Adoption of Ordinances and Resolutions; Public Hearings
9. Reports of Officers, Boards and Committees; Routine Monthly Reports from Departments
10. Unfinished Business (unfinished or pending matters)
 - a.
 - b.
11. New Business
 - a.
 - b.
12. Miscellaneous
13. Public Comments - General
14. Closed Session (For situations that meet the circumstances specified in the Michigan Open Meetings Act.)
15. Return to open session
16. Adjournment

V. Sample Rules of Procedure

Sample rules of procedure from a fictional government body follows. Refer to your city or village charter and ordinances to clarify what discussion, topics, etc. are allowed before your boards and commissions. City and village councils should adopt rules of procedure designed to expedite business and provide fair and open deliberation. Rules of procedure describe the processes for councils, clerks, and city managers/administrators to bring matters before the council.

The sample rules of procedure that follow contain suggestions for items that may be included in your city's or village's rules of procedure. However, you may have rules that are at variance with those suggested. Your governing document, whether a home rule charter or the General Law Village Act, should be the basis for your municipality's rules of order. These rules may cover

preparation of agendas, the order of business, methods for processing communications, conducting appeals and hearings, and the length of discussion and conduct in the council chambers.

Agenda

1. Authority
2. Meetings
 - Regular Meetings
 - Special Meetings
 - Place of Meeting
 - Time of Meeting
 - Changes in Schedule
 - Public Notice of Meetings
3. Quorum
4. Agenda
 - Agenda Items
 - Previous Meeting Minutes
 - Proclamations
5. Conduct of Meeting
 - Mayor
 - Members of the Public
6. Appointments
7. Rules of Order
8. Record of Meetings
 - Recording Responsibility
 - Recording of Discussion
9. Voting Duty
10. Roll Call Votes
11. Expenses

1. Authority

These rules are adopted by resolution of Green Valley City Council under the authority of the city charter (Section 2.4). These rules are superseded by the city charter, city code, and laws of the State of Michigan.

2. Meetings

Regular Meetings. The regular meetings of the council will be on the first Wednesday of each month, unless that day is a holiday or holiday eve. Before the end of the year, the council will approve by resolution the regular meeting schedule for the following calendar year, including exceptions to the first Wednesday meeting.

Special Meetings. Special meetings of the council will be called by the city clerk upon the written request of the mayor, city manager, or any two (2) members of the council or by a majority vote of the council. Notice of special meetings will be delivered personally or left at the councilmember's usual place of residence by the city clerk or designee at least 18 hours prior to the special meeting. The notice will contain the time, place, and purpose of the meeting.

In accordance with the Open Meetings Act, a special meeting notice must be posted in a prominent and conspicuous place—both at city/village hall and on the municipality's website if it maintains one, 18 hours prior to the meeting, and shall contain the date, time, and place of the special meeting.

Note that the OMA does not require the purpose of the meeting to be listed on the notice of a special meeting. A provision requiring this is enacted at the discretion of the public body.

Place of Meeting. All regular and special meetings of the council will be held in the council chambers in the municipal building. The city clerk may change the meeting to a larger room, if needed. A notice of the change will be prominently posted on the door of the regular meeting place and will be published in the newspaper if time permits.

Time of Meeting. All regular council meetings will begin at 7:30 p.m., unless the council, by majority vote, sets a different starting time. Special meetings may be scheduled for other times. Meetings must be scheduled at a time when the public can attend.

Changes in Schedule. Changes in the regular meeting schedule may be made with the approval of a majority of members in session and will be published if time permits.

Public Notice of Meetings. The city clerk will post a notice of the regular meeting schedule for the next calendar year at the city hall, and publish the notice in the newspaper prior to the beginning of each calendar year. The notice will indicate the dates, times and places of the scheduled regular meetings.

3. Quorum

Four councilmembers shall constitute a quorum for the transaction of business at all meetings.

Note: This number will be set by the charter in home rule cities and home rule villages, and by the General Law Village Act in general law villages.

4. Agenda

Agenda Items. Agenda items will be given to the clerk by noon on the Friday preceding the regular council meeting. The clerk will prepare and deliver to the councilmembers the agenda with supporting material and explanations as soon as possible after setting the agenda. The agenda may be changed at the regular meeting by a majority vote. A special meeting agenda will consist only of the matter(s) stated in the notice of the meeting. The order of business at regular meetings will be as follows.

1. Call to Order
2. Roll Call
3. Approval of regular and/or special minutes of the last meeting
4. Approval of Agenda
5. Public Comments - Agenda Items
6. Petitions and Communications

7. Consent Agenda
8. Introduction and Adoption of Ordinances and Resolutions; Public Hearings
9. Reports of Officers, Boards and Committees; Routine Monthly Reports from Departments
10. Unfinished Business
 - a.
 - b.
11. New Business
 - a.
 - b.
12. Miscellaneous
13. Public Comments - General
14. Closed Session (if required, for situations that meet the circumstances specified in the Michigan Open Meetings Act).
15. Return to Open Session
16. Adjournment

Previous Meeting Minutes. The minutes of the previous meeting(s) will be distributed to the council with the next meeting's agenda and will not be read at the meeting.

Proclamations. Proclamations will be included in the agenda under "Petitions and Communications" and may be brought before the council by any member.

5. Conduct of Meeting

Presiding Officer. The mayor will preside at all meetings of the council. In the absence of the mayor, the mayor *pro tem* will preside. In the absence of both the mayor and mayor *pro tem*, the councilmember who has served the longest will preside.

Members of the Public. Members of the public will speak only when recognized by the chair. Members of the public will be limited to speaking during the "Public Comment - Agenda Items" time and during the "Public Comment – General" time. During the "Agenda Items" time, each speaker will be limited to three (3) minutes and to items on the agenda; during the "General" time, each speaker will be limited to three (3) minutes and to topics not listed on the agenda or acted upon at the meeting. Prior to addressing the council, members of the public are requested to identify themselves with their name and address – this time is not included in the three (3) minute limit.

6. Appointments

No member of the council will serve on any committee, commission, or board of the city of Green Valley except the Retirement System Board of Trustees, unless membership is required by statute or city charter.

7. Rules of Order

The current edition of Robert's Rules of Order Newly Revised is adopted and made part of these Rules of Order and Procedure except as modified by the charter and city ordinances or by these rules.

8. Record of Meetings

Recording Responsibility. The clerk will be responsible for maintaining the official record and minutes of each meeting of the council. The minutes will include all actions of the council with respect to motions, including the name of the maker of the motion. If the vote is by roll call, the minutes will show who voted "Aye" or "No" or abstained and the reason for the abstention along with the permission of the council for abstaining. The clerk will also maintain in city hall a file of each resolution and ordinance passed by the council.

Recording of Discussion. The clerk will NOT be responsible for maintaining a written record or summary of the discussion or comments of the council or members of the public made at council meetings, unless directed to do so by the council.

9. Voting Duty

Whenever a question is called by the chair, every member present will vote. No member will abstain from voting unless that member states his or her conflict of interest. Conflict of interest will be the only reason for a request to abstain from voting. The council will, by majority vote of the remaining members, determine if the member will be allowed to abstain.

10. Roll Call Votes

Roll call votes will be taken on all matters authorizing expenditure of money or when requested by a member of the council or when required by law.

11. Expenses

Necessary and reasonable expenses incurred when working for or representing the city at state or out-of-town meetings approved by the council will be paid to the mayor and council, provided that a detailed expense report with receipts, when available, is submitted at the end of each month and approved by the council. Mileage on city business will be reimbursed at the current IRS standard business mileage rate, according to the mileage policy.

VI. Sample Meeting Minutes

Sample minutes from a meeting of a fictional government body follows. Refer to your city or village council rules of procedure, charter, and ordinances to clarify what discussion, topics, etc. are allowed before your council, boards, and commissions.

City of Green Valley
Regular Council Meeting, Wednesday, March 15, 2017
Council Chambers

***Present:** Bry, Dickenson, Heide, Krone, Lagus, Mohles, Padree, Pikk, Walper, Woora.*

The meeting was called to order by Mayor Dickenson at 7:30 p.m.

1. The Pledge of Allegiance was led by councilmember Mohles.
2. The minutes of the regular council meeting of February 8, 2017, and the Committee of the Whole meeting of February 22, 2017, were presented.

Corrections to the minutes of February 8, 2017:

Item 5.(e) explain the type of resolution from Grand Woods; Item 7. the word “your” should be “you’re.”

Krone moved, Lagus seconded, CARRIED, to approve the minutes of February 8, 2017, as corrected.

Corrections to the minutes of February 22, 2017:

Item 2. Insert “MML” before the first “Legal”; delete the words “for a” and insert the words “requesting aid from the MML,” the motion should read “Krone moved, Woora seconded, ADOPTED, to adopt the Resolution requesting aid from the MML Legal Defense Fund.”

Lagus moved, Padree seconded, CARRIED, to approve the minutes of February 22, 2017, as corrected.

3. The bills for February, 2017, were presented for council’s review.

Lagus would like to have the township added to the explanation of those bills for the Fire Department for which the city will receive partial reimbursement.

Lagus moved, Woora seconded, CARRIED, to approve payment of \$71,719.71 for February 2017, bills.

4. Short Public Comment
 - a. The brick entrance to Indian Mound Subdivision is in need of repair.
 - b. There is also a speeding problem on Old River.
This problem was referred to the Public Safety Committee.

- c. The sidewalks in subdivision are being blocked both by overgrown trees and by cars at Country Farms Apartments.
Police Chief Auker is meeting with the managers of Country Farm Apartments and he will pass along the information.

The city manager will check on the overgrown trees.

- d. Concerns on fire protection for the residents on the west side of the railroad tracks.
This item was referred to the Public Safety Committee.

5. Awards

Mayor Dickenson, Green Valley Councilmember Woora, and Awards Councilmember Mohles Presented the “Green Valley – You’re Looking Good Awards” to Smith Funeral Home, Connecticut Manor, Grant Karas and Hillcrest Apartment Complex.

6. Public Hearings

Mayor Dickenson opened the public Hearing on rezoning request Z-825 to rezone property on the south side of Clinton River Road between North and Hayes Roads in Section 24 to R-1-70 (Single-Family Residential, 8,400 square feet) from R-1-80 (Single-Family Residential, 10,000 square feet).

Gerald Carpenter, attorney representing the Petitioner, explained the request.

Five residents spoke against the request, citing land and house size preferences for this area and stated that they wish the area to remain R-1-80 as zoned.

Mayor Dickenson closed the public hearing.

Lagus moved, Walper supported, CARRIED, to deny the request for R-1-70 (Single-Family Residential, 8,400 square feet) from R-1-80 (Single-Family Residential, 10,000 square feet) for property located on the south side of Clinton River Road between North and Hayes Roads in Section 24, Z-825, for the following reasons:

- a. The property is capable of development as currently zoned;
- b. The proposed rezoning to R-1-70 would create a higher density development pattern, which would be inconsistent and incompatible with nearby developed properties;
- c. The proposed rezoning is inconsistent with the Master Land Use Plan of the City of Green Valley. Councilmember Padree questioned the amount of 22 acres that is designated as wetlands.

7. Communications

- a. Clare Rater - report on “Making the Sesquicentennial Work.” For information only.
- b. Community Development – notification of approval of the request the city made to reallocate unexpended CDBG Funds to the Streetscape Project.

8. Unfinished Business: None

9. New Business

a. Committee Reports:

Lagus reported that the Public Works Committee recommends approval of the sewer tap agreement with Jim and Lois Peterman, giving the Petermans permission to tap into the city's sanitary sewer system.

Lagus moved, Krone seconded, CARRIED, to approve the agreement and to have the mayor sign the agreement.

Mohles reported on the Public Safety Committee findings on the 9-1-1 emergency phone system. The initial cost of a Primary Public Safety Answering Point (PSAP) is estimated to be \$25,000 and an established \$1,500 monthly service fee. The county is planning to have 9-1-1 effective July, 2017. The committee recommends that the city council approve the following resolution notifying the county board of commissioners of the city's intent to become a PSAP for the emergency 9-1-1 phone system.

Resolution

Notice of Intent to Function as PSAP

Pursuant to Section 307 of the Emergency Telephone Enabling Act, the City of Green Valley shall function as a PSAP within the 9-1-1 service district of the tentative 9-1-1 service plan adopted by resolution of the board of commissioners for the County of Cook, January 8, 2017.

Krone moved, Mohles seconded, ADOPTED, to approve the Notice of Intent to Function as PSAP resolution.

Padree feels a local 9-1-1 would be a duplication of a county service.

b. American Cancer Society: Request for permission to solicit door to door April 15, 2017, through May 3, 2017.

Lagus moved, Woora seconded, CARRIED, to grant permission to solicit door to door April 15, 2017, through May 3, 2017, subject to a statement on why the American Cancer Society does not receive enough funding from the United Way.

10. Other Business

a. Police Chief - no report.

b. DPW Director-no report.

c. City Attorney - no report.

d. City Manager's Report:

1. The city manager reported on the bids that were received for the Green Park Tennis/Basketball Courts. All of the bids were considerably higher than anticipated. The city manager recommended that council deny all bids and rebid the project in the summer of 2017.

Krone moved, Walper seconded, CARRIED, to reject all bids and rebid in the summer of 2017.

2. The city manager reminded the city council that Fall Clean Up Day is the week of October 23, 2017, on the normal pickup day.

- e. Padree requested that November 7, 2017, be declared “Animal Park Day” and that a banner be placed across S. Detroit Street during the last two weeks of October.

Padree moved, Krone seconded, CARRIED, to approve the banner request.

- f. Mayor Dickenson had nothing to discuss.
- g. Mohles moved, Walper seconded, CARRIED, to hold a closed session under the Open Meetings Act to discuss the purchase of property.

Roll call vote:

Aye: Bry, Deckenson, Heide, Krone, Lagus, Mohles, Padree Pikk, Walper, Woorra.

No: None.

Adjournment at 9:08 p.m.

Thomas Hightower, Clerk, City of Green Valley

**VILLAGE OF ROSCOMMON
ORDINANCE NO. 84
ETHICS ORDINANCE**

THE VILLAGE OF ROSCOMMON ORDAINS:

To establish a code of Ethics for all village officials and employees to provide consistent guidelines in order to eliminate conflicts of interest in public office, improve standards of public service and promote and strengthen the faith and confidence of the citizens of the Village of Roscommon in their government.

SECTION 1. FAIR AND EQUAL TREATMENT

No village official or employee shall request or permit the use of village owned vehicles, equipment, materials or property for personal convenience or the private advantage of self or of any other person. Use is to be restricted to such services as are available to the general public except as authorized in their official village duties. No village official or employee shall grant or be granted any special consideration, treatment or advantage beyond that which is available to every village citizen.

SECTION 2. CONFLICT OF INTEREST

No village official or employee shall engage in any act which is in conflict with the performance of their official village duties. A village official or employee shall be deemed to have a conflict of interest if they directly or indirectly:

1. Receives or has any financial interest in any purchase, sale or lease to or by the village of any service or property;
2. Is beneficially interested in any contract, sale, lease, option or purchase that may be made by, through, or under the supervision of the official or employee;
3. Accepts or seeks for others any employment, service, information, compensation, gift or thing of value other than those granted to other village employees, officials or the general public;
4. Engages in or accepts compensation, employment or renders services for any person or a government entity other than the village when such employment or service is incompatible, in conflict with, impairs or interferes with the performance of their official duties;
5. Discloses or uses for the personal benefit of the official, employee or their immediate family any information acquired in the course of official duties which is not available as a matter of public knowledge or public record;
6. Participates in the negotiation, execution of contracts, granting of subsidies, issuance of permits or other regulation relating to any business entity in which they have a financial or personal interest;
7. All public servants who would have a financial interest either directly or indirectly in contracts or sales with the Village of Roscommon must disclose their interest to the Village in compliance with Act 317 of 1968, MCL 15.321 et seq. The personal

disclosure statement shall disclose the existence of the financial interest of the public servant either directly or indirectly in any contract or sale with the Village of Roscommon.

SECTION 3. PROHIBITED CONDUCT

All employees and officials are prohibited from engaging in the following conduct:
Divulging confidential information to any person not authorized to obtain such information.
Representing their individual opinion as that of the village.
Misusing village resources, property, funds or assets for personal gain or benefit.
Accepting any gift or other things of value from any person doing business or seeking to do business with the village, except as permitted by this ordinance.
Giving improper preferential treatment to any person or organization.

SECTION 4. EXCEPTIONS

This ordinance is not intended to cover and shall not prohibit a village official or employee from accepting minor gifts and other items valued at \$25 or less when the gift is extended during the course of village business and no return promise is made by the recipient.

SECTION 5. ABILITY TO ENFORCE ETHICS ORDINANCE

All matters concerning the Ethics Ordinance shall be directed in one of two ways depending upon the employment status of the person or group involved. The request may be made by any village official or employee.

1. Requests to investigate or take action to enforce the Ethics Ordinance regarding elected and appointed officials shall go to the President, Village Council and the Village Attorney. (Should the request involve a member of the council, that member shall not be a part of the investigation.)
2. Requests to investigate or take action to enforce the Ethics Ordinance regarding employees of the village shall go to the Village Manager or the Village Attorney. (Should the request involve the Village Manager, the President shall name a replacement to serve on the investigation.)

If in the process of the investigation it is determined that the employee or official intentionally and willfully violated this Ethics Ordinance the investigators shall be entitled to proceed as it deems necessary and appropriate with disciplinary action including (for elected officials) censure, or petition for dismissal (for employees) reprimand or discharge.

Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this ordinance shall be punished, upon conviction, by a fine of not more than \$100.00, and costs of prosecution, or by imprisonment for a period not exceeding ninety (90) days, or both fine and imprisonment, at the discretion of the court.

SECTION 6. DELIVERY OF COPIES OF ETHICS ORDINANCE

The Clerk shall deliver a copy of this ordinance to each employee and official as soon as practicable after the enactment of this ordinance, and to new employees and officials at the time of employment or taking office. The Clerk shall also request that each person sign and return an acknowledgment of receipt of a copy of this ordinance.

Ethics Ordinance Acknowledgement:

All employees and officials of the Village of Roscommon shall abide by these standards of ethics, as adapted by the Village of Roscommon.

I, _____ acknowledge that I have received a copy of the Village of Roscommon Ethics Ordinance on ____ / ____ / ____.

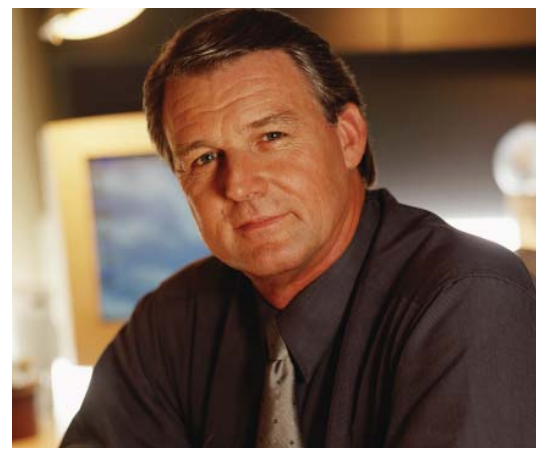
This Ordinance shall become effective thirty (30) days after publication.

Adopted: June 25, 2012

Published: July 5, 2012

Effective: August 4, 2012

Ethics Handbook for Michigan Municipalities



integrity ➤ fair dealing ➤ responsibility ➤ accountability ➤ openness



michigan municipal league
Better Communities. Better Michigan.



Thank you

The Michigan Association of Municipal Attorneys wishes to thank the Michigan Municipal League Foundation for their generous financial support of the Ethics Handbook project. The Foundation contribution has greatly assisted with the publication and distribution of the handbook, ensuring that it will be available to local governments and interested parties throughout Michigan.

Ethics Handbook For Michigan Municipalities

Presented by
The Ethics Roundtable
of the Michigan Association of Municipal Attorneys

A publication of



michigan municipal league

Better Communities. Better Michigan.

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Dedication

This handbook is dedicated to the memory of William L. Steude, general counsel of the Michigan Municipal League from 1971 to 1997, and past chair of the Ethics Roundtable, a committee of the Michigan Association of Municipal Attorneys. Bill was a proponent of ethical conduct and civility in government at all levels, and this handbook was originally his idea. The essay on “Civility in Government” is his, and in it he considers the respect that is deserved by and owed to, both the public and its dedicated local government officials and staff. We have all benefited from Bill’s belief in the necessity of the trustworthiness of government, and with this handbook we hope to advance that belief.

Foreword

The Michigan Municipal League, representing some 518 local governments, is proud to join the Michigan Association of Municipal Attorneys in presenting a comprehensive resource for local government officials interested in the topic of ethics as it applies to municipalities.

One of the hallmarks of municipal governance in Michigan is its strong tradition of ethical conduct in the provision of services for local communities. The actions of municipal elected and appointed officials adhere not only to a statutory framework, but also to professional codes of conduct, local provisions, local organizational culture and, perhaps most importantly, a strong sense of personal ethics borne of the civic pride that leads individuals to be municipal officials. The Michigan Municipal League has traditionally worked to articulate and support the tradition of ethical conduct in Michigan's municipalities. This handbook represents an important additional step. It is both a conceptual resource and a "how to" manual. It is comprehensive in that it addresses numerous facets of ethics. And, it documents the ways numerous municipalities have addressed ethics, in a formal sense, by adopting a local ethics ordinance.

One of the great attributes of municipal government in Michigan is that the government can be tailored to meet the needs of a particular community. The best way to address an issue in one community may be very different from a neighboring community—the topic of ethics included. Thus, this handbook does not seek to present a "model." Rather it discusses the concept of ethics as it applies to municipal government, highlights particular issues, and then presents how several communities have addressed

those issues. It should be pointed out that for many municipalities it will be appropriate to adopt only selected provisions set forth in the handbook.

In making the choice to adopt an ordinance, a community should bear in mind that an ethics ordinance is a tool. While adopted with the intent of improving the government of the municipality, care has to be given to how this tool is used. That is, an ethics ordinance can be a shield—to shield the community from unethical conduct—or it can be used as a sword to unfairly attack municipal officials, and if so used, it can be a detriment to the community.

Ultimately, this handbook is a powerful resource for Michigan's municipal leaders to engage in community dialogue and deliberation to choose the best approach *locally* for maintaining high ethical standards in Michigan municipalities.

This handbook represents a great deal of devotion to this topic by a number of persons. Without their selfless contributions, it would not have been possible. In particular I would like to recognize and thank Daniel C. Matson, chair of the Ethics Roundtable whose guidance and persistence made the handbook a reality. Dennis A. Mazurek, senior counsel of Detroit's Law Department, who organized and analyzed the sample ordinance provisions, and Mary M. Grover, the editor of the handbook, who molded its disparate parts into a unified publication.

William C. Mathewson
General Counsel, Michigan Municipal League;
Secretary/Treasurer, Michigan Association of
Municipal Attorneys

Preface

This handbook is offered as a guide for establishing ethical standards for the conduct of all persons in service to municipal governments in Michigan. A number of Michigan communities have adopted some form of statement about ethics which may appear in the local charter, in an ordinance, or in both. Other communities may be considering adopting some form of standards of conduct for their public officials. This publication is intended to provide assistance to municipal officials in their efforts to either create new ethics policies and procedures, or to update them in keeping with today's expectations regarding the conduct of elected officials, employees, and volunteers.

The Home Rule principle allows Michigan communities to tailor ethics standards to fit local needs and expectations. Each can adopt provisions that are appropriate for a particular community in order to promote public trust in public officials and in government. Elected and appointed officials, staff and volunteers may rely upon this stated framework within which they conduct the affairs of government.

The authors and reviewers of this handbook bring considerable experience to the effort as they have represented the interests of Michigan municipalities and have encountered a broad range of ethical issues and concerns that confront public officials. The publication is the outcome of many such experiences as identified by members of the Ethics Roundtable, a group formed by the Michigan Association of Municipal Attorneys. The Roundtable has focused on aiding local officials to understand and to resolve ethics problems within established legal and voluntary requirements.

With this reference, municipal officials may consider addressing a variety of areas of conduct that would be appropriate for their organizations. The reader may also examine a variety of options that are currently in use in a number of Michigan communities. These approaches are the result of extensive study and discussion, and they reflect local concerns and values.

It is strongly recommended that the municipal attorney be involved in each step of the process of developing, proposing, and adopting ethical

standards. Numerous legal issues must be considered whenever local law of this nature is created, and particularly when enforcement is involved.

Ethical administration of government invites the citizen's confidence in, and respect for, government. Good governance is valued by the community. It is sustained by those who have dedicated themselves to public service, and it is reflected in the decisions made and the actions taken by that government. To that end, the Ethics Roundtable commends this handbook to all citizens of Michigan communities, and to those who serve them, in recognition of the need to promote, and to earn, the public trust.

I wish to acknowledge contributions to this work by members of the Ethics Roundtable of the Michigan Association of Municipal Attorneys, including the following: Dennis A. Mazurek, senior counsel of the City of Detroit Law Department, for his comprehensive research and analysis in authoring Chapter 3, the central chapter of the handbook. John J. Rae, former Midland city attorney, who brought erudite and insightful sharing of the meaning of ethics. Peter A. Letzmann, former Troy city attorney, and foremost seminar organizer and presenter to municipalities on many topics, always with ethical concerns in mind. Michael P. McGee, senior principal with Miller, Canfield, Paddock and Stone, PLC, who applies labor law considerations to the book. William C. Mathewson, general counsel, and Sue A. Jeffers, associate general counsel, of the Michigan Municipal League, who continue to field numerous inquiries regarding ethical issues from constituent municipalities. Dene Westbrook, Jeanette Westhead, and Breanne Bloomquist at the League for their design and production expertise. Mary M. Grover, of Traverse City, public sector facilitator, trainer and presenter of ethics programs on local, state, national and international levels, who served as editor. Many others have generously served as members of the Ethics Roundtable through its years of existence, and their meaningful participation in the ever-current ethics discussion has led to the completion of this handbook.

Daniel C. Matson, Chair
The Ethics Roundtable

Chapter 1: The Importance of Ethics for a Local Government

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“Ethics” and Why it Matters

By John J. Rae

Why should a municipal government be concerned about ethics? At first blush this appears to be a question, the answer to which is so obvious, that it need not be asked. As is the case with so many things, however, things are, more often than not, more complicated than they appear to be.

Aside from the almost automatic response of many, who might say that ethics must mean some sort of standard of good behavior, there appears to be little agreement about what the word “ethics” really means. This has led, unfortunately, to the term becoming so loose in scope and meaning that it is in danger of becoming as floppy as words like *liberal*, or *conservative*, words which often convey whatever meaning the speaker or writer wants, but to the listener or the reader, the words may have a very different meaning.

In addition to the immediate barrier to understanding which this moveable meaning creates (or perpetuates), the standard of good behavior which is supposedly being followed is, by this confusion, in danger of becoming nothing more than a belief that one’s personal opinion on the subject is no better or worse than the opinion of anyone else. The result is a kind of relativism around the word “ethics,” which logically raises the question of whether there should really be any “ethics” standards in the first place.

A large part of the problem here is that the term “ethics” has a number of meanings assigned to it by any standard dictionary. For example, one reference includes all of the following:

1. the study of the general nature of morals and of the specific moral choices to be made by an individual in his relationship with others; i.e. the philosophy of morals or moral philosophy;
2. a set of moral principles or values;

3. the moral quality, fitness or propriety of a course of action; and
4. the rules and standards governing the conduct of a profession.

Also, the historical tension between the religious traditions in our pluralistic society, and the protections of individual rights under our governmental system, inevitably lead to even more disagreement over the subject of “ethics.”

Given all of the foregoing, then why do we bother trying to establish any kind of rational system of ethics guidance for municipal government? The answer is that most people recognize civil society’s need for something which will enable them to live together in a peaceful and productive way. This recognition is already reflected in our Constitution, public laws, statutes, ordinances and regulations. What is driving the renewed interest in codes of ethics, however, appears to be an ever-growing belief that these laws do not go far enough.

What a carefully crafted and defined “ethics” code or ordinance can do is to establish behavioral standards of integrity, fair dealing, responsibility, accountability, and disinterested conduct which are not specifically covered by existing laws, but which are an essential part of the fiduciary duty (the highest standard of conduct) which is almost universally recognized in this country as being owed to the public by its public servants and officials.

Civility in Local Government: The Civil Society

By William L. Steude

While the subject of civility in government is a different concept than that of ethics in government, there can be little doubt that there is a close relationship between the two. It is hard to imagine that true ethical behavior would not be characterized by civil behavior, even though the opposite might not always be the case. The authors of this publication believe that these concepts complement one another, and for this reason have decided to include this chapter. We can find no better explanation and exposition of the subject than was set forth by our mentor, teacher and friend, Bill Steude, in an article entitled, "Civility in Local Government: The Civil Society," which appeared in the April 2001 issue of the Michigan Municipal Review. The article follows, in its entirety. – Editor

The decline in civil conduct and discourse, public and private, needs no documentation. But a search over the Internet under "civility" produces much that supports the case for its sharp decline and a yearning for its restoration. Universities have commissions to promote civility on campuses. Churches offer civility pledges to candidates for public office. Congress even had a civility camp where members and their families gathered to improve the courtesy level in the U.S. House of Representatives. The City of Bloomington, Indiana, established a task force for a safe and civil city, promoting discussion of what it means to be a civil participant. Several state jurisdictions have promulgated civil codes for practicing attorneys.

President George W. Bush, in his 13-minute inaugural address, referred to "civility" four times. He said, "Civility is not a tactic or a sentiment. It is the determined choice of trust over cynicism, of community over chaos."

To be civil, in ordinary understanding, means to be polite, respectful, decent, tolerant, graceful in language and gesture, tone, exercising restraint toward others, cooling the hot passions

of partisanship, adversarial and personalized argument, with magnanimity toward others.

The decline in civility in public affairs reflects the overall decline in American civility – in professional sports, the media, talk shows, politics, academics, interpersonal communication, even road rage. The loss of civility in our national life betrays more fundamental trends in our society and culture, argues Harvard Law Professor Stephen L. Carter in his recent book on civility.¹ He traces the historic, cultural and religious roots of civility that have withered or rotted and now account for the serious lapse in civil social behavior.

Civility probably cannot be codified into standards of behavior enforceable by penalty. In fact, civility codes for public officials may even set a lower threshold, and be an incentive for lowering, rather than raising standards, by setting what you can get away with, not how you should be.

There is no constitutional duty of a public official to be civil. But note Article I, Section 17 of the Michigan Constitution, in the same section in which the due process clause appears, which provides:

"the right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

This "fair and just treatment clause" does not speak to civility, but civility can help set the tone for demonstrating fair and just treatment in hearings and investigations.²

However impossible it may be to mandate, civility might be inspired by conscientious attention to the trappings of a meeting of a public body, by the physical setting, by the rules of procedure and the conscious example of members of the public body themselves.

The trappings of a meeting

Opening ceremonies, such as a prayer by a member of the clergy in the community, the pledge of allegiance to the flag led by Girl or Boy Scouts or by veterans, and a formal roll call of the members can set the level of respect with which such formality is usually accorded.

Remember, a city commission or council is an elected legislative body whose members take exactly the same constitutional oath of office taken by the governor and by every other elected official in the state. If members and the public have the respect for one another and from one another that reflects that status, a certain formal level of discourse and decorum might maintain a higher level of civility.

The physical setting for the meeting, the furnishings and seating arrangements, and even the council's attire influence and can elevate expectations about public deportment at council meetings. A card table or fold up table with folding chairs for the council members seems to belittle the office and may invite an informality that can slide into uncivil discourse or worse.

Money spent on decent furnishings and the setting is well worth the cost. It reflects the level of respect accorded by the community toward its self-government and its elected representatives.

Rules of procedure

No deliberative body can efficiently conduct its business without rules. A governing body has a relatively free hand in designing its own rules of procedure as long as constitutional (First Amendment), statutory (Open Meetings Act), and local charter requirements are not violated. Although most municipal governments which have rules seem to have automatically adopted *Robert's Rules*, *Robert's* does not necessarily have to be the primary source for local rules of procedure.

Robert's Rules of Order are complicated, highly detailed, and are intended primarily for large legislative bodies or for meetings of large associations whose membership may number

hundreds. Its procedures may be unnecessarily cumbersome for small governing bodies: the five-to-seven-member councils of most Michigan municipalities.³

For example, *Robert's* requires a second to support an ordinary motion and put it into debate, but a *small* body which meets weekly, fortnightly or monthly might opt not to require a second at all, but could proceed to debate directly if the rules permit it.

The complex details of parliamentary procedure may also confuse and frustrate elected officials and the public, particularly if the rules are seen as being manipulated for or against one side of an issue or the other, or are seen as being ignored, misunderstood or wrongly invoked. Such a use of the rules of procedure, or the perception of their *misuse*, will counter the very purpose of rules of procedure – to protect the minority and promote orderly deliberations and decisions, and will further undermine public confidence in government.

Truth in government depends on a set of procedural rules that are followed consistently, give equal opportunity for every member of the body to participate in making the decision, make for the most efficient procedure possible, and result in a decision by a majority of the body on the merits of the issue, not on manipulation of procedures.

A governing body ordinarily has the discretion to adopt its own simplified set of procedural rules, unless *Robert's Rules* or some other authority has been mandated by the municipal charter.⁴ Such rules do not automatically command civility, but a good set of rules may minimize the perception that the rules are drawn, or bent, to control an outcome. If parliamentary maneuvering is seen as manipulating the proceedings, a frustrated council member or minority, or the attending public, can erupt in anger.

Civility and decorum is strained by the gadfly, the activist and the protester, who tend to distrust government and those in government. If they engage in abusive and baseless charges, or monopolize a meeting, the presiding official can rapidly lose the ability to maintain order, unless the council backs a zero tolerance policy toward such disruptive behavior.

Personal attacks generate counter attacks and lead to verbal duels and free-for-alls difficult to break, leaving civility and decorum in the dust. The presiding officer in that event may have no choice except to declare a brief recess so tempers and rhetoric may cool.

A rule against personal attacks, applicable equally to members of the body and the public, can help keep a discussion “problem centered” and not “person centered.” A procedure to enforce a zero tolerance policy in progressive steps can be effectuated,

1. By reminding the speaker of the rule if a violation occurs.
2. If the misconduct persists, by calling the speaker to order, citing the rule—a formal warning which may cause the speaker to lose the floor, if the rule so provides (although it may also authorize restoring the floor to the speaker if the abuse ends and the body formally permits the speaker to resume); or
3. If the abuse still persists after warnings, the chair “names the offender”—a last resort step which has the effect of preferring charges. The presiding officer states what the offender has done. The body then decides how to penalize the member, if the offender is a member of the governing body. The rule could specify a range of penalties—e.g. reprimand, formal censure, or municipal civil infraction. If the offender is a member of the public, the presiding officer may order the offender to be escorted from the meeting room.⁵

A rule limiting the length of council meetings and speeches by elected officials and the public will contribute to keeping the deliberations on point. No good government is likely to occur in the late night hours of a meeting when the limits of patience strain the limits of civility.

Procedural rules that permit and promote flexible opportunities for public input may diffuse public frustration at being foreclosed from opportune comment and encourage constructive debate. For example,

- Schedule public comment time at the beginning of the meeting (or of a work session), rather than at the end of the meeting.
- Provide a short time for public comment at the first reading of an ordinance, rather than, or in addition to, at the second reading; (preliminary public comment may surface overlooked problems early and minimize any perception at the second reading that the work has already been done and gone too far to be altered and the issue already decided).
- Hold regular meetings explicitly for public participation separate from or in conjunction with and preceding the regular council meeting.

Titles and debate

How members of a governing body address one another and how the public is conditioned to address the council can promote the level of civility if formalities are observed. Using the “first name” may be appropriate in a casual street encounter or on the phone with a friend or neighbor who is a colleague on the council or a constituent, but it is not appropriate in a formal session of the governing body when addressing one another.

Titles may be a source of sensitivity to gender biased titles.

“Commissioner” when the legislative body is a commission is an easy gender-free title. “councilman” requires its counterpart, “councilwoman,” but “councilmember” fits either, and “councilor” is a shorter alternative. “Trustee” will work for general law villages. “Madam” or “mister mayor,” or just plain “mayor” works for cities. “Madam” or “mister president,” or just plain “president” works for a village presiding officer.

If the title is not in the municipal charter, the rules of procedure can establish the titles, how to address one another, and the practice that members of the public should be requested to follow suit. For example, “Council members shall be addressed as “councilor.”

Remember, a local government council is not only a local elected legislative body with chartered status. A council acquires a quasi-judicial character when it sits as a zoning board of appeals or other appellate hearing body. The decorum should reflect the quasi-judicial duty to be, and seem, judicious and dignified.

Judge Learned Hand was right: “(This) much I *think* I do know—that a society so driven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that a society which evades its responsibility by thrusting on the courts the nurture of this spirit, that spirit in the end will perish.” The same might be said of civility.

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1. Stephen L. Carter, *Civility: Manners, Morals and the Etiquette of Democracy*, 1998, Basic Books.
 2. Violation of fair and just treatment in a legislative hearing was the basis for a \$7.6 million judgment against the Detroit Board of Education in an unpublished opinion of the Michigan Court of Appeals in *Jo-Dan Ltd. v. Detroit Board of Education*, No. 201406, July 14, 2000.
 3. A Michigan Municipal League survey of councils disclosed 80 with 5 members; 2 with 6; 420 with 7; 11 with 8; 15 with 9; 3 with 10; and 2 with 11 members. Of 533 councils, 502, or 94%, had 7 or fewer members.
 4. See *Suggested Rules of Procedure for Small Local Government Boards*, A. Fleming Bell II, Institute of Government, 2nd edition, 1998, presented to the IMLA 65th Annual Conference, 2000.
 5. See David M. Grubb, “Maintaining Civility at Council Meetings,” *New Jersey Municipalities*, March 1995, pp. 24, 47-48 for a good discussion of this. See also Webster’s *New World Robert’s Rules of Order, Simplified and Applied*, 1999, pp. 155-156.

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Different Forms of Local Government; Different Routes to Adopting Ethics Standards for Your Community

By William C. Mathewson

For most people, using this handbook will be straight forward. Michigan municipal elected and appointed officials who are giving consideration to adopting ethics standards for their community can review the handbook to see how others have addressed this issue. Finding the preferred approach from the materials presented, an official can offer a route for adoption of ethics standards in his or her community. However, to enhance the handbook as a resource, especially for persons new to municipal government within Michigan or from outside the state, it may be helpful to pause for a moment to review the Michigan local government structure in which the adoption of ethics standards fits, once the decision has been made locally to do so.

This handbook, which is a collection of essays, makes reference to different legal routes for the incorporation of ethics standards in the governance of a Michigan municipality. Each is accurate but it is helpful to understand how each fits within the larger picture.

There are several forms of local government within Michigan. In addition to Michigan's eighty-three counties, there are home rule cities (HRC), home rule villages (HRV), general law villages (GLV), charter townships (CT) and general law townships (GLT). Michigan cities and villages maintain a strong tradition of home rule. However, with ethics as with other governmental concerns, the state can prescribe what will be the law on a particular subject matter so long as the state statute is consistent with the state constitution. Some state laws relate to local ethics provisions. Two examples are labor law and campaign finance.

But to date, the state Legislature has not chosen to enact a comprehensive statute that would control the way local units of government would enforce ethical conduct within their jurisdictions. This may not always be the case, as it has periodically been discussed, typically within the context of addressing ethics with respect to all governmental jurisdictions within the state, including state government. Thus,

at present, local units of government have discretion in choosing the best approach to take to address ethical conduct within their unit of government.

For cities and villages in Michigan, this means that they may proceed in one of two ways. They can adopt an ethics provision in their city or village charter (the local equivalent of a constitution) coupled with the subsequent adoption of a local ordinance (the local equivalent of a statute) to carry out the intent of the charter provision. They can also adopt an ethics ordinance, without direct mention of the topic in the charter, under the authority granted in the Home Rule City Act, Home Rule Village Act or General Law Village Act to adopt ordinances to carry out the general grant of authority to these units of local government. If this were done, however, some sanction provisions might not be enforceable. (Perhaps a third way would be local guidelines, but they would not have the force of law and would not be legally enforceable.)

The essay by Bill Steude that follows this one discusses in some detail ethics provisions in the context of a municipal charter commission. This route is applicable to a city or home rule village that is being incorporated for the first time and thus has a charter commission to write its initial charter. Or, more likely, this route is one that would be taken by an existing city or home rule village that has chosen to convene a charter commission to review and offer new or revised sections of its existing charter for presentation to the electorate—which could include a provision regarding ethics.

Putting an ethics provision in the city's or village's local "constitution" (charter) could also take the form of a charter amendment. An amendment to the city's or village's existing charter could be offered to the citizens for their approval without convening a charter revision commission. An ethics amendment could stand alone or be one of a few amendments placed on the ballot for the electorate to consider. There are thus two ways to change an existing city or village charter: in cities or home rule villages

through the convening of a charter commission and presenting the proposed revised charter to the voters; or in cities and all villages by placing selected amendments on the ballot.

While a city or village charter can speak to or even require, addressing ethics, it need not do so. A city or village could adopt a binding set of ethics provisions in the form of an ordinance without the specific involvement of the charter. The majority of this handbook is devoted to setting forth samples and discussion of ethics provisions in ordinance form. This is appropriate because regardless of the approach taken in a charter, it is presumed that the implementation of ethical conduct/standards will be in the form of an ordinance. In fact, it would be impractical to put in a charter (again, the local equivalent of a constitution) the level of detail that is typical in an ordinance that addresses ethics.

With respect to cities and villages, a logical next question is why involve the charter of a city or village if a legally enforceable ethics ordinance can be adopted on its own, so to speak. There are various responses and ultimately the individual community will need to decide what the best approach is. That having been said, one reason is that some sanction provisions in an ordinance, such as removal from office, would not be enforceable if not authorized in the charter. Another reason for a charter provision is that it could be drafted to *mandate* that there be an ethics ordinance for the city or village. While it is beyond the scope of this publication to discuss the degree to which it is appropriate to require the legislative body (council or commission) to enact such an ordinance, if the citizens feel strongly enough about the topic of ethics they can require that the city or village adopt and enforce standards.

But whether a charter requires adoption of an ethics ordinance or speaks more generally about the topic, making reference in the charter is a clear expression of the intent of the electorate and should serve to guide the elected and appointed officials. Also, as a practical matter, a charter provision once adopted by the electorate will stand until changed by that electorate, unless the charter provision is nullified by state or federal law.

Conversely, care should be taken in putting an ethics (or any) provision in a charter. For instance, if the issue addressed is too topical, it may lose importance over time and the city or village will be saddled with a provision in its charter that is obsolete. The more relevant danger, however, is that the charter provision will be too detailed or too inflexible, thus restricting the appropriate implementation of the intent of the provision through the adoption, and if needed, subsequent revision of an ordinance. Again, further discussion of this aspect is beyond the scope of this particular essay. But suffice to say, care should be taken in drafting and adopting an ethics provision in a charter (or for that matter in ordinance form)...if for no other reason, as even with the best of intentions, such provisions may be subject to misuse, to unfairly attack a local official (sword) rather than protect (shield) the community.¹

Each of the sample ordinances presented in this handbook happen to be from cities. Other local units of government in Michigan could adopt similar provisions. In the case of villages, under the Home Rule Village or General Law Village Acts, the considerations for doing so are equivalent to cities. With respect to general law villages' charter authority² while their basic governing document is a state statute (the GLV Act) it is deemed to be their charter. The Act does not speak to ethics provisions but general law villages have the authority to amend their charters (via amendment but not revision) and to adopt local ordinances, including provisions pertaining to ethics.

Charter townships and general law townships do not have home rule charters, but rather are respectively governed by specific state statutes augmented by somewhat limited authority to adopt local ordinances. Ethics ordinances could be adopted, with the above noted limitation regarding sanctions.

	HRC	HRV	GLV	CT	GLT
Charter Revision	X	X			
Charter Amendment	X	X	X		
Ordinance	X	X	X	X	X
Guidelines	X	X	X	X	X

In summary, then, local government officials who seek to address the topic of ethics within their local governments need to be cognizant of the fact that there are different routes that can be taken. For cities and villages, their respective charter may or may not address the topic, in the initial charter or later by revision (HRC, HRV) or amendment (HRC, HRV, GLV), but to the extent that enforceable specifics are desired they will be in the form of a city or village ordinance. And in the case of local governments without charters, ethics ordinances may be adopted to the extent of their respective ordinance adoption authority under state law. Finally, the local approach presumes that the state does not in the future seek to preempt local authority and impose ethics standards on government officials including those at the local level.

For a complete discussion of forms of local government, a good source of information is chapter one of *Local Government Law and Practice in Michigan*, published by the Michigan Municipal League and the Michigan Association of Municipal Attorneys. This chapter, by Stratton S. Brown and Cynthia B. Faulhaber, outlines each of the forms

of local government and the authority that each has. Also, chapter seventeen, by Daniel C. Matson, sets forth the process of charter amendment and revision. Additional material regarding charter revision and amendment and other powers of cities and villages is available through the Municipal League's library. Information with respect to Michigan's townships is available from the Michigan Townships Association. Practical expertise on charter revision and amendment is available from municipal attorneys who specialize in that area of the law. Finally, the city, village, or township attorney for each jurisdiction is an essential resource when consideration is given to adopting standards for the local government to govern ethical conduct by its elected and appointed officials.

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1. See the following essay by Bill Steude, "Including Ethics Provisions in Charters: Advice for Charter Commissions"
 2. There are 211 general law villages; new village incorporations must be as home rule villages.

Including Ethics Provisions in Local Government Charters: Advice for Charter Commissions

By William L. Steude

[Editor's note: In this essay the author primarily addresses the incorporation of an ethics provision through the charter revision process that applies to Home Rule cities and villages. See the preceding essay, "Different Forms of Local Government; Different Routes to Adopting Ethics Standards for Your Community."]

Revelations in the media about the conduct of some public officials have raised the consciousness of local voters and taxpayers about appropriate standards of conduct for government officials. In

response, some local governments have voluntarily adopted ethics codes that focus on various aspects of the conduct of those entrusted with the public's business. In 1998 the Michigan Law Revision Commission published a report¹ calling for adoption of legislation that would provide an ethics code with uniform standards applicable to all public officials in local governments statewide. Charter commissions, authorized to draft or to revise the charter of a local government, often wonder *whether* to include ethics provisions, and *how far to go* in mandating adoption of an ethics code or ethical conduct.

Michigan law

The Home Rule Acts² neither mandate nor prohibit including a provision regarding ethical conduct or a code of ethics, so a charter commission could choose not to include ethics. In fact, most Home Rule charters in Michigan address ethics indirectly, or selectively, or not at all.

A Home Rule local government can enact an ethics ordinance without a specific charter provision authorizing it to do so. A broad powers provision in the charter could authorize the adoption of a comprehensive ethics code, as the Home Rule City Act permits a charter to provide,

... for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.³

General approaches and alternatives

A charter is not an ordinance; rather, it is the basic local law by which the local government is to be governed for a period that may be as long as forty or fifty years. The job of a charter commission is to establish a prescriptive legislative framework for the community, a document that isn't caught up in issues that may be currently of public concern. A charter commission *can* include a detailed system of ethical standards and enforcement procedures in the charter. However, this approach will be time consuming, and it carries some risk of making the charter outdated if some of the details are nullified by subsequent preemptive state legislation. In general, charter commissions are advised to *avoid excessive detail in the charter*, and leave the task of developing the details, by ordinance and policy, to the local governing body.

One approach would be for the charter to provide an alternative to inaction by the governing body by authorizing citizen initiatives and referenda. By this means, local voters could initiate an ethics ordinance by petition, or originate or reject local ethics legislation through the ballot process.⁴ The

charter may also be amended by the legislative body or by initiative of the voters, to address ethics requirements.⁵

If the commission chooses to include an ethics provision in the proposed charter, it has a number of options to consider.

1. It can *authorize* the adoption of an ethics ordinance by the governing body, which then could enact a detailed code of ethics.
2. It can *mandate* that an ethics ordinance be adopted within a specific period of time after the charter is adopted.⁶

A charter commission could also:

3. include in the charter a list of general principles or standards of conduct, without going into specific detail. For example, the list could refer to general standards of accountability, impartiality, integrity, confidentiality, conflicts of interest, or public trust. An ordinance could subsequently define these standards in greater detail, and provide procedures for enforcement.
4. take a traditional approach and address selective aspects of ethical conduct in the charter, focusing on particular problems that may have triggered community concerns, such as nepotism (the public employment of relatives), or specific areas of conflicts of interest, and require timely disclosure.⁷
5. specifically authorize or require in the charter the governing body to adopt a comprehensive ordinance with specific provisions governing the receipt of gifts, disclosure of conflicts of interest, moonlighting (i.e., a local government employee having a second job that might create a conflict of interest with the employee's public employment), pre-employment and post-employment limitations, and restrictions regarding nepotism, political activity, and representation before local government bodies.
6. have the charter authorize or require the establishment of an enforcement body, such as an ethics commission or board,

with responsibility to maintain and enforce the ethical standards of the charter and ordinances. Such a board or commission could assist local officials in determining the appropriate course of action when they are faced with uncertainty or conflict between ethical obligations. It could support public officials and employees in situations of unwarranted charges or criticism by adopting administrative rules, issuing advisory opinions, or recommending amendments to an ordinance or charter. It could also sanction unfounded complaints.

7. include a provision to require the governing body, and each local government board and commission established by charter, ordinance or law, to adopt standards of conduct for their respective members. The standards of conduct could be made subject to periodic review and approval by the governing body, or by the ethics board or commission if one is established.
8. include a provision to require that ethics education be included in orientation programs for newly elected officials, and in the training and continuing education of public employees.

Finally, the Michigan Municipal League maintains a charter database that is an excellent resource with examples of some of the approaches charter commissions have taken in recent years, to improve the ethical environment in the local government, and by extension, in the community.

4. State law would remain applicable to local officials and local governments. It governs conflicts of interest in public contracts, campaign finance, lobbying, the expenditure of public funds, codes of professional conduct governing the city manager, city attorney, public accountants, licensed engineers and other occupations, personnel policies and collective bargaining agreements affecting public employees.
5. See MCL 117.21, amendment by initiative for cities; and MCL 78.17, amendment by initiative for Home Rule villages.
6. One charter commission mandated enactment of a comprehensive ordinance within six months of the adoption of the charter. It was difficult to meet this deadline, and a longer period should be considered. A better approach is found in the Charter of the City of Jackson, Section 9.13: "Within two years after the effective date of this charter, the council shall adopt by ordinance a code of ethics by which all persons in the municipal service shall abide, whether compensated or voluntary." The Charter was adopted on November 4, 1997; the Ethics Ordinance was adopted November 16, 1999.
7. For example, Section 2-106 of the 1997 Detroit City Charter provides, "The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, consistent with state law. . . . The ordinance shall provide for the reasonable disclosure of substantial financial interests held by any elective officer, appointee, or employee who regularly exercises significant authority over the solicitation, negotiation, approval, amendment, performance or renewal of city contracts, and in real property which is the subject of a governmental decision by the city or any agency of the city. The ordinance shall prohibit actions by elective officers, appointees, or employees which create the appearance of impropriety."

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1. *Final Report to the Michigan Law Revision Commission on the Proposed Government Ethics Act of 1999*, Michael A. Lawrence, November 2, 1998; published in the MLRC 33rd Annual Report, 1998, p. 13119.
 2. The Home Rule City Act 279 of 1909, MCL 117.1 et seq.; the Home Rule Village Act 278 of 1909, MCL 78.1 et seq.
 3. MCL 117.4j.

Labor Considerations

By Michael P. McGee

Although a municipal government may have authority to adopt an ethics policy or ordinance, the government as a public employer also may have an affirmative obligation to negotiate over such a policy or ordinance if the public employer is unionized. Specifically, if the policy or ordinance has an impact on or concerns the union members' wages, hours, or other employment conditions ("mandatory subjects of bargaining"), the public employer must bargain with the union before the policy or ordinance may be adopted.

In the seminal case of *Detroit Police Officers Association v City of Detroit*, 391 Mich 44 (1974), the city adopted a residency ordinance after reaching impasse in contract negotiations with the union. The union filed an unfair labor practice charge, and the case proceeded to the Michigan Supreme Court which held that just because an employer may have a legal right to take such action, it does not mean it may do so in derogation of its obligation under the Public Employment Relations Act ("PERA"):

"The enactment of an ordinance, however, despite its validity and compelling purpose, cannot remove the duty to bargain under PERA if the subject of the ordinance concerns the "wages, hours or other terms and conditions of employment" of public employees. If the residency ordinance were to be read to remove a mandatory subject of bargaining from the scope of the collective bargaining negotiations, the ordinance would be in direct conflict with state law and consequently invalid. Const. 1963, art.7, §22. . . . Therefore, if as we will consider below, residency is a mandatory subject of bargaining, a city ordinance cannot foreclose collective bargaining on the subject." *Id.*

The Court concluded that a residency requirement is a mandatory subject of bargaining, but found that the city did not engage in an unfair labor practice because it did not adopt the ordinance until after it had bargained to impasse in good faith. The Court noted that "[i]n future negotiations, however, the

city will again be required to bargain in good faith on the residency requirement if it is proposed as a bargaining issue by the [union]." *Id.*

Both the Michigan Employment Relations Commission (MERC) and subsequent appellate decisions have resulted in similar holdings circumstances other than residency. For instance, in *Pontiac Police Officers Association v City of Pontiac*, 397 Mich 674 (1976), the city refused to bargain over a union proposal regarding a grievance procedure for disciplined police officers. The city argued that because the city charter provided for a specific means by which discipline was to be imposed upon the officers, the charter provision controlled and there was nothing to bargain over. MERC disagreed, holding that the city committed an unfair labor practice by refusing to bargain because the grievance procedure was a mandatory subject of bargaining. On appeal, the Michigan Supreme Court affirmed MERC's ruling. See also *Local 1383, International Association of Firefighters, AFL-CIO v City of Warren*, 411 Mich 642 (1981) (a collective bargaining provision negotiated under PERA supersedes both a City Charter and the Michigan Constitution); *Senior Accountants, Analysts and Appraisers Association, UAW v City of Detroit*, 218 Mich App 263 (1996) (city cannot unilaterally implement pension provisions for union members without collective bargaining; the city could, however, through a City Charter Revision Commission, submit proposed changes to the electorate prior to collective bargaining as long the city did not implement or enforce the voter-approved changes until the employer satisfied its PERA collective bargaining obligations).

Neither the courts nor MERC have yet addressed the question of whether ethics regulation is a "mandatory subject of bargaining" under PERA. Ethics regulation typically does not implicate wages or hours, and thus the unanswered question is whether ethics regulation falls within the scope of "other terms and conditions of employment."

This will depend on the facts and circumstances of the particular regulatory scheme. It may be, for example, that the *standards* announced by an ethics policy (e.g., disclosure of conflicts of interest, prohibitions for receiving gifts, etc.) may be imposed in the exercise of normal management rights. *Consequences* for breaching the standards, on the other hand, to the extent they affect discipline or punishment, may very well fall within the scope of mandatory bargaining under *Detroit Police Officers Association, supra*, and its progeny.

Accordingly, before a municipal employer adopts or implements an ordinance or any type of ethics policy or regulation that may affect its unionized employees, or refuses to bargain with a union based on a conflicting governmental policy, the employer should first consult with legal counsel to evaluate compliance with applicable labor law.

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Definitions for an Ethics Ordinance

By Dennis A. Mazurek

Initial drafting considerations

An ethics ordinance should include definitions of some of the terms that will be used in its provisions. Many of these words will have a definition that is specific to the ordinance, rather than a more commonly understood meaning.

Charter requirements

Before drafting definitions, it must first be determined whether the local government charter requires that an ethics ordinance be organized around a central directive, and whether it must include specific definitions.¹ For example, the Detroit ethics ordinance was required to define the term “private gain,” and it is organized around the central theme of prohibiting the use of public office for private gain.

Jurisdiction and scope

As with any ordinance, the drafters must determine the persons to be regulated by the ethics ordinance, and the scope of the regulation. The definitions will establish the persons and relationships that are intended to be regulated. The jurisdiction of an ethics ordinance could be extended to,

- elected and appointed officials,
- full-time and part-time employees,
- paid and unpaid members of boards and commissions,
- people who provide services under a personal services contract, and
- the spouses or domestic partners, children, and other relatives of any or all of the above.

The scope of the ordinance will also be reflected in the definitions. For example, the definitions could establish that the ordinance will regulate,

- certain confidential information,
- decisions, and
- ownership interests.

Universal and comprehensive

It is important that the definitions be universal and comprehensive, and in as clear language as possible. Universality means the definition could be applied to most, if not all, Michigan municipalities. Comprehensive means complete definitions that have a tight interrelationship to one another.

Examples of definitions

Although there are no “definitive” definitions, the following definitions would be applicable in most local governments. They are both universal and comprehensive, and the list itself is comprehensive, as well.²

Agency means any department, office, multi-member body, or other organization of the local government.

Appointee means one who holds either a compensated or an uncompensated position, including an individual who is appointed by the mayor, the legislative body, other elected officials, or a department, division or commission head.

Basic living expenses means shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the [spouse or] domestic partners and any other cost, such as medical care, where some or all of the cost is paid as a benefit because a person is another person’s [spouse or] domestic partner.

City means the city of _____. [Alternatively, **village, township, or county** means the local government of _____.]

Clerk means the clerk of the local government of _____.

City council means the legislative body of the city of _____. [Alternatively, commission or board means the legislative body of the jurisdiction of _____.]

Commercial gain means the use by a public servant of any local government resource including, but not limited to, the local government's time, equipment, facilities, supplies or staff, which results or is intended to result in unauthorized income or other benefit to the public servant.

Confidential information means information that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, being MCL 15.231 *et seq.*, or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose, including:

1. any written information, whether in document or in electronic form, which could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
2. any non-written information which, if written, could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
3. information which was obtained in the course of or by means of a written or electronic record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing the information is authorized by state law to make disclosure, or unless the public servant disclosing the information has been properly authorized to make disclosure pursuant to an applicable law, regulation, policy or procedure, except that when such information is available through channels

which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

Decision means:

1. a determination, action, vote, or other disposition upon a motion, proposal, recommendation, resolution, or ordinance by members of the governing body, or of a governing body of a local government agency; or
2. a determination, action or other disposition taken by an elected official with the authority to do so, or a local government agency in the performance of its public duties.

Domestic partner³ means one of two adults who

1. have a common residence; and
2. agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership; and
3. are not married or are not a member of another domestic partnership; and
4. are not related by blood in a way that would prevent them from being married to each other in this state; and
5. are at least eighteen years of age; and
6. have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and
7. are capable of consenting to the domestic partnership.

Exercises significant authority means having the ability to influence the outcome of a decision on behalf of the local government in the course of the performance of a public servant's duties and responsibilities.

Extraordinary circumstances means circumstances which, due to the unavailability of information that is critical to the disposition by the Board of Ethics of an advisory opinion request or of a complaint, have prevented the board from completing its investigation.

Have a common residence means that both domestic partners share the same residence. Two people can have a common residence even if one or both have additional residences, or if both domestic partners do not possess legal title to the common residence. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return to it.

Immediate family means:

1. a public servant's spouse or domestic partner, or
2. a public servant's relative by marriage, lineal descent, or adoption who receives, directly or indirectly, more than one-half of his or her support from the public servant, or from whom the public servant receives, directly or indirectly, more than one-half of his or her support; or
3. an individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code, being 26 USC 1 *et seq.*

Joint responsibility means that each domestic partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for himself or herself.

Local government means the governmental organization of a jurisdiction which is a subdivision of a major political unit, as a state; the governing organization of the jurisdiction of _____.

Mayor means the mayor of the city of _____.

Municipal government means a Michigan city or village, for the purposes of this handbook.

Ownership interest means a financial or pecuniary interest that a public servant has in the affairs of 1) any business entity in which the public servant or a member of his or her immediate family is an officer, director, member, or employee; 2) any business entity in which the public servant or a member of his or her immediate family controls, or directly or indirectly owns, in excess of 5% of the total stock or an interest totaling \$50,000 or more in value; or 3) any person or business entity with whom the public servant has a contract.

Personal services contract means a contract for the retention of an individual to perform services on behalf of the local government for a fixed period and for fixed compensation.

President means the president of the village of _____.

Private gain⁴ means any benefit which is accepted or received by a public servant, or is perceived by a reasonable person to be accepted or received by a public servant, as remuneration for the purpose of improperly influencing an official action in a specific manner or for refraining from the performance of an official action in a specific manner, or as inducement for the public servant to act in favor of some interest other than in the public interest.

To clarify, *unless the above-standard is violated*, the following types of benefits, monetary payments or reimbursements, gifts, awards or emoluments may be received by a public servant:

1. payment of salaries, compensation or employee benefits to a public servant by the local government, or the payment of salaries, compensation or employee benefits to a public servant by an employer or business other than the local government pursuant to a contract where the payment is unrelated to the public servant's status as a public servant;
2. authorized reimbursement by the local government to a public servant of actual and necessary expenses incurred by the public servant;
3. fees, expenses or income, including those resulting from outside employment, which are permitted to be earned by, or reimbursed to, a public servant in accordance with the Code, policies, rules and regulations of the local government;
4. campaign or political contributions which are made and reported by a public servant in accordance with state law;
5. admission or registration fee, travel expenses, entertainment, meals or refreshments a) that are furnished to a public servant by the sponsor(s) of an event, appearance or ceremony which is related to official local government business in

connection with such an event, appearance or ceremony and to which one or more members of the public are invited, or b) that are furnished to a public servant in connection with a speaking engagement, teaching, or the provision of assistance to an organization or another governmental entity as long as the local government does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity;

6. admission, regardless of value, to a charitable or civic event to which a public servant is invited in his or her official representative capacity as a public servant where any admission or other fees required of all persons attending the event are waived or paid for the public servant by a party other than the local government or the public servant;
7. an award publicly presented to a public servant by an individual or by a non-governmental entity or organization in recognition of public service, acts of heroism, or crime solving;
8. an award, gift or other token of recognition presented to a public servant by representatives of a governmental body or political subdivision who are acting in their official capacities;
9. a gift received from a public servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article;
10. a registration fee for a seminar or other informational conference that a public servant attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the public servant's attendance is waived or paid for the public servant by a party other than the local government or the public servant;
11. expenses or gratuities, including but not limited to admission fees, lodging, meals or transportation, that are paid for a public servant and are related to the

public servant's participation at a seminar, conference, speaking engagement or presentation in his or her official capacity as a speaker, panelist or moderator where such expenses or gratuities are waived or paid for, as the case may be, by a party other than the local government or the public servant, provided that, within five business days after the conclusion of the seminar, conference, speaking engagement or presentation, such public servant files with the clerk a statement which contains the following information for each expense that is paid for or waived or for each gratuity that is provided: a) a description of the expense or of the gratuity; b) the amount of the expense or of the gratuity; c) the date that the expense was incurred or that the gratuity was received; d) the date that the expense was paid or waived, or that the gratuity was received; and e) the name and address of the party who paid or waived the expense or who provided the gratuity;

12. meals or beverages provided to the public servant by an individual or by a non-governmental organization during a meeting related to official local government business;
13. anything of value, regardless of the value, presented to or received by a public servant on behalf of the local government where the thing of value is offered to, and accepted by, the local government;
14. a gift to a public servant that either is returned to the donor or is donated to the local government or to a charitable organization within thirty days of the public servant's receipt of the gift, provided that the public servant does not claim the donation as a charitable contribution for tax purposes;
15. complimentary single copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials that are received by a public servant;
16. compensation paid to a public servant for a published work which did not involve the use of the local government's time, equipment, facilities, supplies, staff or other resources where the payment is arranged or paid for by the publisher of the work;

17. compensation paid to a public servant for a published work which did involve the use of the local government's time, equipment, facilities, supplies, staff or other resources where the payment of the compensation to the public servant is lawfully authorized by a representative of the local government who is empowered to authorize such compensation;
18. receipt by the public servant of anything of value, where the payment, gift or other transfer of value is unrelated to, and does not arise from, a public servant's holding or having held a public position, and where the activity or occasion for which the payment, gift or other transfer of value given does not involve the use of the local government's time, equipment, facilities, supplies, staff or other resources in any manner or degree that is not available to the general public;
19. hospitality that is extended to a public servant by an individual, or by an organization, for a purpose unrelated to the official business of the local government, including a gift of food, beverage, or lodging; and
20. receipt by a public servant of a devise, bequest or inheritance.

Public servant means the elected mayor, president, members of the legislative body, any member of any local government agency, board, commission, or other voting body that is established by the local government Charter or by the Code, and any appointee, any employee, or any individual who provides services to the local government within or outside of its offices or facilities pursuant to a personal services contract.

Relative means a person who is related to a public servant as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, uncle, aunt, nephew, niece, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law, or sister-in-law.

Voting body means the governing body and any other local government authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative, or quasi-judicial or any combination thereof, which, in order to take any official action, even where the action is advisory, must act as a body on the basis of a vote of some or all of its members.

Summary and conclusion

A first step in drafting an ethics ordinance must be a consideration of and discussion about the following issues:

1. Does the local government charter *require* that the ethics ordinance be organized around a central directive, or contain specific definitions?
2. If the charter does not mandate the enactment of an ethics ordinance, and if it doesn't require that the ethics ordinance be organized around a central directive or theme, and if it does not require specific definitions, which of the definitions listed in this chapter should be included?
3. What kinds of ethical issues have occurred in the past, or might arise in the future, with the elected officials, appointees, employees, volunteers and independent contractors associated with the local government?

The answers to these and other policy questions will ensure that charter-mandated requirements will be met, and that the definitions will be tailored to the needs and the concerns of the community. The answers will also assist policy makers in building a consensus with local government elected officials, appointees, employees, volunteers and independent contractors, as well as with the public, in accepting and adhering to the ethics ordinance. It is, therefore, recommended that the drafters of the ethics ordinance favorably consider the above definitions as a starting point for debate.

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1. For example, see the 1997 Detroit City Charter, Section 2-106, footnote.
 2. The terms and the definitions are adapted from the ethics ordinance of the City of Detroit, Section 2-6-3 of the 1984 Detroit City Code.
 3. The inclusion of “*domestic partner*” relationships is based on the reality that there are certain close personal, often intimate relationships involving non-married public servants which are equivalent to the personal relationships which exist between legally married spouses. The potential for public servants to be influenced by or on behalf of partners involved with them in such “domestic partner” relationships or arrangements is just as real as the potential for public servants to be influenced by or on behalf of spouses in legal marriages or family members. This article does not adopt any position regarding the propriety of such non-marital relationships among domestic partners. However, for purposes of implementing standards for the conduct of public servants in the performance of their duties for the local government, the article does attempt to include within its reach all public servants.

The definition of domestic partner included in this section is modeled on the definition of domestic partner contained in Division 2.5 of the Family Code, Article 9 of Chapter 1, Part 5 of Division 5 of Title 2 of the Government Code, and Section 1261 of the Health and Safety Code of the State of California.

4. *Private Gain*: Section 2-106 of the 1997 Detroit City Charter expressly prohibits the use of public office for private gain. Accordingly, a major provision in this article is the prohibition against a public servant’s acceptance or receipt of private gain as compensation for 1) the taking of an official action in a specific manner by the public servant (for example, a particular decision or vote in a specific manner), or refraining from the taking of an official action, as the result of an improper influence by another party; or 2) incentive or inducement for the public servant to act in favor of an interest other than the public interest. In the interest of maintaining honesty, integrity and impartiality in government, the goal of this provision is to ensure that public servants conduct government business in a manner that enhances public confidence and respect for city government, and places paramount importance on the public interest, rather than a public servant’s own personal interest or the private interest of a third-party.

Improper influence upon a public servant’s official actions refers to 1) any action that would constitute a violation of federal or state laws regulating the conduct of public officials, such as state law prohibiting the acceptance by any executive, legislative or judicial officer of a bribe (Section 118 of the Michigan Penal Code, being MCL 750.118; or 2) facts, events or circumstances which give rise to an appearance of impropriety in the taking of an official action by a public servant, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

What constitutes private gain to a public servant may take many shapes and forms and may vary depending upon the facts and circumstances of a situation. Therefore, the above definition of private gain does not attempt to enumerate all forms or types of tangible economic gain, or circumstances or situations from which a public servant may derive tangible economic gain for himself or herself. Rather than attempt to list what is private gain that may not be accepted in all circumstances, the article attempts to illustrate for public servants the circumstances or types of remuneration, emoluments, gratuities or other items that a public servant may accept without violation of this article. The listing set forth in this section is based on the most typical situations which confront city public servants. However, this is not an exhaustive list, and there may be other types of economic benefit to a public servant that are permissible under this article.

Fundamental Standards of Conduct For an Ethics Ordinance

By Dennis A. Mazurek

Overview

Before deciding upon the standards of conduct to regulate, drafters of the ethics ordinance must first determine whether the local government charter requires that its ethics ordinance include certain standards of conduct. For example, the 1997 Detroit City Charter (Section 2-106) required enactment of an ethics ordinance which, at a minimum, regulated specific areas of conduct: prohibiting the use of public office for private gain; “reasonable” financial disclosure for some officers; and the avoidance of the appearance of impropriety.

If the charter does not mandate specific provisions or standards for the ethics ordinance, the drafters can be guided by the experience of ethics experts and the ten fundamental standards of conduct that follow. Human nature too often lures public officials and public employees into taking advantage of their positions of trust to use these positions inappropriately and to unfairly benefit themselves, their families or their friends. It is this competition between self-interest and the public interest that results in unethical (and sometimes illegal) conduct; it is this conflict that gives rise to formal, codified statements regarding ethical conduct.

Ethics ordinances from 18 local governments were surveyed for this publication: Bay City, Detroit, DeWitt, Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Rochester Hills, Royal Oak, Sterling Heights, Warren, Wyandotte, and Ypsilanti. Many of them include some or all of the ten fundamental standards. In alphabetical order, the standards are:

1. Conflicts of interest
2. Disclosure
3. Impartiality
4. Improper use of position
5. Incompatible employment

6. Nepotism
7. Personal interests
8. Political activity
9. Public information
10. Public property and personnel

A list of citations to these local governments’ charter and ordinance provisions is in Appendix C.

These are the areas that are most often regulated because these are the areas in which misconduct by public officials most often occurs. In order to give drafters the benefit of learning from the language and the experience of existing ethics ordinances, excerpts from the ordinances of these communities are offered to illustrate different approaches to articulating the ten basic standards of conduct. In the pages that follow, each standard is presented with a statement of its purpose, along with a compilation of excerpts from ethics ordinances. In some instances the actual language is used; in others, the codes were used as references and the language is not verbatim. Variations that are used by different municipalities are noted in footnotes.

Editor’s note: To aid the reader, ordinance language options are either in brackets within the text, or footnoted. The excerpts presented here reflect a community’s thinking at a point in time, although the ethics ordinance may have subsequently been revised. Also, some stylistic changes were made for consistency with the rest of the text, eg. capitalization of the titles of officials.

1. Conflicts of interest

Purpose: The duty of a public servant is to represent the best interests of the public entity, and to serve the entity with the highest degree of loyalty. This standard is at the heart of any ethics ordinance. The absence of an easily understood standard regarding conflicts of interest diminishes the effectiveness of an ethics ordinance, and ignores the primary reason for having one. The fundamental concept is that a public official is not to exploit this position of power in unjust or inappropriate ways.

- A public servant shall not make a loan of public funds, grant a subsidy, fix a rate, issue a license, permit or certificate, [participate in the negotiation or execution of contracts] or otherwise regulate, supervise or participate in a decision that pertains¹ to an entity in which the public servant, or a member of his or her immediate family, has an ownership [or financial or personal] interest.² *(Bay City, Detroit, Harper Woods, Lansing, Rochester Hills, Warren)*
- A public servant [whether paid or unpaid] shall not solicit or accept [or receive, directly or indirectly] a³ gift or loan of money, [compensation], goods, services⁴ [contribution, reward, employment],^{5 6 7} or other things of value^{8 9} which would tend to influence¹⁰ the manner in which the officer or employee performs his or her official duties.^{11 12 13 14 15 16 17} *(Bay City, DeWitt, Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Rochester Hills, Warren, Wyandotte, Ypsilanti)*
- A public servant shall not represent his or her individual [personal] opinion as that of the city.¹⁸ *(DeWitt, Harper Woods, Lansing, Warren)*
- A public servant shall not solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity in any proceeding or application, request for ruling,

determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or any solicitation or proposal thereof.
(Royal Oak)

- A public servant shall not accept any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a contract or order. *(Royal Oak)*
- A public servant shall not retain a person to solicit or secure a contract with the local government upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
(Royal Oak)
- A public servant shall not be a party, directly or indirectly, to any contract with the city except for the renewal or negotiation of an employment or independent contractor contract with a city officer or employee, or a collective bargaining agreement or contracts with any bona fide union. *(Ypsilanti)*
- Except for personal employment agreements authorized by the governing body, a public servant shall not solicit, negotiate, renegotiate, or approve, directly or indirectly, any contract, or amendment of any contract, with the city and 1) himself or herself, 2) any partnership, limited liability company or unincorporated association, or other legal entity of which the officer or employee is a partner, member, owner or part owner or employee, 3) any corporation in which the officer or employee is an owner or stockholder of more than one percent (1%) of the total outstanding stock of any class where the stock is not listed on an exchange, or of value of \$25,000 or more where the stock is listed on a stock exchange or of which the public servant is a director, officer, or employee, or 4) any trust of which the officer or employee is a beneficiary or trustee, or represents any party to such contract. *(Ypsilanti)*

2. Disclosure

Purpose: If a government is to be both transparent and accountable, the public must know of real and potential conflicts of interest. The general public, and those within the local government organization, are entitled to know about the relationships and circumstances which might influence a public servant's performance of duty, and which might diminish an official's independence and objectivity. Public disclosure makes it possible to evaluate the potential effects of these interests upon the public official, and to prohibit participation in decision making, in the public interest. Questions about which information, how much, and when to disclose it should be resolved in favor of full, and timely, public disclosure.

- A public servant [or his or her relative] shall not engage in business with the city, directly or indirectly, [or have any financial or personal interest in any business transaction with the city] without filing a complete [written] disclosure statement for each business activity, prior to engaging in the activity, and on an annual basis. *(Farmington Hills, Jackson, Midland, Sterling Heights)*
- A public servant shall not participate, as an agent or representative of the city, in approving, disapproving, voting upon, abstaining from voting, recommending or otherwise acting upon any matter¹⁹ in which he or she [or a relative] has a direct or indirect financial²⁰ interest²¹ without disclosing²² the full nature and extent of their interest.²³ *(Detroit, Farmington Hills, Jackson, Midland, Riverview)*

3. Impartiality

Purpose: Public officials must assure the public that, except for publicly approved pay and related benefits, they receive no benefits or services that aren't available to any member of the public.

Intent and purpose

- It is the intent of this Code that a public servant, regardless of whether specifically prohibited by this Code, shall avoid any action which might result in, or create the appearance of,

1. Using public office or employment for private gain.
2. Giving improper preferential treatment to any person or organization.
3. Impeding government efficiency or economy.
4. A lack of independence or impartiality of action.
5. Making a government decision outside of official channels.
6. Affecting adversely the confidence of the public in the integrity of the local government.

It is not the intent of this Code to limit the right or ability of any public servant to exercise his or her discretion in making legitimate policy decisions which are within their discretion so long as such action does not provide a special benefit to that person, relieve the public servant of a particular duty, or treat that person differently than other similarly situated residents in the community. *(DeWitt)*

Fair and equal treatment

- No public servant shall request, use or permit the use of any consideration, treatment, advantage or favor beyond that which is the general practice to grant or make available to the public at large. All public servants shall treat all citizens of the local community with courtesy, impartiality, fairness and equality under the law. *(DeWitt)*

4. Improper use of position

Purpose: To the public, an official is the governmental organization. An official's misuse of his or her position not only destroys public confidence in that public official, but it also destroys trust and confidence in the governmental organization as well. A public official must use the position and power of public office for the benefit of the community as a whole. Thus, a public official should not receive a greater benefit from his or her actions than anyone else in the community. Although this standard may seem unnecessary because the potential effect of the misconduct is so

obvious, a clear and specific statement establishes for all the assurance that abuse or exploitation of public office or public employment will not be tolerated.

- A public servant shall not make any policy statements which promise to authorize or to prevent any future action, agreement or contract, when, in fact, the public servant has no authority to do so. *(Lansing)*
- A public servant shall not act on behalf of the city in the making of contracts when, in fact, he or she has no authority to do so. *(Ypsilanti)*
- A public servant shall not make policies that affect the citizens of the community that are not authorized by the local government Charter, Code of Ordinances, governing body, an authorized agency of the local government, or its adopted policies. *(Wyandotte)*
- A public servant shall not use his or her official position in violation of federal or state law, or to obtain or to create the appearance to obtain a private gain for the public servant in return for improperly influencing a decision of the mayor, of the city council, of the city clerk, or of a member of a city authority, board, commission, committee, council or group, or other city agency. *(Detroit, Rochester Hills)*
- A public servant shall not use, or attempt to use, his or her official position to unreasonably secure, request or grant, any privileges, exemptions, advantages, contracts, or preferential treatment for himself or herself, a relative, his or her immediate family, or others. *(Farmington Hills, Jackson, Livonia, Mason, Midland)*
- A public servant shall not use his or her public office and employment for personal [private or economic] gain,^{24 25} [or use or attempt to use his official or her official position to secure special privileges or exemptions for himself or herself, or others, except as provided by law].²⁶ *(Bay City, Flushing, Lansing, Rochester Hills, Sterling Heights, Wyandotte, Ypsilanti)*
- A public servant shall not make or participate in making a decision in his or her capacity as a public servant knowing that the decision will provide him or her, a member of his or her immediate family, or a business with which he or she is associated, a financial benefit of more than an incidental nature which is distinguishable from the benefits to the public servant as a member of the public or as a member of a broad segment of the public. *(Ypsilanti)*
- A public servant shall not take any action or create the appearance of making a government decision outside official channels. *(Rochester Hills)*
- A public servant shall not take any action or create the appearance of impeding government efficiency or economy. *(Rochester Hills)*
- A public servant shall not take any action or create the appearance of giving preferential treatment to any organization or person. *(Rochester Hills)*
- A public servant shall not take any action, or create the appearance, that adversely affects the confidence of the public in the integrity of the city. *(Rochester Hills)*
- Public servants who are members of a city agency shall not take final action on any matter under consideration that is before the agency until the citizens' rights to address the agency have been provided for, subject always to the provisions of the Michigan Open Meetings Act. *(Wyandotte)*
- A public servant shall not interfere with the ordinary course of law enforcement within the city, and shall not suggest or request special favors or consideration or disposition of any law enforcement person of the city, including the city manager, chief of police, police officers, ordinance officers, city attorney or administrative staff, concerning any city law enforcement matter including, but not limited to, parking tickets, traffic tickets, ordinance tickets, or the enforcement of city codes. *(Ypsilanti)*

5. Incompatible or dual employment

Purpose: Dual employment or dual representation by a public official can cause a conflict of interest between the discharge of official duties and the requirements of another employer. Such a conflict might impair the official's independent judgment. However, it may be possible to permit a public servant to participate in discussion or decision making due to "necessity," as determined by the public body, provided that full, timely and public disclosure takes place prior to discussion and action.

- A public servant shall not engage in or accept employment, or render services, for a private or public interest where such employment or service is incompatible [or in conflict] with the [proper] discharge [or performance] of the public servant's official duties [and responsibilities] for the city, or where such employment or service is reasonably expected²⁷ to impair the public servant's independence of judgment or action in the discharge [performance] of his or her official duties [and responsibilities] for the city. *(Bay City, Detroit, DeWitt, Farmington Hills, Harper Woods, Riverview, Rochester Hills, Warren, Wyandotte)*
- A public servant shall not act, for compensation from any person other than the municipality, as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency [other than in the course of the duties and responsibilities of his or her office or employment pursuant to duties assigned by city employee unions] [other than himself or herself before the governmental body of which the public servant is a member or employee] . *(Detroit, Flushing, Lansing)*
- A public servant may represent another person, business, or organization before a city agency where such representation is a required part of the public servant's official duties. *(Detroit)*

- A public servant shall not engage in private employment with, or render services for, any private person who has business transactions with the city, without first making a full public disclosure of the nature and extent of such employment. *(Sterling Heights)*
- A public servant who, while a city employee, is participating directly or indirectly in the procurement process, shall not become or be the employee of, or perform a service for, any person who is contracting with the city. *(Royal Oak)*
- An elected public servant shall not engage in employment with any other agency or department of the city. *(Wyandotte)*

Note: Incompatible public offices

Daniel C. Matson

There are standards governing an official holding more than one public office at the same time, and they are found in the Incompatible Public Offices Act, (IPOA), 1978 PA 566 (MCL 15.181 *et seq.*). Section 1(b) of the Act defines "incompatible offices:"

"Incompatible offices" means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

1. The subordination of one public office to another
2. The supervision of one public office by another
3. A breach of duty of public office

Perhaps the most difficult questions arise as to when a breach of duty of public office has occurred when more than one public office is held.

The Michigan Attorney General has issued numerous formal opinions regarding public officials holding incompatible offices simultaneously. Excerpts from opinions adopted by courts involving breach of duty include these interpretive statements:

A breach of duty arises when a public official holding dual offices cannot protect, advance, or promote the interest of both offices simultaneously. A public office is a public trust, and the courts have imposed a fiduciary standard upon public officials that requires disinterested conduct.

It is well established that a breach of duty creating an incompatibility exists when a person holding dual public offices is placed at opposite sides of a contract. An incompatibility can also result out of a non-contractual matter, such as when one office has to pass upon a matter affecting the other office. (OAG 1997, No. 6931, p 124 (February 3, 1997); *Macomb County Prosecutor v Murphy*, 233 Mich App 372, 381, 382 (1999).)

Section 3 of the IPOA allows certain limited exceptions to a person holding two or more incompatible offices at the same time. The exceptions do not apply to allow or sanction activity constituting conflict of interest prohibited by the Constitution or laws of Michigan.

If there is any question about whether or not holding more than one office is incompatible, it is advisable to seek an opinion from the municipal attorney *before* the problem arises.

6. Nepotism

Purpose: Whether deserved or not, the limitation or prohibition of public service by certain persons related by blood, adoption or marriage, to others within the governmental organization avoids actual and perceived favoritism or partiality. The very fact of the relationship creates the perception of unfairness. In smaller communities it may be common for related parties to work for, or to serve in, the local government, particularly in dual-income families. In these situations the perception of favoritism can be reduced if the local government requires that such relationships be fully and publicly disclosed.

- A public servant shall not cause the employment or any favorable employment action of an immediate family member, or participate in any employment decision about such family member.

- The spouse of any elected city official, or the city administrator, shall be disqualified from holding any appointive office. The immediate family members of any elected official, or the city administrator, or the spouses of any such family members shall be disqualified from holding full-time or permanent part-time employment exceeding ten hours per week with the city during the term served by the elected official or during the tenure of the city administrator. (*Livonia, Mason*)

7. Personal interests

Purpose: The existence of a private business relationship between a public official and the municipality presents the opportunity for real or perceived abuse of public office. To protect the interests of all, the relationship should either be avoided, or should be fully and publicly disclosed.

This standard is akin to incompatible employment in that the conduct is detrimental to the objectivity of the public servant. However, participation in discussions or actions may be permitted if there is a showing of "necessity," as determined by the public body, provided that full public disclosure, and explanation, takes place.

- A public servant shall not engage in any act [or business transaction which may cause him or her] [or his or her immediate family or business that he or she is associated with] to derive a personal profit or gain directly or indirectly as a result of his or her official position [or authority] or omission in the discharge of his or her official duties for private gain [or use his or her official position or authority to profit from a business transaction] [or act in an official capacity on matters in which he or she has a private financial interest clearly separate from that of the general public]. (*Bay City, Detroit, DeWitt, Flushing, Harper Woods, Lansing, Warren*)
- A public servant shall not speculate or deal in equipment, supplies, materials, or property purchased by or sold to the city. (*Rochester Hills*)

- A public servant shall not hold a substantial financial interest, i.e., any stake, including stockholder, partner, joint venture, creditor, guarantor or director, in a firm which provides services or supplies, materials or equipment to the city, *excluding* holding an interest in a firm providing services or supplies, materials, or equipment to the city where, after reporting the conflict, 1) the contract for services or supplies, materials, or equipment is awarded pursuant to sealed bids, 2) the public servant is not involved, directly or indirectly, with making the decision on the award of the contract or with the city department for which the contract relates, and 3) the city council determines, after reviewing the circumstances, that the award of the contract would be in the best interests of the city. *(Rochester Hills)*

8. Political activity²⁸

Purpose: Public officials do not waive their constitutional rights upon assuming a position in a municipal government. However, reasonable limits can be established so that there is no public subsidy of the political activity. Political activity by public officials and employees jeopardizes the goal that the governmental unit will be objective and fair, and treat all equally. Local government assets such as employees' time, materials and other resources belong to the public, and should not be used for personal or political purposes.

Public officials must use public assets for authorized purposes only, and not for personal political benefit, or for the political benefit of someone else. Political activity should not be permitted under any circumstance during business hours.

- A public servant shall not use any city time or property for his or her own political benefit or for the political benefit of any other person seeking elective office, provided that the foregoing shall not prohibit the use of property or facilities available to the general public on an equal basis for due consideration paid. *(Livonia, Mason)*

9. Public information

Purpose: Government insiders are often "those in the know," with access to information that may not be generally available. To avoid abuse of a public position, information must be used only as authorized, and not for personal benefit or advancement.

- A public servant shall not benefit financially²⁹ [or further his or her private economic interests or that of a relative or any other person] from confidential information acquired in the course of holding office or employment,^{30 31} [or knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person].³² *(Bay City, Detroit, DeWitt, Farmington Hills, Harper Woods, Jackson, Lansing, Midland, Rochester Hills, Royal Oak, Sterling Heights, Warren, Wyandotte, Ypsilanti)*
- Except as authorized by law, a public servant shall not knowingly disclose³³ to a third party [to any unauthorized person] confidential information that is acquired in the course of his or her employment [in the course of holding office]^{34 35} [including, but not limited to, information provided, obtained or discussed in closed or executive sessions of city council]³⁶ [in advance of the time prescribed [authorized] [by the governmental body] [department head, city manager or law] for its authorized release to the public], [except as otherwise required [provided] or permitted by law]. *(Bay City, Detroit, DeWitt, Harper Woods, Lansing, Rochester Hills, Warren, Wyandotte, Ypsilanti)*
- A public servant shall not use information protected from disclosure by the Michigan Freedom of Information Act which she or he has obtained by reason of such position or authority. *(Flushing)*
- A public servant shall not disclose any confidential information, without prior formal authorization of the public body having jurisdiction, concerning any city official or employee, or any other person, or any property or governmental affairs of the city. *(Sterling Heights)*

- A public servant shall not suppress or refuse to provide city reports or other information which is publicly available. (*Livonia, Mason*)
- A public servant shall not suppress any public city report, document, or information available to the general public because it might tend to affect unfavorably his or her private financial or political interest. (*Farmington Hills*)

10. Public property and personnel

Purpose: Public resources or assets that are not offered to the general public are not to be used by the public official or anyone else for private purposes. To do so subsidizes private activities with public dollars.

- [Unless judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures], a public servant shall not [request], [directly or indirectly] use [misuse] [or permit others to use] any city [publicly]-owned [or publicly-supported] real or personal property, [vehicle, equipment, material, labor or service], city funds, city personnel, or any other tangible city assets [under his or her care] [or control] for commercial gain [for personal [financial] gain or benefit] [or personal convenience or private advantage of himself or herself or any other person] [for private economic interest or that of a relative] [or for a member of his or her immediate family or a business entity with which he or she is associated] [or the private benefit of a third party]. (*Bay City, Detroit, Farmington Hills, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Sterling Heights, Warren, Ypsilanti*)

2. Whether the charter requires that the ethics ordinance have a specific focus, for example, a requirement to prohibit or limit the acceptance of gifts;
3. Whether some or all of the standards of conduct that have been featured in this chapter should be included; and
4. What kinds of ethical issues have occurred in the local government in the past, or what kinds of ethical issues might arise in the future, with elected officials, appointees, employees, and independent contractors.

Answering these questions will ensure that charter-mandated requirements will be met, and that the standards of conduct will be tailored to the needs and the will of the community. Further, the discussion itself will increase awareness of ethical issues, and will help build a consensus among elected officials, appointees, employees, and independent contractors, as well as with the public.

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1. or relates
 2. other than as a citizen, officer, or employee of the city
 3. substantial
 4. promise
 5. or promise of future employment
 6. for the benefit of a person or organization, other than the city
 7. in the form of money, a loan, service, travel, entertainment, hospitality, or other thing of promise
 8. for the benefit of a person or organization
 9. or give anything of value
 10. or would unduly influence
 11. under circumstances where it can reasonably be inferred that the gift is intended to influence him or her in the performance of his or her official action or is intended as a reward for any official action
 12. or duties
 13. based upon an agreement or understanding that a vote or an official action or decision would be influenced thereby
 14. to accept in a one-year period a gift or any other item exceeding \$100 in value from people or business entities under circumstances which may tend to impair his or her independence of judgment or action in the performance of his or her official duties

Summary

When selecting the standards of conduct to be codified, drafters should consider:

1. Whether the local government charter requires that the ethics ordinance contain certain minimum standards of conduct;

15. or favors, gratuities, or special consideration from anyone currently doing business with the city, seeking to do business with the city, or who may currently be negotiating to do business with the city in the future, or who may otherwise seek any actions or approval by the city unless specifically allowed by city policy, including soliciting or accepting, without reimbursement, meals, sporting event tickets, social amenities, or attendance at any event with any organization that does business or seeks to do business with the city unless specifically sanctioned as a city sponsored event,
16. or which is intended to influence a vote, decision, or other exercise of official authority in any matter involving the city
17. based upon an agreement that the vote or official action or the official action or decision of the public servant would be influenced thereby
18. or falsely represent his or her personal opinion to be the official position or determination of the governmental body which he or she is a member or employee
19. or in a decision or transaction
20. an economic
21. or benefit
22. on the public record
23. or without providing written notification to the city council, if an elected public servant, or to his or her immediate supervisor if a non-elected public servant.
24. or use the authority, title, or prestige of his or her public office for the attainment of a public servant's financial gain or that of a member of his or her immediate family's private financial benefit when inconsistent with the public interest
25. or engage in a business transaction in which the public servant may profit from his or her official position or authority
26. or make unauthorized use of his or her public position to obtain financial gain for himself or herself, a member of his or her immediate family, or a business [or entity] with which he or she is associated.
27. or tends to impair
28. The Michigan Campaign Finance Act, MCL 169.201 *et seq.*, requires that candidates for public office make campaign contributions and expenditures public by filing appropriate reports.
29. or use for private gain
30. or obtained or may obtain by reason of his or her position or authority
31. or use or permit the use of confidential information to advance a financial or personal interest of himself or herself, or of any other person
32. or make unauthorized use of any confidential information received through holding such public position to obtain financial gain for himself or herself, a member of his or her immediate family or a business [or entity] with which he or she is associated
33. or divulge
34. in the course of holding his or her position
35. in the course of his or her service
36. to any person not authorized to obtain such information

Consequences for Violating the Ethics Ordinance

By Dennis A. Mazurek

Overview

This chapter discusses the range of penalties, or sanctions, which can be found in the ethics ordinances of the 18 local governments that were surveyed for this study. These municipalities have taken different approaches to responding to violations of their ethics ordinances, and to enforcement. It's important to remember there are many players on the municipal stage, such as elected and appointed officials, employees (full-time and part-time), volunteers, vendors, and

contractors. Not all will come within the scope of an ethics ordinance. For those who are subject to an ethics ordinance, the range of sanctions runs from self-policing with no formal sanctions, to criminal penalties:

No sanction or penalty

Public admonition or reprimand

Public censure

Forfeiture of office and removal proceedings

Disciplinary action

Termination of contract (external vendors or contractors)

Municipal civil infraction

Cumulative sanctions

Misdemeanor

Felony

Review of decision

Those who are charged with drafting or developing an ethics ordinance can consider a wide range of penalty options, and the penalties can be tailored to fit the community.

Before thinking about penalties, however, the first step must be to decide whether the ethics ordinance should be “*aspirational*,” whether it should have sanctions that are enforceable, or whether it should be something in between. An aspirational approach reminds officials of their mission in service to the public, sets forth what they should aspire to and how they should conduct themselves, but it stops short of imposing serious penalties for failing to live up to the standards. An approach that demands greater accountability states the standards of conduct that are expected, the consequences for violating the standards, and the means by which it will be enforced, which is usually through the local court system.

Ethics ordinances that lean toward the aspirational can be found in both large and small municipal governments, such as Detroit, Farmington Hills, Jackson, Mason, Midland, Riverview, and Rochester Hills. A more accountable approach can be found in the ethics ordinances of Bay City, Flushing, Harper Woods, Lansing, Livonia, Royal Oak, Sterling Heights, Warren, and Ypsilanti. Interestingly, two communities, DeWitt and Wyandotte, have combined the two approaches.

Considerations

To help drafters think through the kind of ethics ordinance they want for their community, the following considerations are proposed for discussion.

1. What does the local government charter say about enforcement?
2. Should the ethics ordinance be aspirational, establishing the standards of conduct that public officials should exemplify, or should the standards be enforceable, with penalties or sanctions imposed when violations occur?
3. If the standards of conduct are to be enforced, who will,
 - a. Receive and process complaints?
 - b. Investigate complaints?
 - c. Decide whether a violation has occurred?
 - d. Decide whether a sanction should be imposed?
 - e. Enforce the sanction?
 - f. Oversee the process?
 - g. Provide advice about whether a proposed action violates the ethics ordinance?
 - h. Provide training to all those to whom the ethics ordinance applies?
4. At what point in the process does the Michigan Freedom of Information Act provide the public with a right to know?
5. Should a body, such as a board of ethics, be created to respond to requests for advisory opinions and complaints?
6. Where discipline is contemplated, how will collective bargaining agreements be affected?
7. Will the local government be able to successfully prosecute its elected officials before its elected district court judges?
8. What effect will potential civil or criminal penalties have on employee morale?

9. Will civil or criminal penalties dissuade potential employees from seeking employment with the local government organization?
10. Does the political will exist to adopt an ordinance with serious sanctions?
11. Will the sanctions be fairly and uniformly applied?

A discussion of these questions is important to help policy makers understand what is being undertaken, and to develop a consensus for action. The process can be especially challenging when, in effect, the policy makers are proposing and enacting legislation to regulate themselves.

Responding to violations of an ethics ordinance

Eleven different kinds of responses to violations have been identified in the ethics ordinances of the 18 local governments that were surveyed. The enforcement sanctions are included below in the order of severity, from lesser to greater. Each example provides the actual language from the ordinance.

No sanctions

An aspirational ordinance is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and employees; it is not designed to be a punitive measure. It is anticipated that the issuance of advisory opinions by the Board of Ethics will conclude all matters originating as requests for advice, and substantially all matters originating as complaints. The Board of Ethics is not an adjudicative body and no finding of the Board should be deemed conclusive, nor should it subject any municipal official or employee to penalties. *(Mason)*

This chapter is intended to establish standards governing conduct in dealings with the city. Violations of this chapter shall not make the violator subject to a fine or incarceration. *(Rochester Hills)*

Public admonition

In the event the Board of Ethics determines that a violation of this article has occurred, the Board may adopt a resolution of public admonition [*Editor's note: mild rebuke or reprimand*] against a public servant which includes the mayor, members of the city council, the city clerk, any member of any city agency, board, commission, or other voting body that is established by the city charter or by the city code, and any appointee, any employee, or any individual who provides services to the city within or outside of its offices or facilities pursuant to a personal services contract regarding the violation. *(Detroit)*

Public censure of elected officials

Violation of this Ordinance by an elected official may result in censuring by unanimous vote of the remaining members of the city council. [*Editor's note: A censure is a strong disapproval or condemnation, expressed by a resolution passed by the governing body.*] *(Riverview)*

Forfeiture of office and removal proceedings

Where, based upon an investigation arising from a complaint, the Board of Ethics determines that there may be grounds for further investigation for possible forfeiture of or removal from office under the City Charter and applicable law, the matter may be referred by the Board to the city council for consideration of forfeiture or removal proceedings in accordance with the City Charter. *(Detroit)*

Depending upon the employment status of the city official or employee involved, or group concerned, and the nature of the action requested, all matters concerning the Conflict of Interest and Ethical Code shall be directed to either i) the mayor, the city council and the city attorney for elected and appointed officials, or ii) to the city manager and the city attorney for full and part-time appointed employees. In matters concerning the mayor, city manager or city attorney, the mayor pro tem will assume

the controlling authority position in place of the affected official. When requested, these authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning Conflict of Interest and the Ethical Code policy of the city. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include, but is not limited to, taking [*Editor's note: or recommending*] appropriate disciplinary action, including removal from office or appointed position, in accordance with the City Charter, the City Code, state law, or the regulations or policies of the city. (*Farmington Hills, Jackson, Midland*).

The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be enforced. (*DeWitt, Sterling Heights*)

Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant. When requested, the above-listed authorities shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, taking appropriate disciplinary action, including removal from office or appointed position in accordance with the City Charter, Code of Ordinances or state law. (*Wyandotte*)

Disciplinary action

Where the Board of Ethics determines that a violation of this article by such public servant may present grounds for disciplinary action, the matter may be referred by the Board to such public servant's supervisor with a recommendation that the public

servant's conduct be reviewed for disciplinary action. Any such disciplinary action must be carried out in accordance with the provisions of the City Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense. (*Detroit*)

Depending upon the employment status of the public servant or group involved, or group concerned, and the nature of the action requested, all matters concerning the Conflict of Interest and Ethical Code shall be directed to either i) the mayor, the city council and the city attorney for elected and appointed officials, or ii) to the city manager and the city attorney for full and part-time employees. In matters concerning the mayor, city manager or city attorney, the mayor pro tem will assume the controlling authority position in place of the affected official. When requested, these authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning Conflict of Interest and the Ethical Code policy of the City. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include, but is not limited to, taking [*Editor's note: recommending*] appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the City Charter, the City Code, state law, or the regulations or policies of the city, or the requirements of any collectively bargained agreement. (*Farmington Hills, Jackson, Midland*)

Violation of this Ordinance by the city manager, or an officer or employee may result in disciplinary action, up to and including discharge, in accordance with city policies, applicable collective bargaining agreements, and employment contracts. (*Riverview*)

Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the city of Wyandotte

chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant. When requested, the above-listed authorities shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the City Charter, Code of Ordinances or state law. *(Wyandotte)*

Recommendation of termination of contract

Where the Board of Ethics determines that an existing city contract has been entered into in violation of the provisions of this article, after such determination and recommendation from the Board, the city may void or seek termination of the contract where legally permissible. *(Detroit)*

Municipal civil infraction¹

This chapter is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and employees and is not intended to be a punitive measure. It is anticipated that the issuance by the Board of Ethics of advisory opinions will conclude all matters originating as requests for advice and substantially all matters originating as complaints. The Board of Ethics is not an adjudicative body and no finding of the Board shall be deemed conclusive nor, in and of itself, subject any city official or employee to penalties. In the event of legal proceedings alleging a violation of this chapter, then in accordance with the provisions of the City Charter, a violation of this chapter shall constitute a municipal civil infraction, and shall subject a person found responsible by a court of violating this chapter to a maximum civil fine of not more than one hundred dollars. *(Livonia)*

Misdemeanor

Any official, officer or employee who violates this ordinance shall be guilty of a misdemeanor, which shall be punishable by a fine not to exceed \$500 or by imprisonment of not more than ninety days in jail or both, in the discretion of the court. *(Bay City, DeWitt, Ypsilanti)*

Any person violating any of the provisions in this article shall, upon conviction, be punished as prescribed in this Code. *(Sterling Heights)*

Any person convicted under the provisions of this ordinance shall be deemed guilty of misconduct. *(DeWitt, Sterling Heights)*

Violation of the provisions of this ordinance shall be a misdemeanor. *(Flushing, Harper Woods, Lansing)*

Failure of an elected official or appointee to file a disclosure form with the city clerk by March 28 of each year, or to file a conflict of interest disclosure form with the city clerk, shall be a misdemeanor and may result in a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than ninety days, or both. *(Wyandotte)*

Felony

To the extent that violations of ethical standards of conduct set forth in this Ordinance constitute violations of the Michigan Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Ordinance. *(Royal Oak)*

Cumulative sanctions

The invocation of one subsection of this section does not preclude the application of any other subsection of this section or of any other applicable laws or policies. *(Detroit)*

The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be imposed. *(DeWitt, Sterling Heights)*

Review of Decision

Where the Board of Ethics finds that a decision of the mayor, the city council, the city clerk, an appointee, or other public servant was made in violation of this article, the board may recommend to the mayor, the city council, the city clerk, an appointee, or other public servant that such decision be reviewed in accordance with the applicable provisions of the City Charter and the City Code. Upon such recommendation, the decision may be reviewed by the mayor, the city council, the city clerk, appointee, or other public servant in accordance with the applicable provisions of the City Charter, the City Code, and any other applicable laws.

(Detroit)

Conclusion

What will happen when it appears, or when it is determined, that the ethics ordinance has been violated? Is it enough to plainly say what the public official's duty to the public is? Is it enough to say, in a formal and public way, what the standards of conduct should be for those who serve the local government? Or should some kind of consequence, from private admonition to criminal penalty, flow from a violation of those standards?

In drafting an ethics ordinance, the selection of an appropriate sanction and enforcement process for a municipality is a difficult task. While it is advisable to avoid harsh and extreme punishment for incidental infractions, it is unwise to allow significant violations to go unpunished. At the same time, it is important to remember that Michigan statutes provide for the prosecution of criminal offenses.

While both the aspirational and accountable approaches to ethics ordinances are worthy of consideration, the aspirational approach affords greater control of the enforcement process than does a more punitive approach. With both, enforcement involves some type of sanction. The aspirational approach is grounded in the concept of self-policing, and minimizes reliance on overloaded district courts by keeping enforcement "in-house." On the other hand, the punitive approach ultimately plays out in the courts, where the imposition of sanctions is a matter left to the discretion of judges for whom a violation of an ethics ordinance may be no more compelling than a minor violation of any ordinance of the local government.

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1. There is an important legal distinction between a *municipal civil infraction* and a *civil infraction* as defined by statute. Consult the enabling act relevant to your jurisdiction to determine which class of infraction applies. Section 4L of the Michigan Home Rule City Act, MCL 117.4L, identifies certain statutes that will permit or prohibit their classification in either category.

Enforcement and Administration of an Ethics Ordinance

By Dennis A. Mazurek

Considerations

In designing systems for enforcement and administration of an ethics ordinance, the complexity of the task will depend on whether the drafters choose an aspirational approach to encouraging ethical behavior, or a more accountable and enforceable approach by which certain ethical conduct is required. The aspirational approach reminds public officials of the standards of conduct to which they should aspire, but it does not assign serious penalties for failure to abide by

the standards. On the other hand, an approach that includes serious sanctions must set clear standards for required conduct, along with the consequences for violating the standards.

In thinking through an enforcement system, drafters should consider some basic questions.

1. Which segments of the municipal organization come within the jurisdiction of the ethics ordinance?

2. Should there be one enforcement system for elected and appointed officials, and a separate process for employees?
3. Who should be given authority to investigate and enforce the ordinance when the conduct of elected officials is questioned?
4. Should the group that will have responsibility for enforcement be part of the municipal organization, or should it be independent of the municipality?
5. Who shall appoint the members of that group, and how long should they serve?
6. How should the process balance an individual respondent's right to privacy, and the public's right to know? Can any part of the process remain private under the Michigan Freedom of Information Act?
7. How shall the enforcement system be funded? Should the ethics ordinance include a requirement that the municipality provide "adequate" resources for enforcement?

In general, an enforcement process and administrative system usually include:

- a. Receipt and processing of complaints or allegations that the ethics ordinance has been violated;
- b. Notice to the person(s) complained about;
- c. Investigation of complaints;
- d. An initial decision whether a violation may have occurred, or whether the complaint is without grounds and should be dismissed;
- e. Gathering and recording of facts;
- f. Hearing the respondent's version of the circumstances of the alleged misconduct;
- g. Testimony from witnesses;
- h. Deciding whether a sanction should be imposed, and if so, what sanction;
- i. Implementing or enforcing the sanction;
- j. Overseeing the enforcement process;
- k. Keeping records of complaints and results;
- l. Providing advice, or advisory opinions, about whether a contemplated action would violate the ethics ordinance; and
- m. Providing periodic training to all who are within the jurisdiction of the ethics ordinance.

Overview

As always, a first step is to determine whether the local government charter requires a specific enforcement mechanism that must be codified in the ethics ordinance, and then implemented. An example of how a local government incorporated some of the elements listed above, Section 2-106(2) of the 1997 Detroit City Charter may be helpful. It mandates a comprehensive structure for enforcement and improvement of ethical standards, and a Board of Ethics is its primary enforcement and administrative mechanism.

Section 2-106(2) An independent Board of Ethics is created. The Board of Ethics shall consist of seven members:

1. Seven members of the public,
 - a. Three of whom shall be appointed by the city council,
 - b. Three of whom shall be appointed by the mayor; and
 - c. One of whom shall be jointly appointed by the mayor and city
2. None of the Board members shall be removed by the respective appointing authority except for cause; *[Editor's note: "Cause" in this context might include breach of a duty relating to the office, e.g. misfeasance, malfeasance, or nonfeasance.]*
3. The term of membership of the Board shall be five years, and not more than two members' terms shall expire in any one year;
4. Each appointee may serve a maximum of two consecutive five-year terms, not to exceed a total of ten years.

Public members of the Board shall be residents of the city who are not elected officers, appointees, or employees of the city at any time during their Board membership. Members shall serve without compensation. All city elected officers, appointees, and employees shall be available for consultation with the Board of Ethics as it deems necessary. The Board of Ethics shall issue advisory opinions regarding the meaning and application of provisions of the Charter, city ordinances or other laws or regulations establishing standards of conduct for elected officers, appointees, or employees. Advisory opinions shall be rendered upon written request by an elected officer, appointee, or employee. Advisory opinions shall be published by the Board annually in a report to the mayor and city council. The opinions shall not disclose the identity of the elected officers, appointees, or employees concerned.

All meetings of the Board shall be open to the public, unless an individual involved in the matter to be addressed requests in writing that the meeting be closed, or unless otherwise provided by ordinance.

Consistent with state law, the Board of Ethics may recommend improvements in the standards of conduct to ensure the ethical behavior of city elected officers, appointees, and employees, or in the organization and procedures related to the administration and enforcement of those standards. The Board of Ethics shall be authorized by ordinance to conduct investigations on its own initiative, subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, appoint independent counsel when necessary, and to perform other functions essential to ensure the integrity of city government. The Board shall establish its rules and procedures, in accordance with Section 2-111 of this Charter. Funds sufficient to enable the Board to perform its duties shall be appropriated annually.

Examples of different enforcement systems

The ethics code enforcement mechanisms in the ordinances of 17 local governments in Michigan were surveyed and are highlighted below. These examples are from Bay City, Detroit, DeWitt,

Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Royal Oak, Sterling Heights, Warren, Wyandotte, and Ypsilanti. Six different versions of enforcement systems were identified in these ordinances.

1. Boards of Ethics

The cities of Detroit, Lansing, Livonia, Mason, and Warren have enacted ordinances requiring a Board of Ethics. Although the Ethics Ordinance of the city of Detroit goes far beyond where most communities will want to go, it, again, provides a useful and detailed example of the various elements that drafters might want to consider.

Charter independence; duties; promulgation of rules.

- a. The city of Detroit Board of Ethics is an independent body that was created by Section 2-106(2) of the 1997 Detroit City Charter for the following purposes:
 1. To render advisory opinions regarding the meaning and application of provisions of the 1997 Detroit City Charter, this article, and other laws or regulations which pertain to disclosure requirements and standards of conduct for public servants;
 2. To conduct investigations based upon a complaint in order to ensure the integrity of city government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and
 3. To recommend a) improvements in the disclosure requirements that are found in Division 2 of this article, and the standards of conduct that are found in Division 3 of this article, and b) improvements in the administration and enforcement thereof, in order to promote an ethical environment within city government, and to ensure the ethical behavior of public servants.

- b. In accordance with Section 2-111 of the 1997 Detroit City Charter, the Board of Ethics shall promulgate administrative rules to perform its duties as set forth in the 1997 Detroit City Charter and this article.

Limitations on Board's authority

The Board does not have the authority to reverse or otherwise modify a prior decision of the mayor, the city council, the city clerk, appointee, or other public servant.

Resources and staffing

- a. A sufficient annual appropriation shall be provided to enable the Board of Ethics to perform its duties as set forth in the 1997 Detroit City Charter and this article, including hiring adequate staff.
- b. The corporation counsel shall assign legal counsel from the city of Detroit Law Department who shall provide representation and advice to the Board on legal matters. The Board may refer a matter to the city attorney from the law department who represents the Board for appropriate action. Upon completion of review and consideration, the city attorney shall report his or her findings to the Board. Any retention of outside counsel on behalf of the Board of Ethics shall be governed by the provisions of section 6-408 of the 1997 Detroit City Charter.

Each city agency to cooperate and assist

As needed, each city agency shall cooperate in gathering information to assist the Board of Ethics in performing its duties.

Information provided to Board to remain confidential

Members of the Board of Ethics or any public servant who have access to any confidential information that is related to the functions or activities of the Board are prohibited from divulging such information to any person who is not authorized to possess the information.

Annual report

- a. On or before April 1 of each year, the Board of Ethics shall issue simultaneously to the mayor and to each member of the city council a report that contains:

1. An analysis of all activities of the Board including the number of advisory opinions requested and the number issued, and the number of complaints filed and the disposition thereof during the preceding calendar year;
 2. A compilation of opinions that have been issued during the preceding calendar year; and
 3. The Board's recommendations, if any,
 - a) for improvement of the disclosure requirements that are found in Division 2 of this article, and of the standards of conduct that are found in Division 3 of this article, and b) for improvement of the administration and enforcement thereof.
- b. In addition, a copy of this annual report shall be submitted to the city clerk, each department director, each agency head and the municipal reference library.

2. Chief of police/city attorney

In the ethics ordinance of the city of Wyandotte, the chief of police and the city attorney direct the enforcement process.

- a. Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the city of Wyandotte chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant.
- b. The above listed authorities, when requested, shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article.
- c. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, any of the following:
 1. Pursuing further investigation by the controlling authority;

2. Taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the Wyandotte City Charter, Code of Ordinances or state law;
3. Pursuing such other course of action which is reasonable, just and appropriate under the circumstances;
4. Pursuing criminal prosecution for failure to file the necessary disclosure forms required in this article;
5. Determining no action is required and stating the reasons therefore; and
6. Recovering the costs and expenses the city has incurred against an individual under the cost recovery provisions of Section 2-312.5.

3. City attorney

The Bay City ordinance provides that the city attorney shall head up the enforcement system.

All complaints concerning violations of this ordinance shall be made to the city attorney, who shall investigate and prosecute all allegations concerning or relating to violations of this ordinance.

4. City manager/city commission/city council

Riverview and Royal Oak chose the city manager, city commission and city council to be the enforcement system.

The following sanctions shall not be construed to diminish or impair the rights of an employee under any collective bargaining agreement, nor the city's obligation to comply with such collective bargaining agreements.

- a. Mayor and commissioners. The Royal Oak city commission shall have the authority to issue an oral or written warning or reprimand to one of its members for violations of the ethical standards in this Ordinance.
- b. Employees other than elected officials. The city manager, or the city commission if the employee is appointed by the commission pursuant to the Charter, may impose any

one or more of the following sanctions upon an employee for violations of the ethical standards in this Ordinance:

1. Oral or written warnings or reprimands;
 2. Suspension with or without pay for specified periods of time; or,
 3. Termination from employment.
- c. Non-employees. The city manager or city commission may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:
1. Written warnings or reprimands;
 2. Termination of contract; or,
 3. Disbarment or suspension.

5. Mayor/city council/city attorney/city manager

The ordinances of Farmington Hills, Jackson, and Midland include the mayor, city council, city attorney, and city manager in the enforcement system.

- a. All matters concerning the conflict of interest and ethical code shall be directed to one of the two following controlling authorities depending upon the employment status of the city of Farmington Hills official /employee involved, or group concerned, and the nature of the action requested:
 1. Elected and appointed officials of the city of Farmington Hills to the mayor, city council and city attorney.
 2. Appointed employees, full and part-time, of the city of Farmington Hills to the city manager and city attorney.
- b. The above listed authorities when requested, shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning conflict of interest and the ethical code policy of the city of Farmington Hills. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include but is not limited to any of the following:

1. Referral of the matter to a higher authority.
 2. Pursuing further investigation by the controlling authority.
 3. Taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the Farmington Hills City Charter, City Code, state law, or the regulations or policies of the city of Farmington Hills.
 4. Determining no action is required.
 5. Pursuing such other course of action which is reasonable, just and appropriate under the circumstances.
- c. The above listed controlling authorities may render written advisory opinions, when deemed appropriate, interpreting the Conflict of Interest and Ethical Code of Conduct as set forth in Section 3 above. Any city official /employee may seek guidance from the controlling authority upon written request on questions directly relating to the propriety of their conduct as officials and employees. Each written request and advisory opinion shall be confidential unless released by the requester.
1. Request for opinions shall be in writing.
 2. Advisory opinions may include guidance to any employee on questions as to:
 - a. Whether an identifiable conflict exists between his/her personal interests or obligations and his/her official duties.
 - b. Whether his/her participation in his/her official capacity would involve discretionary judgment with significant affect on the disposition of the matter in conflict.
 - c. What degree his/her personal interest exceeds that of other persons who belong to the same economic group or general class.
 - d. Whether the result of the potential conflict is substantial or constitutes a real threat to the independence of his/her judgment.
 - e. Whether he/she possesses certain knowledge or know-how which the city will require to achieve a sound decision.
 - f. What effect his/her participation under the circumstances would have on the confidence of the people in the impartiality of their city officials and employees.
 - g. Whether a disclosure of his/her personal interests would be advisable, and, if so, how such disclosure should be made so as to safeguard the public interest.
 - h. Whether it would operate in the best interest of the people for him/her to withdraw or abstain from participation or to direct or pursue a particular course of action in the matter.

6. District court

Dewitt, Flushing, Harper Woods, Sterling Heights, and Ypsilanti have ethics ordinances featuring the district court as the head of the enforcement system.

Any person who shall be convicted, by a court of competent jurisdiction, of violating any of the provision(s) of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars or by imprisonment of not more than ninety days, or both, in the discretion of the court.

- a. In addition, any person so convicted by a court of competent jurisdiction shall forfeit any city employment or office held. The office shall be vacant upon conviction.
- b. Any person convicted by a court of competent jurisdiction of a misdemeanor involving election fraud, or any felony, or a misdemeanor involving moral turpitude committed in the course of employment with the city, shall forfeit any city employment or office held. The office shall be vacant upon conviction.

Chapter 4: How to Proceed

Essay

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Developing, Adopting and Implementing an Ethics Ordinance: The Process

By Daniel C. Matson

1. Getting started

A charter can be *silent* on the question of an ethics ordinance, or it can *mandate* the adoption of an ethics ordinance, along with a time certain for enactment. In either case, because there is much to consider about the content of an ethics ordinance, and because there is much to research, a reasonable amount of time for its development should be allowed. A period of one year seems to be adequate time for most communities to prepare and enact an ethics ordinance, although some require a longer time.

2. The study committee

A committee should be formed to review the initial draft of a proposed ethics ordinance or to draft the ordinance in consultation with a knowledgeable municipal attorney. It is helpful to involve people with municipal experience, people with a legal background, and people with broad experience in the community. It is helpful to include at least one elected official who serves on the legislative body and who is interested in the undertaking. This person may assist in formulating the ethics policy, and also by endorsing and presenting the ordinance to the legislative body for adoption.

3. Finding background materials and examples

This publication is intended to serve as a guide for the ethics ordinance study committee. It provides the basic standards of conduct that are found in many ethics ordinances, and it points to a number of ordinances currently in use in Michigan cities. The Michigan Municipal League database can identify more communities in which comprehensive ethics ordinances exist. In addition, the League will provide

copies of ordinances upon request. Since no two communities will have the same perspective or approach toward codifying standards of conduct, it is strongly advised that the ethics ordinance of another local government not be adopted as is. One size doesn't fit all, and it is important that an ethics ordinance be tailored to the circumstances of the community and the municipality that will be asked to adopt and to abide by the ordinance.

4. Legal research and drafting

Ideally, the development of an ethics ordinance should have the benefit of legal advice every step of the way. This might be a luxury for some municipal governments, but legal review should occur periodically, or at least at the end of the drafting process, before the work product is offered to the public. Both Constitutional and statutory law must be consulted to ensure that the ethics provisions are valid subject matters for the ordinance, and are not preempted by higher law. Also, the ethics ordinance will affect various rights and duties of municipal employees, and collective bargaining agreements must be considered.

The municipal charter or a contract with the attorney may require the attorney to draft the document in its entirety because it is to be an ordinance, or may at least require the attorney's review prior to its presentation to the legislative body. Involving the attorney in the complete process is strongly recommended.

5. Adopting the ordinance

When the ethics ordinance committee is satisfied with its work product, and after it has had adequate legal review, the proposed ordinance is then submitted to the legislative body for consideration,

along with the committee's recommendation for adoption. Members of the committee may assist in the discussion during the public forum as the matter is debated. They can provide background information, explain the rationale for the standards of ethical conduct chosen, explain the committee's approach to the proposed ordinance, and facilitate an understanding of both the meaning and the effect of the provisions in the proposed ordinance.

6. Publication of the ordinance

The complete ordinance, or a summary of it, must be published in the manner required by state and local law. In addition, each person in service to the municipality (elected and appointed officials, full- and part-time employees, and volunteers serving on boards and commissions) should be given a copy of the ordinance. They should also be required to read it and be given an opportunity to raise questions about its effects. Depending upon the structure of the organization, it may be appropriate to have department heads review the ordinance with staff in special meetings scheduled for that purpose.

7. Living with the ethics ordinance

The ethics ordinance exists to provide a reasonable framework in which the local government servant is to function and meet public expectations. To be as effective as possible, on-going training and discussion should be available for all who come within the jurisdiction of the ordinance. The purpose of any ethics ordinance is, after all, to promote the trustworthiness of government. Those who serve *in* government, and those who are served *by* government, which is all of us, want to know that our government exists to promote the public good.

Appendix A:

The Contributors

The contributing authors and the editor of the Ethics Handbook are all attorneys at law and they are all current and longstanding members of the Ethics Roundtable of the Michigan Association of Municipal Attorneys. All are indebted to William L. Steude, as without his belief in the importance of ethical conduct in the affairs of government, this project would not have happened.

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Contribution:

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Management Association Ethics Advisor
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Contribution:

Editor

Appendix B:

Some Ethics-Related Michigan Statutes

The following are Michigan statutes that have been referred to in the text, and that have implications for the development of ethics codes and ethics ordinances by local governments. The list is not intended to be comprehensive, but, rather, instructive.

Conflicts of Interests as to Contracts Act,
Act 317, 1968 (MCL 15.321 *et seq.*)

Failure to uphold or enforce the law
(MCL 752.11)

False statement of public finances
(MCL 750.489)

Incompatible Public Offices Act
(MCL 15.181)

Political Activities by Public Employees,
Act 160, 1976 (MCL 15.401 *et seq.*)

Public moneys, manner of keeping,
embezzlement, etc.
(MCL 750.490)

Purchase of goods on public credit
(MCL 750.490a)

Standards of Conduct and Ethics Act,
Act 196, 1973
(MCL 15.341 *et seq.*)

Whistleblower's Protection Act,
Act 469, 1980
(MCL 15.361-15.369)

Willful neglect of duty
(MCL 750.478)

Appendix C:

Eighteen Local Government Ethics Ordinances

The text refers to eighteen municipalities' charters and ethics ordinances that were reviewed, and excerpts from them were offered as examples. The following is a listing of the citations for these charters and ordinances, some of which are available on the Michigan Municipal League website. Also included are citations for municipal charters that include provisions regarding ethics.

Local Government	Population ¹	Charter or Ordinance Citation
DeWitt	4,441	Charter Art. 8, §8.14; Code of Ordinances, Ch. 2, Art. VI, §2-191 <i>et seq.</i>
Mason	7,985	Ordinance 132, effective October 1, 1999
Flushing	8,110	Ch. 37 of Ordinances, §3701 Code of Conduct, A through G; and §3702 Financial Disclosure; adopted 1993
Riverview	12,744	City Code of Ordinances, Ch. 2, Div. 3, Secs. 2-71 through 2-78
Harper Woods	13,621	Ordinance 96-3: Article VIII, Secs. 2-275 through 2-280, City Code of Ordinances
Ypsilanti	21,832	Ypsilanti City Code, Chapter 46, Articles II and III, adopted May 22, 1995
Wyandotte	26,940	Ord. No. 1235, Sec. 1; revised July 18, 2005
Jackson	34,879	Charter, §9.13 Ethics Ordinance, adopted Nov. 4, 1997; Ordinance 99-25, adopted Nov. 16, 1999
Bay City	34,879	Charter, Article 7, §§7.1-7.3; Code of Ordinances, Chapter 2, §2.30 <i>et seq.</i>
Midland	41,760	Ordinance No. 1337: Ch. 32, Secs. 32-1 through 32-6, City of Midland Code of Ordinances, dated January 22, 1996
Royal Oak	58,299	Ch. 45, Royal Oak City Code, adopted in 1993, and amended in 1998 and 2004
Rochester Hills	69,995	Ch. 50, Ethics, Secs. 50-1 through 50-7, effective February 13, 1996
Farmington Hills	80,223	Code of Ethics, adopted December 11, 1989
Livonia	97,977	Ethics Ordinance, §2.200.010 through §2.200.100, adopted 1997
Lansing	115,518	Charter, Ch. 5, §§5-501-5-505; Ordinance 290.01-290.12 (1966)
Sterling Heights	128,034	Code of Ethics for Public Officials and Employees, Ord. No. 165, §1.01, with Guidelines, effective December 18, 1974
Warren	135,311	Article VIII, Code of Ethics, §§2-371 through 2-381, adopted September 11, 1991
Detroit	886,671	Detroit City Charter, §2-106 <i>et seq.</i> , 1997 Detroit City Charter; Detroit Code, Article VI Ethics, §2-6-1 <i>et seq.</i>

1. Source of population data: U.S. Census Bureau, 2005 population estimates

Appendix D:

Ethics Resources for Local Governments

Aaron, Henry J., Thomas E. Mann and Timothy Taylor. *Values and Public Policy*. Brookings Institution Press, Washington, D.C., 1994.

Bell, A. Fleming, II. *Ethics in Public Life, Adapted from Ethics, Conflicts, and Offices: A Guide for Local Officials*. Institute of Government, the University of North Carolina at Chapel Hill, 1998. The book explores what ethics and the public trust mean, and presents ways that the ethical climate of government can be improved.

Berman, Evan M., Jonathan P. West, and Stephen J. Bonczek, eds. *The Ethics Edge*. Washington, D.C.: International City/County Management Association, 1998. A collection of articles covering contemporary insights and current ideas on management practice in ethics.

Bok, Sissela. *Lying: Moral Choice in Public and Private Life*. Pantheon Books, a division of Random House, Inc., 1978. A inquiry into the practice of lying, the avoidance of the hard questions, and the resulting damage.

Bowman, James S., ed. *Ethical Frontiers in Public Management*. Jossey-Bass Publishers, San Francisco, 1992. The book presents current research that defines the moral environment found in public management, examines how and why thinking about government ethics needs to be revitalized, and offers theoretical strategies to bring that renewal to fruition.

Denhardt, Kathryn G. *The Ethics of Public Service: Resolving Moral Dilemmas in Public Organizations*. Greenwood Press, New York, 1988.

Dworkin, Ronald. *A Matter of Principle*. Harvard University Press, Cambridge, MA, 1985.

Elliott, Kimberly Ann, ed. *Corruption and the Global Economy*. Institute for International Economics, Washington, D.C., 1997. In some parts of the world, corruption threatens to slow or reverse trends toward democratization and international economic integration.

Ethics in Action Training Package. Washington, D.C.: International City/County Management Association, 1999. Designed to help local government leaders and staff explore ethics issues together. Using case studies, exercises, real local government examples, and mini lectures, the training package addresses how all staff can make ethical decisions all the time and how to build and maintain an ethical local government.

Fisher, Roger, Elizabeth Kopelman, and Andrea Kupfer Schneider. *Beyond Machiavelli: Tools for Coping with Conflict*. Harvard University Press, 1994. The authors look systematically at what is wrong with the world, present a theory on how conflicts ought to be handled, and suggest practical skills for bringing that theory to bear on the real world. They bring a perspective that is applicable on the world stage, and at the dinner table.

Fisher, Roger, and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*. Houghton Mifflin Company, 1981. What is the best way for people to deal with their differences? Being respectful, and separating the people from the problem goes a long way.

Glazer, M.P., et al. *The Whistleblowers: Exploring Corruption in Government and Industry*. Basic Books, New York, 1989.

Institute for Local Government, *Ethics Law Compliance Best Practices, A Check List*, 2005. See http://www.cacities.org/resource_files/23862.finalcompliancebooklet.pdf

Kellar, Elizabeth K., ed. *Ethical Insight, Ethical Action: Perspectives for the Local Government Manager*. Washington, D.C.: International City/County Management Association, 1988. The book covers the inevitable tensions between personal and organizational ethics, and several of the articles deal specifically with the nature of responsibility in public organizations.

Kellar, Elizabeth K., and Mary Slawson. *Ethos: Multimedia Ethics Training for Local Governments CD-ROM*. Washington, D.C.: International City/County Management Association, 1999. An interactive training program featuring 21 real-life ethics scenarios with options for resolutions. The participant watches a scenario, chooses a response, and learns the preferred response.

Lewis, Carol W. *The Ethics Challenge in Public Service: A Problem-Solving Guide*. Jossey-Bass Publishers, San Francisco, 1991. The author offers practical tools and techniques that public managers can use in making ethical choices in the ambiguous, pressured world of public service.

Lewis, Carol W. *Scruples & Scandals: A Handbook on Public Service Ethics for State and Local Government Officials and Employees in Connecticut*. The Institute of Public Service and the Institute of Urban Research, The University of Connecticut, 1986. The book looks further than Connecticut, and is meant to provide a useful, practical examination of the formal procedures and processes by which we seek to encourage, if not ensure, “good” or “right” behavior.

McCollough, Thomas E. *The Moral Imagination and Public Life: Raising the Ethical Question*. Chatham House Publishers, Chatham, NJ, 1991.

Richter, William L., Frances Burke and Jameson W. Doig, eds. *Combating Corruption, Encouraging Ethics: A Sourcebook for Public Service Ethics*. American Society for Public Administration, Washington, D.C., 1990.

Sabato, Larry J., and Glenn R. Simpson. *Dirty Little Secrets: The Persistence of Corruption in American Politics*. Times Books, New York, 1996.

Salkin, Patricia E., ed. *Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials*. Section of State and Local Government Law, American Bar Association, 1999. The book is a compilation of essays, articles, and research, intended to help government lawyers focus on some of the ethical considerations that arise in the practice of law in the public sector.

Speers, JoAnne, 2000-2006: *A California Ethics Odyssey*. A report distributed by the International Municipal Lawyers Association at its 2006 Mid Year Seminar held April 23-25, 2006 in Washington, D.C.

Steinberg, Sheldon S., and David T. Austern. *Government, Ethics, and Managers: A Guide to Solving Ethical Dilemmas in the Public Sector*. Praeger, New York, 1990.

Zimmerman, Joseph. *Curbing Unethical Behavior in Government*. Greenwood Press, Westport, Connecticut, 1994. The book stresses the importance of action to ensure open government as a deterrent to improper conduct, a facilitator for its detection, and a promoter of a moralistic political culture.

Appendix E:

Professional Associations' Codes of Ethics

American Association of School Administrators
aasa.org

American Institute of Certified Planners
planning.org

American Planning Association
planning.org

American Public Works Association
(Standards of Professional Conduct)
apwa.net

American Water Works Association
(Members' Code of Practice, and Policy
on Conflicts of Interest)
awwa.org

Association of Government Accountants
agacgfm.org

Government Finance Officers Association
gfoa.org

International Association of Assessing Officers
iaao.org

International Association of Chiefs of Police
(Also at ethics.iit.edu/codes)
theiacp.org

International City/County Management Association
icma.org

Michigan Association of Planning
planningmi.org

Michigan Government Finance Officers Association
migfoa.org

Michigan Local Government Management
Association (adopted the ICMA Code of Ethics)
mlgma.org

Michigan Municipal Treasurers Association
(Code of Professional Ethics)
mmta-mi.org/pdf/profcodeethics

National School Boards Association
nsba.org

State Bar of Michigan
Rules of Professional Conduct
Code of Judicial Conduct
michbar.org



michigan municipal league
Better Communities. Better Michigan.



Email and Retention of Records

What is email?

Electronic mail (email) is a means of exchanging messages and documents using computers. A complete email message includes the contents of the communication, the transactional information (dates and times that messages were sent, received, opened, deleted, etc.), and any attachments.

Is email a public record?

Email messages are public records if they are created or received as part of performing a public employee's official duties.

The Michigan Freedom of Information Act (FOIA) (1976 PA 442, as amended) defines a public record as "a writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

I sometimes use my home computer and personal email account to conduct government business. Am I creating public records?

Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer resources.

What is a Retention and Disposal Schedule?

Michigan law requires that all public records be inventoried on an approved Retention and Disposal Schedule that identifies how long the records must be kept, when they must be destroyed, and when certain records can be sent to the State Archives of Michigan for permanent preservation. Public records cannot be destroyed unless disposal is authorized by an approved Retention and Disposal Schedule.

Is there a Retention and Disposal Schedule that covers municipal public records?

Yes. General Retention Schedule #8 covers municipal records. Additionally, the State of Michigan's Records Management Services has created department-specific schedules for local governments. If a municipality maintains records that are not listed on General Retention Schedule #8 or any of the department-specific schedules, a specific schedule must be created to address the retention of those records before they can be destroyed. Records Management Services is available to advise municipalities about Retention and Disposal Schedules and records management issues. Additional information is available from the Records Management Services' website, www.michigan.gov/recordsmanagement/.

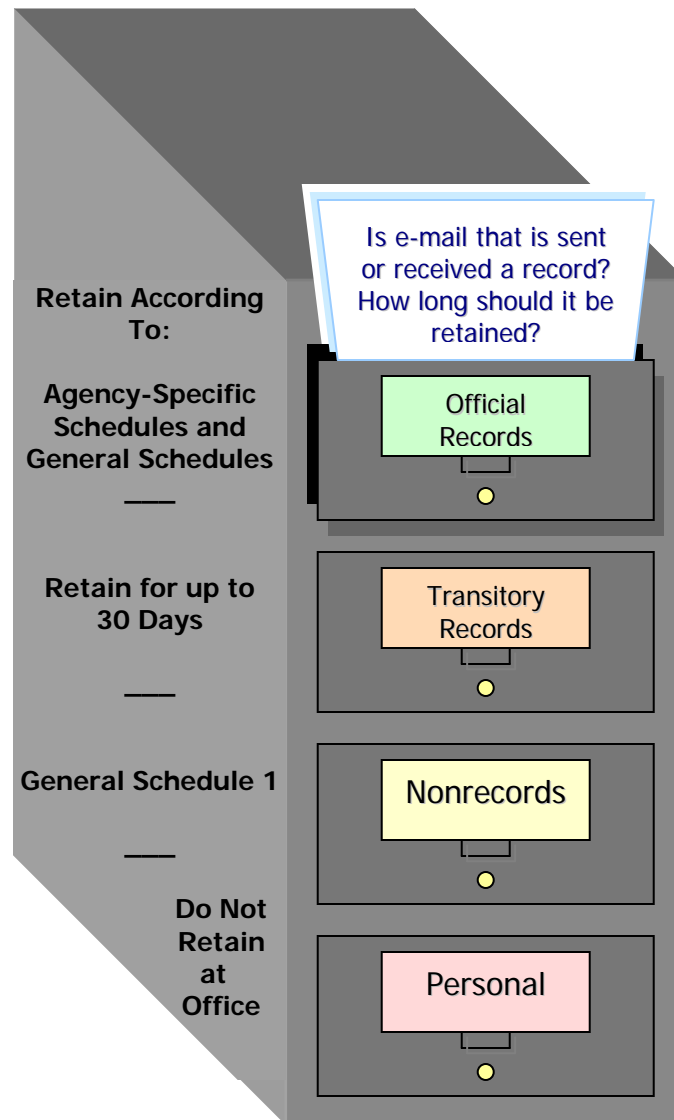
Does all email have the same retention period?

No. Just like paper records, email records are used to support a variety of business processes. Email messages must be evaluated for their content and purpose to determine the length of time the message must be retained in accordance with the appropriate Retention and Disposal Schedule.

"Plus" material was provided by the State of Michigan Records Management Services.



State of Michigan Records Management Services Electronic Mail Retention Guidance



Warning! Do not dispose of (or allow the automatic disposal of) any relevant e-mail message, even if its retention period has expired, that is responsive to a FOIA request or which is likely to be required in litigation.



Caution! Litigation/discovery and FOIA requests both apply to all relevant e-mail messages, including metadata associated with messages and any associated data stored on server back-up tapes.

Definitions and Examples

Official Records: recorded information that is prepared, owned, used, in the possession of, or retained by an agency in the performance of an official function.

TO: Joe
FROM: Jim
DATE: February 13, 2009
SUBJECT: Contract
Please change the fourth paragraph in contract #10775 to read, "payment must be received within 30 days", removing the phrase "60 days."

TO: Bob
FROM: Carol, Personnel Director
DATE: May 10, 2009
SUBJECT: Reallocation
After further review, it is our decision that there is not sufficient justification to approve the reallocation for Susan's position, based upon the fact that . . .

TO: Vendor
FROM: Lisa
DATE: February 18, 2009
SUBJECT: Contract
Thank you for your question. The intent is to guarantee unit prices to all state agencies and to provide a mechanism to easily obtain imaging services.

TO: Mark
FROM: John
DATE: April 19, 2009
SUBJECT: Appointment
This is your official notification of your appointment to the Taxation Committee. Your responsibilities include . . .

Transitory Records: records relating to agency activities that have temporary value and do not need to be retained once their intended purpose has been fulfilled.

TO: Staff
FROM: Janet
DATE: January 6, 2009
SUBJECT: staff meetings
The staff meetings will be held on Tuesday mornings from now on instead of Thursday afternoons.

TO: Marilyn
FROM: Doug
DATE: March 12, 2009
SUBJECT: supplies
I noticed that there are no more blue ink pens in the supply cabinet. Can you please order more? Thanks.

TO: Doug
FROM: Becky
DATE: July 20, 2009
SUBJECT: Retention Schedule
Would you please e-mail me a copy of the schedule for Administrative Services?"

TO: Debbie
FROM: Jim
DATE: September 7, 2009
SUBJECT: training
You have my approval to attend the seminar "Buying over the Internet." Please complete your registration form within the next two weeks.

Nonrecords: recorded information in the possession of an agency that is not needed to document the performance of an official function.

TO: Jim
FROM: Marilyn
CC: Brice
DATE: October 4, 2008
SUBJECT: Contract
For your information, the contract has been mailed to Purchasing.

TO: Debbie
FROM: ARMA
DATE: February 23, 2009
SUBJECT: Books
The Association of Records Managers and Administrators has four new books for sale regarding e-discovery. They are . . .

TO: DMB
FROM: Susan
DATE: November 1, 2008
SUBJECT: Give Blood!
The American Red Cross Blood Drive will be held in Constitution Hall on November 20, 2008.

TO: Dave
FROM: Karen
DATE: August 11, 2009
SUBJECT: brochure
The attached Word document is a draft for your review. Please let me know if you have any comments. Thanks.

Personal Records: records that document non-government business or activities. Note: agencies may have policies that prohibit the use of personal e-mail.

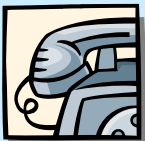
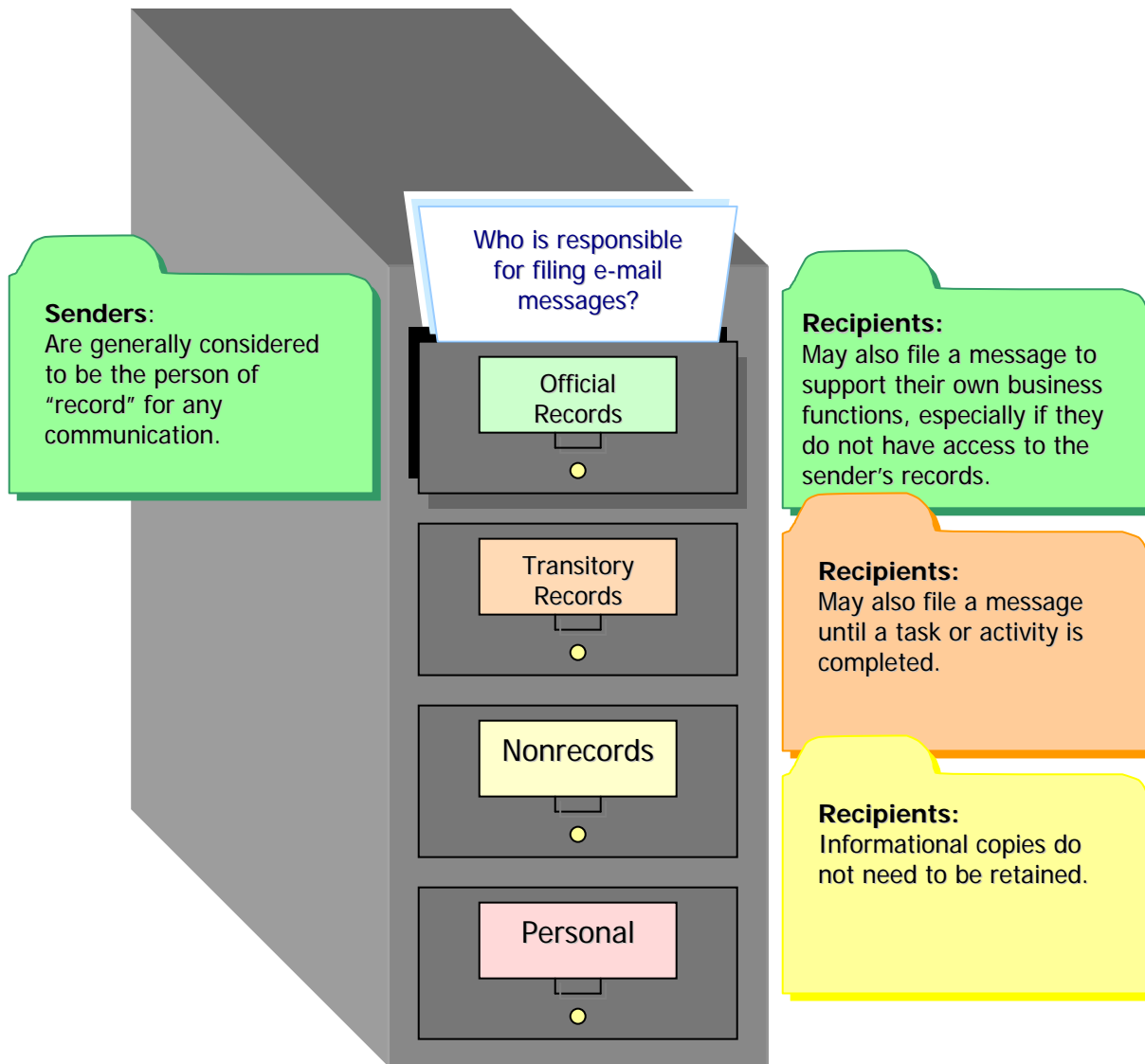
TO: Sandy
FROM: Debbie
DATE: June 3, 2009
SUBJECT: Good luck!
Congratulations on your new job! It has been great working with you these past three years. Keep in touch!

TO: Jane Smith
FROM: John Smith
DATE: May 27, 2009
SUBJECT: late
Honey. My meeting is running later than expected. Please save dinner for me. Thanks.

TO: All Division Employees
FROM: John Smith, Director
DATE: October 29, 2008
SUBJECT: holiday
This year's annual holiday buffet will be held on December 22 at noon in the conference room. Please remember to sign-up to bring a dish to pass.

TO: Fairlane Building Employees
FROM: Phyllis
DATE: January 16, 2009
SUBJECT: car
FYI. I noticed that a blue Oldsmobile in the parking lot with the license plate XYZ 123 has its lights on.

Electronic Mail Filing Guidance



QUESTIONS MAY BE DIRECTED TO:

State of Michigan
Records Management Services
(517) 335-9132

<http://www.michigan.gov/recordsmanagement/>

[AGENCY NAME]

POLICY FOR ELECTRONIC MAIL RETENTION

SECTION 1. INTRODUCTION

Electronic mail (e-mail) is a means of exchanging messages and documents using telecommunications equipment and computers. A complete e-mail message not only includes the contents of the communication, but also the transactional information (dates and times that messages were sent, received, opened, deleted, etc.; as well as aliases and names of members of groups), and any attachments.

SECTION 2. PUBLIC RECORDS

In accordance with the Michigan Freedom of Information Act (FOIA) (Public Act 442 of 1976, as amended), e-mail messages are public records if they are created or received as part of performing a public employee's official duties. All e-mail messages that are created, received or stored by a government agency are the property of the **[agency name]**. They are not the property of its employees, vendors or customers. E-mail accounts are provided to employees for conducting public business. Employees should have no expectation of privacy when using the agency's computer resources.

SECTION 3. RETENTION AND DISPOSAL SCHEDULES

Michigan law requires that all public records be listed on an approved Retention and Disposal Schedule that identifies how long the records must be kept, when they may be destroyed and when certain records can be sent to the Archives of Michigan for permanent preservation. Retention and Disposal Schedules for local government agencies are approved by the Records Management Services, Archives of Michigan and the State Administrative Board. Records cannot be destroyed unless their disposal is authorized by an approved Retention and Disposal Schedule. The State of Michigan Records Management Services is available to advise local government agencies about a variety of records management issues.

SECTION 4. RETENTION POLICY

Just like paper records, e-mail messages are used to support a variety of business processes. Just like paper records, senders and recipients of e-mail messages must evaluate each message to determine if they need to keep it as documentation of their role in a business process. Just like paper records, the retention period for an e-mail message is based upon its content and purpose, and it must be retained in accordance with the appropriate Retention and Disposal Schedule.

SECTION 5. E-MAIL STORAGE AND MAINTENANCE

The [agency name] will retain its e-mail by [Agency administrators and information technology staff must agree upon and choose one of the five options listed below. Each option has its pros and cons, and other options may be available as well.]

- 1) Filing the e-mail in a Document Management System repository where it will be organized and automatically disposed of at the end of its retention period.
- 2) Storing e-mail online in the active e-mail system for its entire retention period. Employees are encouraged to establish folders for arranging e-mail according to their content, and they are responsible for disposing of e-mail that has met all of its retention requirements.
- 3) Creating online e-mail archives for storing messages that are accessible by the active e-mail system, but are not stored on the active e-mail server. Employees are encouraged to establish folders for arranging e-mail according to their content, and they are responsible for disposing of e-mail that has met all of its retention requirements.
- 4) Storing e-mail on hard drives or peripheral drives [*information technology staff must specify which drive to use; shared servers are recommended*]. Employees are encouraged to establish folders for arranging e-mail according to their content, and they are responsible for disposing of e-mail that has met all of its retention requirements.
- 5) Printing e-mail and related transactional information, and filing the paper in a manual filing system.

SECTION 6. EMPLOYEE RESPONSIBILITIES

Employees are responsible for organizing their e-mail messages so they can be located and used. They are responsible for keeping e-mail messages for their entire retention period, and for disposing of e-mail messages in accordance with an approved Retention and Disposal Schedule.

Many agencies have established automatic purge routines for e-mail messages that are 30 or 60 days old. However, these purge routines are technology-driven and are not based upon Retention and Disposal Schedules. Many e-mail messages need to be retained longer than these periods of time. Employees are responsible for ensuring that e-mail messages with longer retention periods remain accessible until the appropriate Retention and Disposal Schedule authorizes their destruction. *Note: Records, including e-mail, cannot be destroyed if they have been requested under FOIA, or if they are part of on-going litigation, even if their retention period has expired.*

Employees who use a home computer and a personal e-mail account to conduct government business must manage their work-related e-mail the same way as those messages that are created and received using government computer resources.

Just like paper records, e-mail messages might be subject to disclosure in accordance with FOIA. They can also be subject to discovery once litigation begins. Employees should be prepared to provide access to their e-mail to their FOIA Coordinator or an attorney for the [agency] under these circumstances.

SECTION 7. INFORMATION TECHNOLOGY STAFF RESPONSIBILITIES

Individual employees are responsible for deleting messages in accordance with the appropriate Retention and Disposal Schedule. However, deleted messages may be stored on servers and backup tapes for several days, weeks or months after they are deleted. Information technology staff will ensure that deleted messages are rendered unrecoverable within [insert timeframe; 1 week is the suggested maximum] of employee deletion. *Note: The destruction of e-mail messages on servers and backup tapes must cease when an agency becomes involved in litigation or when it receives a FOIA request.*

Many e-mail messages need to be kept longer than the original technology that was used to send and receive them. New technology is not always compatible with older technology that agencies may have used. Information technology staff will ensure that older e-mail messages remain accessible as technology is upgraded or changed. Each time technology upgrades and changes take place information technology staff will ask agency administrators for information about the existence and location of older messages so they can be migrated to the new technology.

SECTION 8. ADMINISTRATOR RESPONSIBILITIES

Agency administrators are responsible for ensuring that their employees are aware of and implement this policy. They are also responsible for ensuring that their agency has an approved Retention and Disposal Schedule that covers all records (regardless of form or format) that are created and used by their employees.

Agency administrators are responsible for ensuring that the e-mail (and other records) of former employees are retained in accordance with approved Retention and Disposal Schedules.

Agency administrators are responsible for notifying information technology staff when the agency becomes involved in litigation or when a FOIA request that involves e-mail is received.

SECTION 9. FOIA COORDINATOR RESPONSIBILITIES

Just like paper records, e-mail messages might be subject to disclosure in accordance with FOIA. FOIA coordinators are responsible for identifying if the records that are requested by the public are stored in e-mail, even if the public does not specifically

request e-mail. They are also responsible for ensuring that information technology staff is notified that a FOIA request involving e-mail was received to prevent the destruction of relevant messages.

SECTION 10. ATTORNEY RESPONSIBILITIES

Just like paper records, e-mail messages might be subject to disclosure during the discovery phase of litigation. Attorneys representing Michigan government agencies are responsible for identifying if the records that are requested during the discovery process are stored in e-mail, even if the discovery order does not specifically request e-mail. They are also responsible for ensuring that information technology staff is notified that a discovery order involving e-mail was received to prevent the destruction of relevant messages.

QUESTIONS?

State of Michigan

Records Management Services

(517) 335-9132

<http://www.michigan.gov/recordsmanagement/>

21 PR Commandments for Public Officials

1. **Be on time for meetings.** Even being late one minute is a long time.
2. **Smile.** It is a trademark of a friendly person and we all like to deal with pleasant people.
3. **Call people by name.** The most important name in the world is the person's to whom you are speaking.
4. **Don't argue.** Even if you win, you lose.
5. **Sell your municipal position.** When you speak well of your office, you speak with of yourself.
6. **Show your appreciation.** A person does not like to feel that you are performing a favor by serving him/her.
7. **Show your enthusiasm.** It's contagious.
8. **Be a good listener.**
9. **Make saying "thank you" a habit.** It never gets old.
10. **Don't be a stuffed shirt.** People can see through a false front.
11. **Put yourself in the other person's shoes.** When requests are made, you may understand his/her position.
12. **Keep Cool.** Lost tempers can be damaging.
13. **Do small favors.** They are more important than big favors.
14. **Don't gush.** Be sincere.
15. **Know what you are talking about.** People may depend upon you for accurate information. If you guess, you may guess wrong.
16. **Keep promises.**
17. **Look the part of an official.** People judge you by your appearance.
18. **Be tactful.** Tact is the consideration of the feelings of others.
19. **Be helpful.** You are obligated to serve the public.
20. **Don't be afraid to admit to mistakes.**
21. **Avoid jargon and acronyms.** Not everyone has the same information or is aware of local government language.