

the review

January / February 2019

the official magazine of the  michigan municipal league

Local
Government
Basics

FRASER'S MCKINLEY PARK

Barrier-Free Playground Wins 2018
Community Excellence Award



The official magazine of the Michigan Municipal League

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9 It's Budget Time. Do You Know Where Your Revenue Is?

A row of red and white bicycles parked on a city street. The bicycles are parked in a designated area with green and white striped bollards. In the background, there is a building with a sign that says "NOW LEASING" and a white van parked on the street. The number "13" is overlaid in the top left corner of the image.

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Income Tax on East Lansing's Average Gross Household Income

\$67,926 x .01 = \$679.26*

*This does not take into account East Lansing's 10% property rate. It is based on the average income tax rate for the city of East Lansing, Michigan, which is 1.46%.



5-MH Property Tax Reduction on East Lansing's Average Taxable Residential Parcels in 2017

\$83,500 x .005 = \$417.50



Annual Taxpayer Impact of 10% Concession at \$600+

\$673.26 - \$417.50 = \$255.76 (52.13% **pay more**)

*Based on the fact that 52% of taxpayers in an average city like Lansing (the Lansing Tax paid to the city) are in the 10% concession category. The effective amount will be a minimum of \$400 per the rate for the rate.

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Mayor Michael Carnagie,
and (back, l. to r.) Councilmember
Michael Lesich show off some
of the cool playground
equipment at McKinley Park.
Photo by Marie Vickers Hill



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the review

The official magazine of the Michigan Municipal League

Volume 92, Number 1

We love where you live.

The Michigan Municipal League is dedicated to making Michigan's communities better by thoughtfully innovating programs, energetically connecting ideas and people, actively serving members with resources and services, and passionately inspiring positive change for Michigan's greatest centers of potential: its communities.

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The Review relies on contributions from municipal officials, consultants, legislators, League staff and others to maintain the magazine's high quality editorial content. Please submit proposals by sending a 100-word summary and outline of the article to Lisa Donovan, ldonovan@mml.org. Information is also available at: www.mml.org/marketingkit/.

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\$24 per year for six issues.
Payable in advance by check, money order, Visa/MasterCard/American Express.
Make checks payable to Michigan Municipal League. Phone 734.669.6371; fax 734.669.4223 or mail new subscription requests and checks to the Michigan Municipal League, P.O. Box 7409, Ann Arbor, MI 48107-7409.

The Review (ISSN 0026-2331) is published bi-monthly by the Michigan Municipal League, 1675 Green Rd, Ann Arbor, MI 48105-2530. Periodicals postage is paid at Ann Arbor MI. POSTMASTER: Send address changes to THE REVIEW, 1675 Green Rd, ANN ARBOR, MI 48105-2530.



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Newly Elected? Take Advantage of Great League Resources!

A very Happy New Year! I want to extend a warm welcome from the League to all the newly elected officials and those returning to office. We look forward to working with you in the coming year. The importance of your role cannot be overstated. Decisions that you make today on behalf of your constituents will impact the trajectory of your community in ways big and small for years to come. As a member of a council, engaging with your constituents will provide crucial opportunities to represent and advocate for their best interests on a wide range of issues. Differing opinions will be a natural part of the discourse, but ultimately council will render a collective voice to guide your community into the future.

What is one of the first things you should do as a newly elected official? Get to know your charter! Think of this important legal document as your local constitution—a document that spells out the rights and responsibilities of your municipality and provides an established framework from which to work. For example, it defines the structure of the local government, such as terms of office, and describes qualifications and local taxing and borrowing authority. I will never forget several years back, while visiting a Detroit councilwoman, how impressed I was to see a copy of the city's charter on her desk. It looked like a well-worn family heirloom passed down through the generations. Although it cannot compete with a gripping novel, it's a document that deserves some wear and tear.

Research Specialist/Editor Kim Cekola is our in-house charter specialist, and she finds charters fascinating. You may not reach that level of excitement, but you can take advantage of her enthusiasm and expertise—and it's free to members. She has been working with charters for several years and maintains the League's charter database, a one-of-a-kind resource representing exhaustive research and compilation by staff. It provides the public with a vast amount of information about Michigan's communities with just a few clicks on your computer. In perhaps what should be worthy of a Guinness Book World Record, Kim claims to have read parts of every city and village charter in Michigan. That's impressive! Learn more about charters in the pages ahead.

Continuing education is a must in today's fluctuating political landscape. Throughout the year, our education seminars include basic and advanced elected official trainings as well as myriad opportunities to stay current with ongoing legislative initiatives and changes. One example is the recent passage of the proposal to legalize recreational marijuana. Look for future training sessions to discuss the ins and outs of how the law will impact your community and steps you need to take to be prepared. Check out our Education Calendar on www.mml.org for a full listing of upcoming seminars.

And be sure to plan on attending our Capital Conference, March 19–20, held every year in Lansing. I can't emphasize enough the importance of you all being there. For detailed information, see our Capital Conference preview starting on page 23, and visit our website at cc.mml.org. We'll see you in Lansing!



Daniel P. Gilmartin
League executive director and CEO
734.669.6302; dpg@mml.org



10 THINGS EVERY KNOW ABOUT THE

By Anne Seurnyck



While municipal officials in Michigan are taught that they must comply with the Open Meetings Act (OMA), the OMA's language is not always clear and its application is not always straightforward. Consequently, misperceptions exist about OMA requirements. Because of this, it is important to go back to the basics and address ten issues that every municipality should know to ensure that it does not run afoul of the OMA.

1. Why Have Open Meetings?

The OMA was expressly enacted by the Michigan Legislature to promote transparency. Its purpose is to provide access to governments so that the public understands decisions the public body is making and can participate in the process.

2. What Are Some of the General Rules of Meetings?

All meetings subject to the OMA must be open to the public, be held in a place available to the general public,

and, pursuant to the Americans with Disabilities Act, provide necessary accommodations that allow disabled individuals the opportunity to participate. In addition, a municipality may not place conditions on attendance at a public meeting, such as requiring visitors to sign in or otherwise identify themselves by name.

3. Are Members of the Public Allowed to Comment at Meetings?

Everyone in attendance at a public meeting has the right to address the public body. Thus, every regular or special meeting must have at least one public comment period. While the public body cannot place conditions on the right to attend the meeting itself, the OMA does allow the public body to place reasonable limitations on individuals who desire to speak, such as imposing time limits for individual speakers and requiring that speakers provide their names and addresses. However, a municipality must not limit the total time for public comment—a public body is not permitted to cut off public comment after a set period of time.

MUNICIPALITY SHOULD OPEN MEETINGS ACT

4. Can Meetings be Recorded by the Public?

The right to attend a meeting of a public body includes the right to tape record, videotape, and broadcast the public proceedings, including recording the meeting on a person's phone. Even if a municipality prohibits videotaping or audiotaping, generally, in a building, videotaping or recording must be allowed during an open meeting.

5. What Is a Public Body?

The OMA applies to meetings held by a "public body." A "public body" is specifically defined under the OMA and includes boards, commissions, and other entities that exercise governmental or proprietary authority or perform a governmental or proprietary function. Most municipal officials understand that "public bodies" include village and city councils, zoning boards of appeal, and planning commissions. However, certain committees and subcommittees may also have decision making authority that would qualify the committee as a public body. In contrast, committees with only advisory authority may not meet the definition of "public body." Because it may be difficult to evaluate whether a particular committee is purely advisory, a public body may consider consulting with legal counsel when forming a new committee.

6. What Is a Meeting?

Discerning what is a "meeting" for purposes of the OMA is not always easy. The OMA statute defines a "meeting" as the convening of a public body (1) at which a quorum is present, (2) for the purpose of deliberating toward or rendering a decision (3) on a public policy. Both decisions and deliberations on public policy must be made at an open meeting; therefore,

the municipality should also be concerned about having improper meetings behind closed doors. For example, email correspondence among a quorum of the members of a body on a municipal issue could be considered an improper "meeting." Because the public has no opportunity to attend and comment, that email "meeting" may run afoul of the OMA.

7. What Type of Meeting Notice Is Required?

Public bodies must provide notice of meetings, and the rules related to notice are fairly specific. For example, for regular meetings, the public body must post a notice at its principal office stating the dates, times, and places of its regular meetings, and contain the name of the public body, its telephone number, and its address. That regular meeting notice must be posted within ten (10) days after a public body's first regular meeting of the calendar or fiscal year. If a public body changes its regular meeting schedule, it must post a new notice stating the changes within three days after the meeting at which the change was made.

For special meetings, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting (1) at the public body's principal office and, (2) on the municipal website (only if the public body directly or indirectly maintains an official Internet presence that includes monthly or more frequent updates of public meeting agendas or minutes). The public notice on the website must be on the homepage or on a separate webpage dedicated to public notices and accessible via a prominent and conspicuous link on the homepage. It is a common mistake to either fail to put the notice on the website or to put the notice in an improper place, such as buried in the municipal calendar.

“ The best way to stay on the right side of the law is to be proactive, educate your public officials and administrative staff, and work with experienced legal counsel to plan and conduct your meetings. ”



8. Are Closed Sessions Permitted?

There are exceptions that allow public bodies to hold closed sessions, such as to consider material exempt from discussion or disclosure by a state or federal statute. Municipalities should keep in mind that the exemptions are very specific and may not be improperly expanded. For example, a public body may go into closed session to consider a complaint against the city manager (if the city manager requests the closed session) because it is permitted under Section 8 of the OMA but may not go into closed session to discuss the city manager's contract renewal because Section 8 of the OMA does not include that purpose. The purpose of the closed session must be included in the motion. Common mistakes include moving into closed session without a proper purpose or failing to state or sufficiently describe the purpose of the closed session in the notice.

9. Are Meeting Minutes Required?

Minutes of each meeting must be kept showing the time, date, and place of the meeting. The minutes must also state the names of all members present and absent, any decisions made, all roll call votes taken at the meeting, and the reason for any closed sessions held. Minutes for open meetings must be made available to the public. For closed sessions, a separate set of minutes must be taken by the clerk or designated secretary of the public body. The closed session minutes must be retained by the clerk and are not available to the public.

10. What Happens if the OMA Is Violated?

A decision made by a public body may be invalidated if the public body has not complied with certain provisions of the OMA. If a public body violates the OMA, a person may also commence a civil action to compel compliance or to enjoin further non-compliance with the OMA. Public officials who

are found to have intentionally violated the OMA are subject to monetary fines and misdemeanor penalties.

In many ways, this summary merely scratches the surface of what a municipality must know about complying with the OMA. The best way to stay on the right side of the law is to be proactive, educate your public officials and administrative staff, and work with experienced legal counsel to plan and conduct your meetings. [fosterswift.com](https://www.fosterswift.com)

Anne Seurnyck is an attorney with Foster Swift Collins & Smith PC. You may contact her at 616.726.2240 or aseurnyck@fosterswift.com.

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HOW MANY LAW FIRMS DO YOU NEED TO HIRE TO MEET YOUR COMMUNITY'S NEEDS?

- A. FIVE
- B. THREE
- C. ONE

ANSWER ON PAGE 37

IT'S BUDGET TIME \$\$\$\$

Do You Know Where Your Revenue Is?

By Elis A. Seide

TAXPAYER IMPACT EXAMPLE

The example below illustrates the residential taxpayer impact if both proposals pass. It uses East Lansing's average gross household income (\$67,926) and the average taxable value for improved residential parcels (i.e. parcels w/ a dwelling) in 2017 (\$83,500). View the Taxpayer Impact Charts & Calculator at www.cityofeastlansing.com/incometax for the impact at other levels of income and taxable value. The income tax will be deductible on federal tax returns.



Income Tax on East Lansing's Average Gross Household Income

\$67,926 x .01 = \$679.26*

*This does not factor in exemptions. Assuming \$600** for exemptions, the tax would be \$673.26 for one exemption, \$667.26 for two exemptions, \$661.26 for three exemptions, \$655.26 for four exemptions, etc.



5 Mill Property Tax Reduction on East Lansing's Average Taxable Value for Improved Residential Parcels in 2017

\$83,500 x .005 = \$417.50



Annual Taxpayer Impact w/ One Exemption at \$600**

\$673.26 - \$417.50 = \$255.76 (\$21.31 per month & \$4.92 per wk)

**Please note that the \$600 for exemptions is an assumed amount. East Lansing City Council has yet to determine the amount for exemptions. The deduction amount will be a minimum of \$600 per the state tax code.

WHO WOULD PAY THE INCOME TAX?



RESIDENTS: 1%
Whether they work in East Lansing or another community.



NON-RESIDENTS: 0.5%
Working in East Lansing.

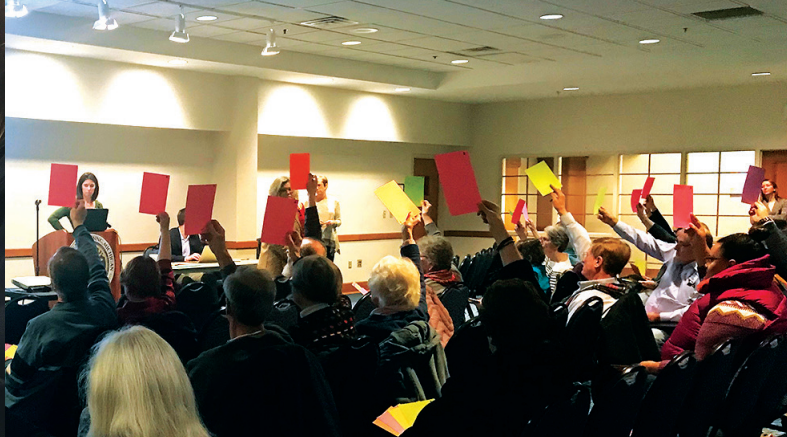
Students decked out in green and white flood the sidewalks, restaurants and stores have lines out the door, student apartments have been secured since last fall, and houses sell within a week... yet the City of East Lansing is in financial distress. Why?

Since 2001, state revenue sharing has declined in East Lansing to the tune of \$35.6 million, while costs have increased. There has been no growth in city general fund revenue in a decade. Additionally, the State of Michigan has made it difficult for municipalities to create revenue. Municipalities are not able to levy excise taxes or collect their own sales tax. There are very few options for revenue generation, property tax being the major source of income. To add to this, Proposal A and the Headlee Amendment limited revenue from taxable value to increase at the rate of inflation or five percent, whichever is less. With the housing recession in 2008, the drop in property values made the taxable values of homes plummet. Cities have struggled to get back to the 2008 level of taxable value.

On top of the revenue shortfall, East Lansing has a major legacy cost problem. The city has to pay the Municipal Employees' Retirement System of Michigan (MERS) for employee pensions and healthcare (OPEB). The costs have increased and those paying into the system have decreased.

However, the city has taken many cost-controlling steps to address its challenges:

- Reducing city staff by more than 130 positions since 2007
- Restructuring pension and retirement benefits for current and new employees
- Consolidating and restructuring city departments
- Creating a Healthcare Task Force to keep rising healthcare costs at a minimum
- Adding 2 mills to the East Lansing Public Library operating budget
- Sharing services with neighboring municipalities
- Making other strategic cost-cutting decisions
- Making at least \$1 million supplemental payments to the pension fund in addition to the required contribution



East Lansing residents voice their opinions on how to balance the budget at community sessions.

Gathering Local Expertise

Despite all these efforts, East Lansing was heading into service insolvency. The city felt it had exhausted its options and needed objective, expert advice. In February 2016, city council approved a resolution establishing a Financial Health Review Team (FHT). The team was comprised of 11 residents instructed to evaluate every aspect of the city's financial health. Some of the notable members include Eric Scorsone, the current deputy state treasurer; Robert Kleine, interim director of the MSU Extension Center for Local Government and Finance and partner at Great Lakes Economic Consulting (GLEC); and Mike Moquin, former general counsel of MERS.

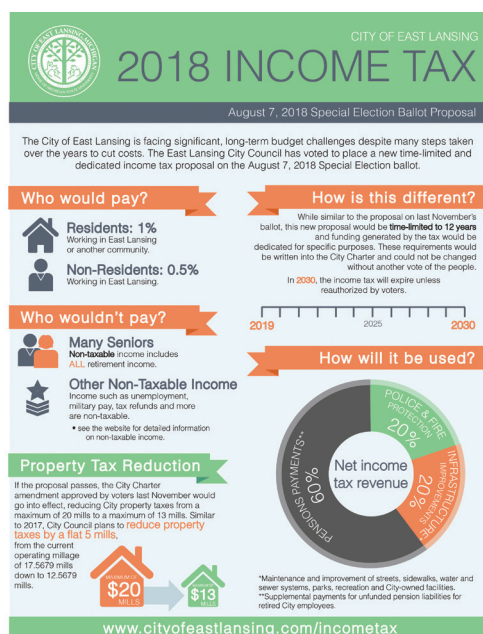
The FHT was divided into 7 subcommittees: Legacy Costs (Pension & Healthcare), Real Property, Development Incentives, Citizen Communications and Services, Revenue Options, OPEB Legacy Cost, and Infrastructure. The group met a total of 55 times before giving a final report to city council in January 2017. FHT's 42 proposed recommendations included increasing employer contributions, realizing new revenue sources, and finding new funding mechanisms for public safety.

The East Lansing City Council and city staff responded to the recommendations by either agreeing, stating that the city is already in the process of implementing some of them, or noting why some of the recommendations would not be pursued. Council deliberated on many of the items over a series of meetings. The most vigorously discussed were the revenue options, particularly the income tax.

Taking it to the Voters

City council evaluated all methods of potential new revenue, finding that the income tax would generate the most revenue over the longest period of time, making it the most enticing option for long-term stability. The FHT commissioned a study that showed a standard 1 percent income tax for residents and 0.5 percent for non-residents, with a 5 mill property tax rollback, would generate \$5 million in revenue for the city.

After seeing maps that show a large parcel of the city that is non-taxable (MSU campus) and seeing a tax base that is using, but not paying for services like roads, maintenance of infrastructure and public safety, city council decided to put the income tax on the November 2017 ballot for voter approval.



Residents Faced Tough Choices

The ballot initiative failed by a slim margin, so city officials reached back out to residents and invited them to attend two in-depth interactive community sessions. At the first sessions, council told residents that cuts are imminent should the income tax not pass and asked participants: "What do you want cut?" Participants were given a mini budget scenario and worked in groups to cut \$3 million in highly valued outward-facing services for the next fiscal year.

There was a strong distaste for that exercise as residents learned that their values did not align with their neighbors. They also learned it is very difficult to make cuts to valued services without cutting jobs. City council was certainly not excited about making the drastic cuts they had intended on making had the income tax not passed. So, city council went back to the FHT revenue options and asked, "What else could we do to raise revenue before making more cuts?"


Due to the changing attitude of the residents and city council, staff changed the focus of the second community session. Residents were asked: "If we went back to the ballot and asked for more income, what would they want it to look like? Would they prefer revenue in the form of a millage, Headlee override, an income tax, or the continuation of service reductions?" At every session, there was a large turnout and great feedback provided. Community members also participated in online surveys.

As a follow-up to the sessions, the city conducted a scientific phone survey and asked participants a wide range of questions, including: "If the city went back to voters for additional revenue, what would they prefer? If city council chooses an income tax, what restrictions would you like?" Ultimately, city council chose to put an income tax on the ballot with 60 percent of the revenue dedicated to supplemental legacy cost payments, 20 percent for public safety, and 20 percent for infrastructure improvements. This also included a 5 mill property tax rollback and a 12-year sunset.

Coming to Agreement

This proposal passed on August 7, 2018. Although it will take an initial \$400,000 to implement, the city expects to earn approximately \$5 million a year in revenue (a conservative estimate).

East Lansing learned a lot from this process. The FHT and the community meetings were an integral part of the development. Residents needed to feel they were being heard and the city needed residents to better understand the situation. It took a lot of citizen input and it all started with building trust and reaching out to local experts for guidance.

Overall, the FHT and citizen engagement processes were fruitful. The FHT commissioned an income tax study and provided a study on the cost impact of MSU. The FHT also provided an outside perspective on how the city should be making decisions. The community engagement sessions involved residents in a way city officials did not expect. Ultimately, the time and resources that were allocated allowed the city to lay the groundwork for a successful ballot proposal that was approved by 61 percent of voters. 

Elis A. Seide is assistant to the city manager in East Lansing. You may contact her at 517.319.6920 or eseide@cityofeastlansing.com.

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WE NEED MORE PARKING! BUT DO WE REALLY?

By Crystal A. Proxmire

“Simply telling people they should walk more may not get the best response, but making the area more welcoming for pedestrians can encourage it.”



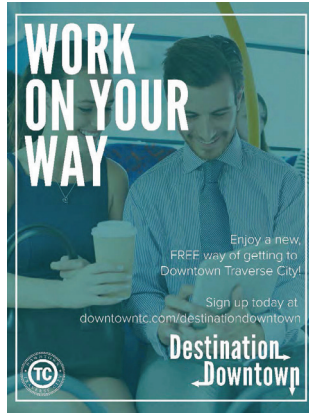
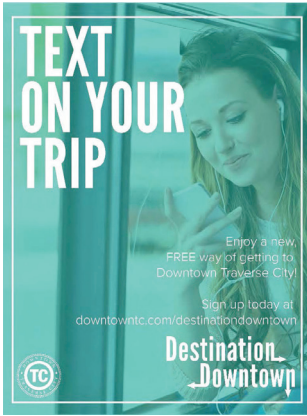
So, does our downtown need more parking? That's a question that brought dozens of administrators and elected officials to a presentation on this hot topic at the Michigan Municipal League Convention in Grand Rapids.

Oftentimes people, particularly business owners in bustling suburban downtowns, think the answer is yes. But in reality, about 90 percent of the time the answer is actually no. Thomas Brown of Nelson\Nygaard and Brad Strader of MKSK joined Traverse City Downtown Development Authority Manager Nicole VanNess to share their experiences working with

communities to assess parking needs and come up with solutions that address not only parking but perception problems.

"Parking is really emotional," VanNess said. "People are really passionate about this topic."

Business owners and guests have misconceptions. Changing those can go a long way towards a better parking system. But there is a key point to be made. "Don't blame people for their perceptions," Brown said. "When we say people won't walk more than a block, it's not their fault—it's yours. It's your downtown, your environment."



In Traverse City, the DDA is encouraging employees to use public transit by providing free bus passes. More than 240 employees signed up and there are approximately 60 bus trips each week which mean less vehicles taking up space in the downtown area. They use DDA funds to cover the cost, which VanNess said is worth it because of the benefit those extra spaces provide.

Encourage People to Walk a Bit

In Chicago, people are comfortable with a ten-block walk from their car to their destination. In Memphis, the norm is 2-3 blocks. But in Metro Detroit, people don't want to walk further than one block. Simply telling people they should walk more may not get the best response, but making the area more welcoming for pedestrians can encourage it.

Creating the right kind of atmosphere for walking is essential. This includes logistical aspects such as safe crosswalks and curbs, adequate lighting, and walkways clear of snow and clutter. But it also includes making the environment welcoming and interesting.

Welcome Bicyclists

Encouraging people to travel by bicycle instead of car can make a difference. For Traverse City, investing in bicycle culture and infrastructure has been worthwhile. Helpful elements include:

- Providing bike racks, bike corrals, and fix-it stations
- Promoting bicycling as a healthy activity and a way to avoid parking hassles
- Holding contests, promotions, and events, such as community rides, bike rodeos, and the "Coldest Day" ride

Business Owners and Parking Problems

No matter the city or type of business, proprietors often cite lack of parking as a reason for slow sales. Strader shared a list of reasons why businesses fail, including e-commerce, prices, competition, poor service, poor selection, and poor management. "But if you ask them, it's the parking," he said.

While it may not be easy to get business owners to look at their individual challenges, it can be an opportunity to get them involved in making the parking system better. The biggest area where businesses can make a difference is committing not to park in prime spaces and instructing employees to do the same.

Parking studies can determine if those spots are available for customers, or if they are being monopolized. Presenting this data in a way that demonstrates the problem, and shows how it impacts businesses, can be a good way to encourage behavior to change.

There are other ways to help reduce prime space parking by employees. If a system has paid parking, the further away lots should be less expensive. Employees can purchase, or be given, a pass to use in those lots.



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Transit

Bus passes are not just a great idea for employees, but for residents who come downtown as well. Traverse City conducted a campaign to promote transit with a series of posters and social media posts. “Text on Your Trip” “Read on Your Ride” “Work on Your Way” These slogans got people thinking about the benefit of letting the bus drivers do the driving.

Curbside Usage

Congestion curbsides can cause the perception of a parking problem, so communities need to consider how their curbsides are being used. Is on-street parking really the best use of space? Other possibilities include bike lanes and bike parking, covered transit shelters, loading and unloading areas, curbside pick-up services for customers, ride share services like Lyft and Uber, or valet parking. For some communities having free valet service changed the perception of a parking problem by reducing the number of cars circling around looking for prime spaces.

Get Techy


An increasing number of cities use apps and signage to let visitors know where parking is available. In Birmingham, for example, there is an app and signage that let drivers know how many spots are available in each parking deck. Coordinating with the operators of privately owned lots can also help make sure that information is shared with the public in the most effective way.

Price Right and Guide People

The price of parking, and publicizing those price differences, is a great way to manage parking systems and turnover of spaces. Prime parking spots should have limited hours and higher prices, while the less desirable lots should cost less. Signage should also let visitors know where to find parking, and if there are less expensive lots available.

The Future of Parking

It isn't exactly clear how future technology and transit will impact the need for parking, but in general it is likely to decline. Autonomous vehicles, ride share, scooters, and more investment in transit are coming.

- “Uncertainty about the future is causing developers and public agencies to be less willing to fund new parking structures,” Strader said.
- Cities like Royal Oak, Birmingham, and Ferndale have been growing in usage and density and have done parking studies that show a definite need. In circumstances like those, many are looking at creating mixed-use developments so that downtowns can gain office, residential, and retail spaces along with the parking use in the limited space they have.
- But in many communities, evaluating parking and making some of the suggested changes can have enough of an impact that businesses, employees, and guests feel more comfortable with parking and walking without having to make major infrastructure investments. 

Crystal A. Proxmire is editor and publisher of the Oakland County Times. You may contact her at 248.259.8961 or editor@oc115.com.

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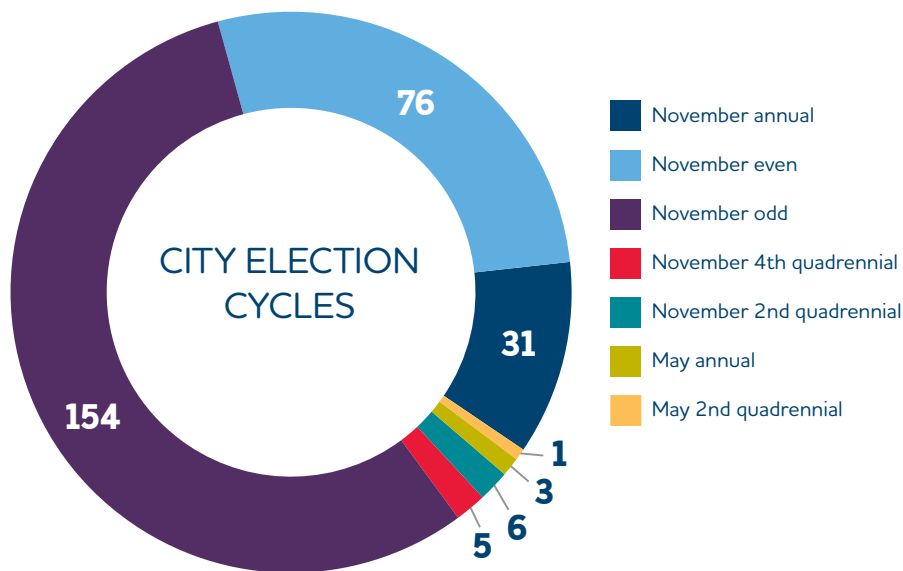
WHAT ARE CHARTERS? & WHY DO I LOVE THEM?

By Kim Cekola

Charters are fascinating and, believe it or not, can be entertaining. Part of my job at the League is to maintain our charter database. I have read parts of every city and village charter in Michigan—322 total. The fascinating part: a city charter that allows for citizen referendum on literally any topic that could come before the city council. The entertaining part: a village charter that lists among the reasons a councilmember could be removed from office is public drunkenness.

Defining a Charter

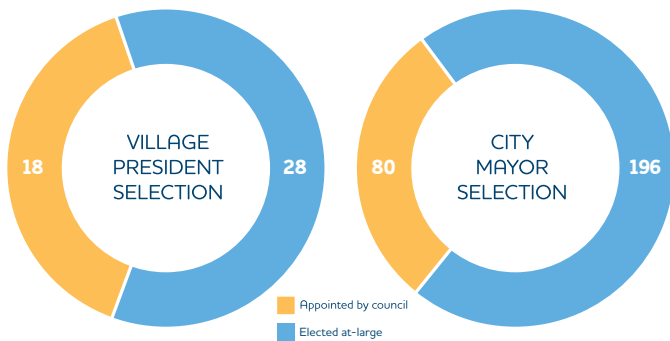
A charter is similar to a constitution. It establishes the framework and authority of the local government and identifies the rights and responsibilities of a municipality in fulfilling the needs of its citizens. Home rule generally refers to the authority of a city or village to draft and adopt a charter for the running of its government. Charters are written by an elected charter commission made up of citizens, and then voted up or down by the electorate. They are truly democracy in motion.



Local election details are just one of the many subjects addressed in charters.

RESOURCES:

- Fact Sheets
 - » Charter Revision
 - » Charter Amendment
 - » The Residency Act
- Nature and Purpose of a Home Rule Charter
- Charter Revision Handbook
 - Created by the Michigan Association of Municipal Attorneys for citizens on Charter Revision Commissions undertaking the monumental job of rewriting or creating home rule charters.*
- Municipal Reports
 - » Organization of City and Village Government in Michigan
 - » City Charter Revision
- Charter Database
 - This one of a kind database includes information from all 276 home rule city charters on key concepts such as number on council, how the mayor is selected, terms of office of council, how vacancies are filled, fiscal year, etc. (send requests to info@mml.org).*
- Customizable charter provision research (send requests to info@mml.org)



Charter Requirements

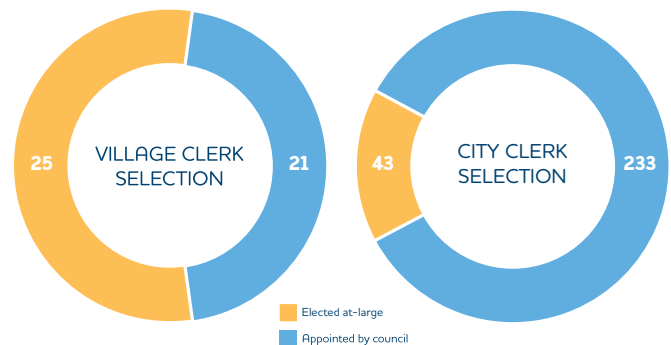
There are certain items required by state law to be included in a charter. The Home Rule City Act lists the requirements for cities, and the Home Rule Village Act lists the requirement for home rule villages. The General Law Village Act and Fourth Class City Act will not be discussed here because they are state statutes (that serve as charters). They are not written by citizens nor voted on at a referendum (but can be amended).

Michigan contains three basic forms of government: Strong Mayor, Weak Mayor, and Council-Manager. There are generalities that classify each type, but to find out the form of government a city or village operates under, you must look to the charter. Stating the form of government in a charter is not a requirement, and it isn't always easy to determine. A Council-Manager city or village will have a provision on the duties and responsibilities of the manager. A charter in strong mayor cities will have provisions like this: the mayor is not part of the council and does not vote; the mayor has veto power; the mayor is responsible for the budget, and hiring and firing employees, etc. A weak mayor form of government is characterized by a mayoral role of formulating the budget and personnel duties, but the mayor is part of the council and does not have veto power. There are roughly 22 cities with a strong mayor form of government in Michigan, where the mayor's position is full-time. For more on forms of government, please see the League's Report: *Organization of City and Village Government in Michigan*.

A charter is where to look when you want to know when a city has its election, if the election is partisan or not, and if there is a primary. You would also find the number of signatures required on a nominating petition (or if a candidate can pay a fee instead of collecting petition signatures). Here are the basic mandatory items in a charter:

- Nomination and election of officers; (at-large or by ward; mayor chosen from among council, etc.)
- Qualifications, duties, and compensation of officers; (elector; age limits; no default; per meeting pay or set by resolution or ordinance)

- Time, manner of, and means of elections; (annual, even-year or odd-year (or even 2nd or 4th quadrennial); primary or no primary)
- Establishment of wards; (one ward or multiple wards)
- Subjects of taxation;
- Annual tax levy and limit; (20 mill statutory limit or a lower number)
- Annual appropriation;
- Levy, collection, etc., of state, county and school taxes;
- Public peace, health, etc.;
- Adopting, continuing, amending, repealing, and publication of ordinances; (one or more readings of an ordinance; initiative/referendum)
- Provide for legislative sessions and records to be public and legislative journal to be in English; and
- Use of a uniform system of accounts.



Typical Charter Provisions

There are many topics that are typically included in charters that are not part of the mandatory list. For instance, most charters contain provisions on franchises, special assessments, purchasing/bidding limits, council investigatory powers, and nepotism and conflicts of interest. Several cities prohibit councilmembers from becoming employees of the city until after a year has elapsed—most do not. Some charters also contain civic leaders' sentiments in the form of a preamble, like this:

We, the people of __, committed to the principles of citizen participation in framing public policy, the accountability of municipal service as a public trust, and the mutual effort for the well-being of our residents in a unique environment, do ordain this Charter.

And here is one completely different:


We, the electors of the City of ____, in order to obtain the benefits of home rule, of more direct and businesslike methods in the transaction of municipal affairs and generally to promote civic advancements and welfare, do adopt the following charter.

Here is a charter provision on orientation sessions that you won't find in many charters:

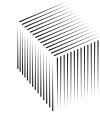
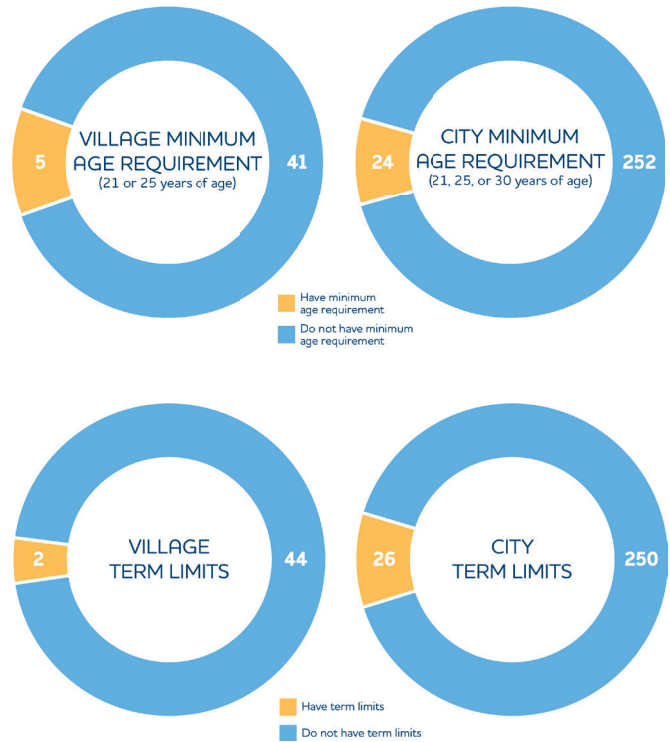
After every regular city election, the city manager shall schedule an orientation session for elected officials, administrative officers, their deputies, and others at the direction of their officers. The session shall include a review of local government documents and shall be open to the public.

The charter can require specifics on meetings, such as attendance provisions for councilmembers. For instance, a charter may say that if a councilmember misses three consecutive meetings (without council approval), he/she can be removed from office. The charter will tell you if a clerk is elected or appointed, and which administrative officers report to the manager, mayor, or council.

A charter must be flexible to govern a city or village over time, but also specific. A \$5 per meeting paycheck that was adequate when the charter was written is no longer adequate today. A charter that states a vacancy in office will be filled by council appointment without saying what happens if the council does not do so within a specific timeframe (if the council does not make an appointment to fill the vacancy in 60 [or 90, or 120] days, then it goes on the ballot) is unspecific enough to cause problems.

There are so many variations in home rule charters in Michigan that it is imperative to read your charter. When operational/administrative questions arise in the future, consult the charter for guidance. It's important to add that only your municipal attorney is empowered to interpret your charter. If your charter contains outdated provisions, the League has charter amendment resources and can also provide sample charters and charter provisions. If your city or village wants to change the form of government, it will require a full charter revision, and the League has resources for that, too. 

Kim Cekola is the research specialist/editor for the League. You may reach her at 734.669.6321 or kcekola@mml.org.



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Mr. Shifman is aided by his partner Brandon Fournier who has extensive experience in municipal operations, including both public safety and general municipal operations. Prior to joining the firm, Brandon served as the City Administrator for the City of Southgate.

Also with the firm is Attorney Robert Nyovich with over 30 years of experience in public sector labor and employment law. Prior to joining the firm, Mr. Nyovich also served previously as a public safety officer and as the Oakland County Undersheriff.

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911

Changes & How They Affect You

By Dan Aylward

We are all familiar with 911 and the simple yet significant value it has for our communities. Behind the scenes there is a vast and complex infrastructure. However, with changes in technology come necessary changes with this telecommunications infrastructure. By the end of 2019, every organization in Michigan with a phone system will need to be in compliance (with the exceptions below). What are the changes? Below are eight frequently asked questions to help you understand the changes, as well as information that all municipalities must understand for compliance.

What is it?

Not long ago, we all used POTS (Plain Old Telephone Service) and PRI circuits (think lines bundled into one digital circuit). Since these phone lines are based on a physical address, almost all calls originated from a reasonable physical distance from the phone system. Today, with VoIP (Voice over IP) and UC (Unified Communication), someone could literally be anywhere when calling 911. This is a problem when you need to get emergency responders on site as soon as possible AND to the right floor within a large building. So, the solution is to push specific geographic identifier information to the PSAP (Public Safety Answering Point) when calling from a MLTS (Multi-Line Telephone System or phone system). This could be the address, floor, wing, or room information.

What is the law?

Consider this: an employee has a heart attack after normal working hours with nobody around. She dials 911 and the ambulance goes to the wrong address. Worse yet, the emergency responders don't know where the caller is located in the building! This is a reality today with VoIP and multiple buildings tied to one phone system. That's why the new E911 law is going into effect.

Every organization in Michigan with a phone system in a location with more than 40,000 square feet building(s) or multiple physical addresses must install equipment and software that reveals where in the building a 911 call originates.

Is this the same as Next Gen 911?

No. NG911 is a technology standard so PSAPs can adapt to receiving texts, video chat, social media, and VoIP. This will also allow the 911 Call Centers to transfer calls to other call centers and deal with call overload. However, many are not ready for this technology. It is also very difficult to know if your local PSAP is capable of handling anything besides calls and SMS (Short Message Service).





Does 911 need to do anything different?

Yes. The PSAPs need to update their systems as well. Most will because the Middle Class Tax Relief and Job Creation Act of 2012 authorized \$112 million to do this and prepare for NG911. But this does not mean all are compliant.

When will this happen?

This was supposed to happen in 2006, but the legislation has been delayed a couple times. The new date is December 31, 2019.


What do we have to do?

Almost all phone equipment seven years old (or newer) is compliant. However, you will need to make sure the phone system database is populated to send the appropriate information to the PSAP. Then you'll need to make sure your telecommunications company (e.g. AT&T) is pushing this information to the PSAP. Every extension on the phone system needs to have the capability to do this. For example: 734 Evergreen Terrace, Springfield, MA 2nd floor Northwest corner. Alternatively, you will have to identify the building(s) into 7,000 square foot sections as identifiers.

Is there any ongoing maintenance involved with this?

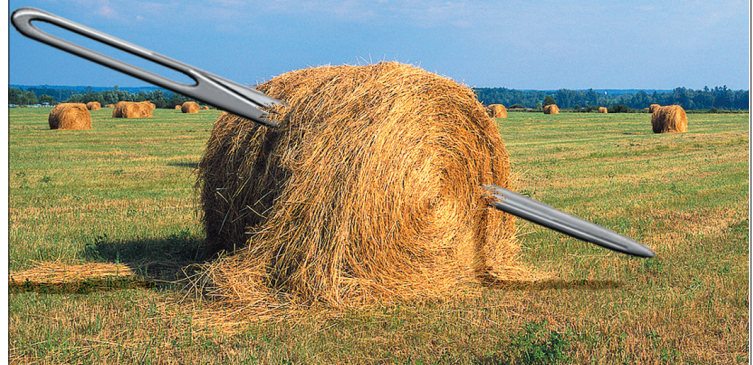
Yes, when you have MACDs (Move, Adds, Changes, Deletions), you will need to update this database with your telecom carrier. For example, if Michelle from Commission on Aging moves from the 2nd floor to the clerk's office on the 1st floor, this information will need to be updated. In addition, if you have connected buildings with one phone system, the street address will need to be updated when an employee moves between buildings.

What if we don't?

Penalties can be \$500-\$5,000 per offense; however, the greater concern is a lawsuit for noncompliance where compliance could mean saving someone's life! Exceptions are if the building maintains, on a 24-hour basis, an alternative method of notification and adequate means of signaling and responding to emergencies, or the phone system is not serviced by E911. The telecommunications industry and services have changed radically over the past ten years. However difficult it is to make this transition, it is important to incorporate standards for the public safety of all staff. 

Dan Aylward is a senior consultant for Abilita. You may contact him at 517.853.8130 or daylward@abilita.com.

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CAPITAL CONFERENCE



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Michigan Municipal League
CAPITAL CONFERENCE

March 19-20, 2019
Lansing Center, Lansing

CAPCON
2019

Michigan voters went to the polls in droves in November!

The result? In 2019, there will be an abundance of changes up and down the political ladder. From small towns to big cities, many local and state seats changed hands and political affiliation. But before the changeover, there was plenty of rapid-fire activity during the Legislature's Lane Duck session. At Capital Conference, you'll learn how the Michigan Municipal League has been tracking all this movement, making our members' voices heard, and keeping an eye on issues coming down the road. You'll also have plenty of opportunities to swap stories and experiences with colleagues who have headed down the highway to Lansing. We hope you'll join us for the League's premier legislative event!



GENERAL SESSIONS

Engage Constituents by Telling Your Community Story



JENNIFER NICHOLS (INVITED)

Assistant Director of Research
Interpretation and Application

FrameWorks Institute



KIM HADDOW

Director, Local Solutions
Support Center

President, Haddow Communications

Constituent engagement in a community is a vital necessity for ballot initiatives, community projects, and development issues. Jennifer Nichols will demonstrate techniques to frame community issues and potential proposals in a story-like way that will allow for better understanding and engagement on community issues. To add another perspective, Kim Haddow will discuss local preemption and explain how to galvanize constituents in a valuable and practical way to interact with legislators and prevent interference with your community's local authority.

Practicing Civil Discourse in Community Conversations



DR. CAROLYN LUKENSMEYER

Executive Director

National Institute for Civil Discourse

Today's political climate can be rife with conflict and arguments. Dr. Carolyn Lukensmeyer will present strategies to practice both tolerance and civil discourse while engaging in community conversations, meetings with your legislators, and at city council meetings. Learn how to navigate the uncertainty of the current political climate and be better equipped to have tough conversations, while also practicing ethical advocacy on behalf of your community.



BREAKOUT SESSION PREVIEW

Breakout sessions will connect attendees with ready-to-use resources and opportunities to help their communities thrive. Attendees will have the opportunity to attend up to two breakout sessions during the conference on Wednesday.

Housing Michigan Residents

Communities around the state are grappling with our residents' need for affordable, quality housing options. We'll discuss the latest state programs and research, as well as some of the local efforts underway to understand and respond to these needs.

Understanding the Paid Sick Time Law

In September 2018, Michigan joined ten other states in adopting a paid sick time law that requires employers to provide paid sick leave to eligible employees. The requirements of the Act can be confusing and ambiguous, resulting in many important questions on what local government employers need to do to comply with its requirements. Join us in this session to learn more about the Paid Medical Leave Act and how it affects your municipality.

More Breakout Sessions

- Equity and Inclusion in Michigan
- Social Media and Your Community
- Recreational Marihuana
- TIF Reporting
- ...and more at cc.mml.org!

CONFERENCE WORKSHOPS

Arrive early and do a deep dive into important municipal topics and earn EOA elective credits. The workshops are included in your registration for Capital Conference, but space is limited so sign up early! Visit cc.mml.org for session descriptions.

- Capitalizing on Local Assets in Economic Development
- Understanding the General Law Village Act
- Council-Manager Relations
- Everyday Bias: Institutional and Implicit

MML LIABILITY & PROPERTY POOL WELCOME RECEPTION

Immediately following the opening general session, take time to network with your fellow attendees, vendors, and League staff during the Welcome Reception. Connections made in the Expo Hall continue beyond the conference and will serve as a valuable resource for you during your time as a municipal official.

MEET YOUR STATE REPRESENTATIVES

We encourage you to contact your representatives before Capital Conference and make arrangements to meet and discuss issues of importance to you and your community.

LEGISLATIVE BREAKFAST

On Wednesday morning, enjoy breakfast in a relaxed setting at the Lansing Center as you network with senators, representatives, key legislative staff members, and other top state officials. Hear their perspectives on state issues and share your views on matters that affect your community.

VENDOR OPPORTUNITIES AT CAPITAL CONFERENCE

Each spring, hundreds of local officials, state legislators, and media figures gather in Lansing at one of the year's most important networking and educational events for Michigan's decision makers, representing over 140 communities throughout Michigan in 2018.

Annual Expo

Looking for an opportunity to connect face-to-face with potential clients from every part of the state? With over 28,000 square feet of expo space, the Annual Expo is the place to be! Vendors are strongly encouraged to attend the Welcome Reception, where vendors and attendees mix and mingle over appetizers, drinks, and more.

Advertising

Advertising in the Capital Conference program is a guaranteed way to get your message in front of your target audience. Our full-color display ads will put your organization in its brightest light!

Event Sponsorship

Looking for visibility and the ultimate in brand recognition? The League represents thousands of individuals in hundreds of communities of all sizes across the state. By becoming a League event sponsor, that vast reach becomes your reach. For complete details about marketing opportunities at the League's Capital Conference, visit cc.mml.org or email Allison Gotelaere at agotelaere@mml.org.



CAPCON2019

CONFERENCE AGENDA


Tuesday, March 19, 2019

9:00 am–Noon	Capital Conference Workshops
9:00 am–4:30 pm	33rd Annual MAMA Advanced Institute*
10:00 am–1:00 pm	League Board of Trustees Meeting & Lunch
Noon–2:00 pm	MAM Board Meeting & Lunch
Noon–5:00 pm	Conference Registration
12:30–2:00 pm	MWIMG Lunch*
1:00–2:30 pm	Opportunity Row: Open Office Hours with State Agencies
	Meetings with Legislators (on your own)
3:00–4:30 pm	Capital Conference Welcome General Session
4:30–5:30 pm	Elected Officials Academy Advisory Board Meeting
4:30–6:30 pm	MML Liability & Property Pool Welcome Reception
7:00–10:00 pm	Awards Gala

Wednesday, March 20, 2019

7:30 am	Conference Registration Open
7:30–8:30 am	Legislative Breakfast
8:00 am–3:00 pm	Annual Expo
8:30–10:00 am	General Session
10:00–10:30 am	Networking Break in the Expo Hall
10:45–11:45 am	Breakout Sessions
Noon–1:00 pm	Networking Luncheon
	MBC-LEO Meeting/Lunch
1:00–1:30 pm	Dessert & Networking Break in the Expo Hall
1:30–2:30 pm	General Session
2:30–3:00 pm	Networking Break in the Expo Hall
3:00–4:00 pm	Breakout Sessions

*Additional Fee



“Reality may feel overwhelming, but the problems will only get worse if they are ignored.”

5 STEPS TO BETTER RECORDS MANAGEMENT

By Caryn Wojcik

Trying to better manage records might sound like an overwhelming and impossible task. It's not. There are practical things that government agencies can do to better manage their records, and these solutions do not require the office to buy anything.

It's worth the effort, because poorly managed records increase storage costs and legal liability. Disorganized records frustrate employees and reduce consistency, quality, and efficiency. However, the office needs to recognize that something needs to be fixed.

It's time for a reality check! In the real world...

- Records management is not a big responsibility for most employees, and it is not a priority.
- Most employees think they can destroy official government records whenever they feel like it.
- Most employees don't know how long they are supposed to keep records.
- Few employees understand the risks of keeping records too long.

- Records (both paper and electronic) are purged when space becomes a problem, or when an employee departs.
- Filing systems (both paper and electronic) are not well organized, and records are frequently lost or misfiled.
- Technology is used to fix record-keeping problems without analyzing the source of the problem, all potential solutions, and the total cost of the fix.
- Employees are given new technology tools for creating and storing records, but are not informed about the appropriate use of those tools.
- Records that are needed for litigation holds and Freedom of Information Act (FOIA) requests are difficult to find and may not be released appropriately.
- Confidential and sensitive information is not sufficiently protected.

Whew! Reality may feel overwhelming, but the problems will only get worse if they are ignored.



Legal Responsibilities

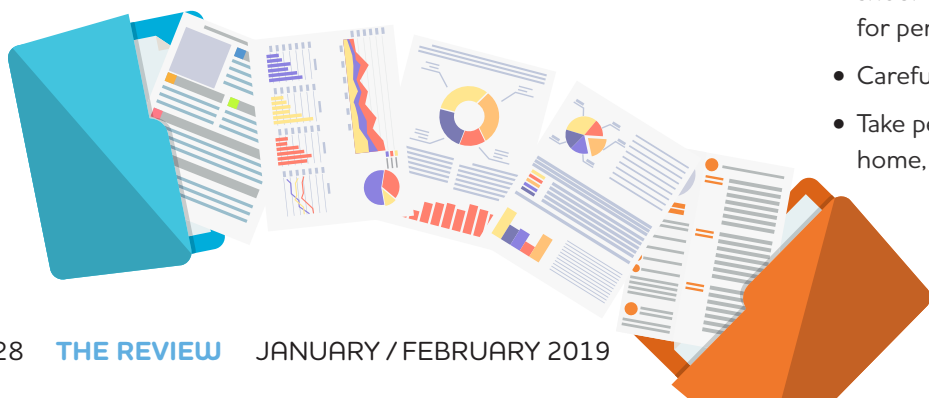
Before the solutions are discussed, everyone needs some baseline knowledge about the legal responsibilities of government agencies (and every government employee) to manage records.

- Destruction of government records, regardless of the format or storage location, must be authorized by an approved Retention and Disposal Schedule. If a record is not listed on an approved schedule, it cannot be destroyed; it is, by default, permanent.
- To be legal documents, schedules for local governments must be approved by the State of Michigan's Records Management Services, the Archives of Michigan, and the State Administrative Board.
- There are two types of schedules, general and specific. General schedules cover records that are common to a particular type of government agency, like a clerk or a treasurer. These schedules are approved by the State of Michigan for use by local government agencies and are published online at www.michigan.gov/recordsmanagement. Specific schedules cover records that are created by the government agency named on the document. These schedules are submitted by local government agencies to Records Management Services and are approved by the State of Michigan.
- Government agencies are responsible for ensuring that records are kept and destroyed in compliance with the retention periods that are approved on the schedules.

Getting Organized Step by Step

Still feeling intimidated and uninspired? That is because there needs to be a strategy to get the chaos under control. The following five steps will help offices better manage both paper and electronic records.


1. Distribute the agency's Retention and Disposal Schedule to staff
 - Ensure that everyone knows how long they need to keep records.
 - Identify unscheduled records and get them added to an approved schedule.
 - Instructions for submitting specific schedules are online
2. Train employees about records management
 - All employees need to know their recordkeeping responsibilities.
 - Free online training is available.
3. Plan an annual clean-up day
 - All employees need to participate—no meetings, phone calls, or missing work that day.
 - Make it fun—dress casual and plan a yummy lunch and snacks.
 - Review paper and electronic records. Don't forget email!
 - Be aware of legal holds and FOIA requests that may require the temporary suspension of the Retention and Disposal Schedule.
 - Identify what can be destroyed/deleted, and what should be transferred to the Archives of Michigan for permanent preservation.
 - Carefully destroy confidential or sensitive records.
 - Take personal documents (non-government business) home, avoid storing them at work.





4. Adopt new recordkeeping habits
 - Toss drafts, duplicates, and transitory documents, so they don't waste space and increase legal liability.
 - Create shared filing systems to be used by all employees who have the same work responsibilities.
 - Develop business rules for filing systems, so records are managed consistently.
 - Establish naming conventions for folders and documents, so employees can easily find what they are looking for.
 - Create check out and check in procedures, so records are not lost.
 - Take a day-forward approach to change. Wait 6-12 months to organize and toss the existing records. This will give everyone time to adopt new recordkeeping habits first.
5. Avoid individual recordkeeping
 - Store all records of a business process together, so employees only have to look one place for a document, or to answer a question.
 - Ensure records can be found, regardless of who is in the office on a particular day. If records are stored in an email account or text messages, they may not be accessible.
 - Prevent the loss of essential records when an employee retires or moves to another job.

Better records management will not happen overnight. It is a process that takes time. It is important that employees have a sense of ownership over the changes that are taking place. Give employees an opportunity to share their opinions

and experience, and to contribute to the solutions. It will be worth the effort. Organized and clean files feel good, increase efficiency and quality, and improve employee morale. Please visit the Records Management Services' website for more information www.michigan.gov/recordsmanagement. 

Caryn Wojcik is a senior records analyst in Records Management Services for the State of Michigan. You may contact her at 517.335.8222 or wojcikc@michigan.gov.



63

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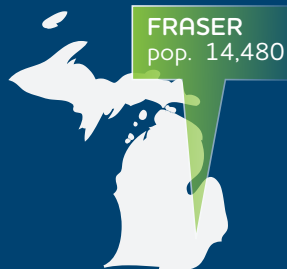
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FRASER'S MCKINLEY PARK

Sliding Fun and Understanding into Barrier-Free Playground

By Lisa Donovan

2018 WINNER!



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A child in a wheelchair can roll right up to the sand and water area. Kids with and without physical and mental challenges can joyfully interact with each other and all the fun, colorful playground equipment. Parents or grandparents with mobility issues can easily move around the park as they watch their laughing kids at play. These priceless moments are now possible at Fraser's McKinley Barrier-Free Park and Playground for People of ALL Abilities, winner of the Michigan Municipal League's 2018 Community Excellence Award.

"This award represents the culmination of 12 or more long years of work, fundraising, and thousands and thousands of volunteer hours by a dedicated group of people," said Michael Lesich, Fraser councilmember and member of Fraser First Booster Club, after winning the award at the Michigan Municipal League's 2018 Convention in Grand Rapids.

"This park has really given our community an engaging, exciting place for people of all abilities and all ages," added Christina Woods, Fraser Parks and Recreation director. "I really hope this park will serve as a reminder to all the volunteers who have

been involved that with hard work, dedication, and passion you can make big things happen. Hopefully, it will spur other volunteer efforts in the future."

The Power of Volunteers

More than a decade ago, McKinley Park was just a dreary hangout for teenagers. The city's Parks & Recreation department had begun formulating a plan to revitalize the park when the Great Recession dealt a blow to their budget. Fraser First Booster Club, a nonprofit organization comprised completely of volunteers, sprang into action. Under the direction of Vania Apps, founder and executive board member, they approached the city with the idea of transforming the park into a place that people of all abilities could enjoy. "If we raise the money, will you build the park?" How could the city say no?

The next step was to get the community on board. An essential part of that plan was to educate people on just what barrier-free means and who benefits from outdoor play. One of the clever methods they used was "Walk in My Shoes" challenges. With assistance from Fraser First founding member Karen Silverthorn—a special education teacher—as well



“This park has really given our community an engaging, exciting place for people of all abilities and all ages.”





as a physical therapist and a local business that made prosthetic feet, Fraser First designed a set of engaging challenges. The challenges encouraged people to experience what it would be like to be missing an arm or a foot, the loss of feeling in your hand, or impaired sight. How might people with these challenges be excluded from play at a conventional park? Fraser First took the “Walk in My Shoes” challenges to city and school events to show that it’s the community that loses when we don’t have outdoor play that includes everyone.



“We believe barrier-free play can cure ignorance,” said Apps. “Once someone sees how a person with physical or mental challenges navigates in play, they see that we all have challenges. It’s how we deal with our challenges that is important, and inclusiveness benefits the total community.”

Next up? Fundraising! Building a truly barrier-free playground was going to cost more than a few dollars. Fraser First was definitely up to the challenge. The city has invested about \$150,000 primarily in in-kind donations. In contrast, Fraser First—the primary funding source for the project—has raised well over \$600,000 to date. They’ve received grants from the Michigan Natural Resources Trust Fund, the federal Land and Water Conservation Fund, as well as other grants and significant private donations. They’ve also held a variety of fundraisers—everything from Valentine’s dances and raffles to spaghetti dinners. “The Fraser First Booster Club was the power behind making that happen,” said Lesich.

“This community came together to build this park. It wasn’t corporations saying we’re going to build this for you,” said Sherry Stein, who became president of Fraser First in 2018. “I feel like if you put more effort into it, you feel more pride, more ownership.”



Build It and They Will Come

In addition to fundraising, Fraser First has been an integral part of designing and planning the park, funding a professional grant consultant, and working directly with the city administration on a regular basis. In 2015, their efforts resulted in the grand opening of Phase 1 of the new and improved McKinley Park, which included a parking lot, “Walk and Roll” path, drainage, and comfort station. Two years later, a toddler sand lot, benches, and colorful play structures became part of Phase 2’s entertaining landscape. And just recently, swing sets were added.

In keeping with the park’s mission, all the amenities are accessible. The parking lot has no curbs to hinder access for people in wheelchairs or walkers. And all the playground equipment has a ramp or transfer pad so people in wheelchairs can access all parts of the playground.


“The really cool thing about the park is, because we’re doing it in a real grassroots way, it has come together in phases,” said Woods. “The next step will be looking into adult outdoor gym equipment and maybe a pavilion—things that will really cement that area as a place that people can come to and spend the entire day.”

Fun for All

In the three years since the transformed McKinley Park debuted, it has become a very popular community attraction. People from the surrounding subdivisions and the adjacent Hanover Grove co-op—home to about 600 children—are now enjoying the park on a daily basis.

“It has really transformed the neighborhood,” said Lesich. “People who said, ‘Why are you doing this?’ are now out there every day using the park and walking on the path.”

Fraser resident Brian Laubert, father to two autistic children, is one of those believers. “I’ve watched the park go from absolutely nothing to something great,” said Laubert in a video on the Fraser First website. “I was drawn to the sand park by my kids. They have sensory issues and love the sand. It helps them in their activities.”

“To be able to provide an area where everybody can come together and play on the same playing field helps promote understanding of people who are unlike ourselves,” said Woods. “We’ve been seeing a lot of that.” 

Lisa Donovan is the communications specialist and editor for the League. You may contact her at 734.669.6318 or ldonovan@mml.org.

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Municipal Policy That Gives Discretion to Police May Form Basis for Municipal Liability

FACTS:

In two separate incidents, Grand Rapids Police Department (GRPD) officers stopped and questioned individuals. The first individual (Johnson) was stopped in a parking lot after a complaint was received that he was looking into vehicles. In the second incident, an officer stopped an individual (Harrison) after observing him give someone a large model train engine. During these investigatory stops, photographs and fingerprints were taken in accordance with GRPD's "photograph and print" (P&P) procedures. A P&P involved an officer's ability to take a person's photograph and fingerprints whenever an officer deemed it necessary given the facts and circumstances of the situation. Neither Johnson nor Harrison was arrested for any crime. Johnson and Harrison subsequently sued the city and the police officers involved claiming, in part, that their Fourth Amendment Federal Constitutional rights against an unreasonable search and seizure had been violated when the officers performed P&Ps without probable cause, lawful authority, or lawful consent.

The lawsuits against the city and its officers were filed pursuant to federal law (42 USC 1983). "Establishing municipal liability under 42 USC 1983 requires proof that (1) a person's federal or statutory rights were violated and that (2) the violation was caused by a policy or custom of the municipality." A constitutional violation is attributable to a municipality if "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Liability may also be based on widespread practice of a governmental custom which has not received formal approval. [Quotes attributable to Michigan Supreme Court in its decision.]

In response to motions for summary disposition, the Kent County Circuit Court found in favor of the city and the officers. On appeal, the Court of Appeals affirmed, holding that the city could not be held liable since the plaintiffs had failed to demonstrate that any of the alleged constitutional violations resulted from a municipal policy or a custom so persistent and widespread as to practically have the force of law. The plaintiffs appealed to the Michigan Supreme Court. [For purposes of the appeal to the Michigan Supreme Court, it was assumed that the plaintiffs' Fourth Amendment Rights had been violated.]

QUESTION:

Were the alleged violations of plaintiffs' constitutional rights which occurred during the P&P process caused by a policy or custom of the city?

ANSWER:

YES. The Michigan Supreme Court held that accepted, though unwritten, practices of executing governmental policy may give rise to liability. The Court noted that use of municipal resources to develop and implement practices and procedures can be evidence supporting the existence of official policy. Further, a municipality may be held liable for unlawful actions that it sanctioned or authorized in addition to those specifically ordered. Finally, the Court held the plaintiffs had shown that the policy or custom was the "moving force" or cause of the violation.

Johnson v Vanderkooi, No. 156057 (July 30, 2018)

New League Medical Marihuana Report Aims to Help Communities Choose



AVAILABLE AT:

mml.org/resources/information/mi-med-marihuana.html



Michigan Career Hub-MML TIPS TO GET EMPLOYERS STARTED

1. **Job Title Selection**—Select the job title that best represents your position (you can preview the questions prior to making your selection). In certain cases, you may want to select a second job title, but typically one job title will do.
2. **Job Title Survey**—Complete the survey to receive applicants for your opening.
3. **Fit Assessment**—You will receive a Fit Assessment on every candidate which will show their alignment to your position. Once both you and the candidate indicate interest in your opening, you will receive contact information, along with the candidate resume.

The Michigan Career Hub service is available at no additional cost to employers who submit an ad through the Michigan Municipal League's classified ads system.

For more information, visit mml.org/classifieds.

By Gloria Lara

TALENT-DRIVEN ECONOMIC DEVELOPMENT

Most economists agree that over the past two decades the market has shifted, and talent is now the primary driver of economic development. The companies and communities that can attract and retain talent will hold a formidable competitive advantage moving forward.

While much of the talk about economic development in academic and policy circles has been on the future of work, there are opportunities today to optimize the utilization of our existing workforce to help our companies grow and our communities thrive.



Unlock Your Talent-To

Connecting Workforce Systems with Recruiting Operations

Through the vital workforce programs, community colleges, and four-year institutions in our communities, we are building a strong workforce. But we haven't been using that talent as efficiently as possible.

More than 60 percent of the jobs in the U.S. market originate from small and mid-sized businesses. Many of these small companies don't have Human Resources departments or the time and resources to learn about or connect to local workforce systems. They need to fill a job today, so they can get back to running their business. As a result, they often rely on referrals from a small circle of business associates and frequently miss out on qualified local talent.

At big companies, the structures may be different, but the problems are similar. Recruiters rarely have time or permission to explore and connect with local workforce systems. They often rely on the "post and pray" method of mass advertising through traditional job boards in the hope of serendipitously bumping into the right candidate. They frequently miss out on quality talent locally because the methods required to access that talent rarely fit into their internal workflows or integrate with their enterprise resource planning (ERP) systems.

By connecting the dots between large and small employers and creating a regional talent exchange into the platforms and systems at workforce programs, community colleges,

and four-year institutions, we can create efficiencies that will result in better hires without requiring changes to companies' current policies and procedures.

The economic vitality of your region is enhanced by ensuring this pool of candidates is available to employers in your region, regardless of employer size. Jobs are available, they get filled with qualified candidates, and your region becomes known for its vitality.

Michigan Career Hub Can Be a Solution

The Michigan Career Hub (MCH) is a dynamic exchange that creates a candidate marketplace. Employers post their job openings on MCH, and candidates get matched to jobs through a patented, correlated matching engine. There is a common employment application which provides a structured, standardized view of the candidate's alignment with the employers' job openings.

The Advantages:

Find the right fit, faster

- Helps hiring managers and recruiters get on the same page
- Provides clarity on alignment at a level deeper than traditional résumés and job descriptions
- Increase diversity and inclusion




Instantly ranks candidates based on skill, ability, and interest alignment

- Masks information prone to bias, focusing attention on skill, interest, and ability alignment
- Creates a standardized view of candidate information needed to make an initial assessment

Optimize candidate utilization

- Invites candidates archived in the applicant tracking system to apply to new openings relevant to their interests
- Processes and ranks candidates based on customizable business rules (SUTA savings, veteran hiring, etc.)
- Helps employers connect unplaced candidates to other job opportunities

What can you do? You can play a part in encouraging full employment in your region. Besides posting your municipality's jobs on Michigan Career Hub, you can refer businesses to MCH. You can also publicize MCH to job seekers in all fields, emphasizing that local businesses are posting jobs on the site. By all of us working together to ensure jobs are filled by qualified candidates, alignment with economic development efforts are enhanced. 

Gloria Lara is the executive director of Michigan Career Hub. You may contact her at 313.324.8532 or gloria@micareerhub.com.

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Small Town Hillman Wins Out Over Big City Chicago

By Rene Wheaton



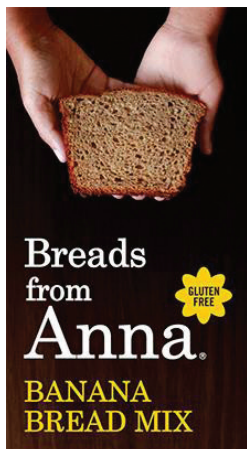
Shah Chaudary takes a hands-on approach to his business.

It would be difficult to find two communities more different from each other than Hillman, Mich., and Chicago, Ill. Just a brief review of statistics paints a picture of a rural small town and a metropolitan behemoth.

According to government estimates, Hillman has just more than 660 residents. Chicago has 2,716,450. Anecdotally, Chicago is known for its shopping on the Miracle Mile. Hillman is known for the Thunder Bay Resort, which offers tourists a chance to see Northern Elk.

When it comes to attracting a manufacturing business and keeping it, most bets would be on Chicago, but it seems that Hillman has a few things the big city couldn't provide.

"We are used to the big city and you don't really get to know your neighbor," said Shah Chaudary, co-owner of Next Phase Enterprises. "It isn't like that in Hillman. People are so nice here."



Last fall, Shah and his brother, Haq, came to Hillman to simply pursue a business opportunity. The pair, who both have extensive experience in the food industry, had learned that Mrs. Glee's Gluten Free Foods, LLC, had recently gone out of business. The brothers had recently acquired another gluten-free business called Wholesome Treats Inc., which is best known for its brand Breads from Anna, which sells mixes. Mrs. Glee's, which used navy beans as a flour for pasta and a variety of baked goods, fit in well with their new business.

"I was more than a little curious when I learned about Mrs. Glee's," Shah said. "I immediately called my brother."

The brothers drove all night to get to Hillman by the next morning and were very intrigued by what they saw. They decided to buy the business with the idea of consolidating it and moving the equipment and operations to their headquarters in Chicago.

Change in the Works

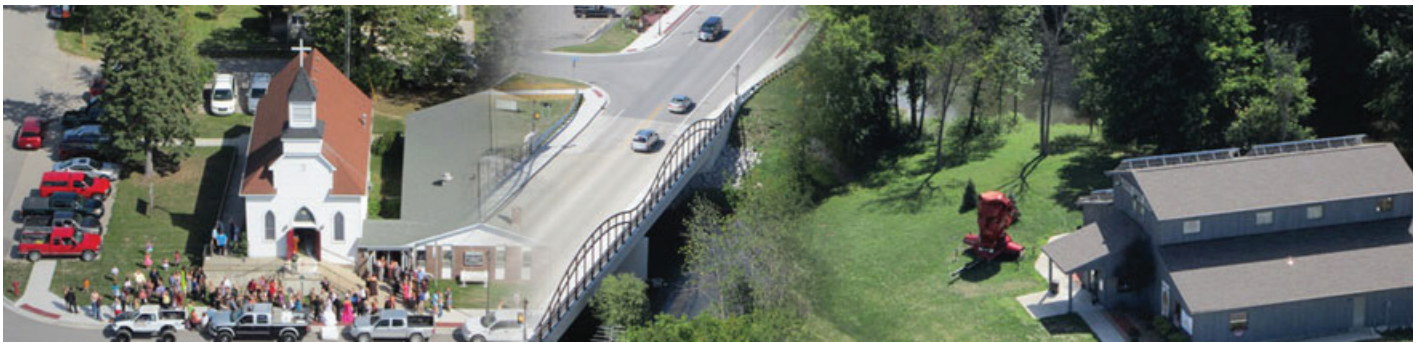
Village Manager David Post has seen a fair number of businesses come and go in his 20-year tenure. While small businesses tend to struggle, he said manufacturing businesses tend to weather the ups and downs a little better, which made losing Mrs. Glee's all the more disappointing.

"When Grand Rapids or Southeast Michigan gets a cold, small towns like us get pneumonia," Post said. "Things can be really difficult for rural towns like ours. It is especially hard on small businesses, which depend on the summer tourism season. It is a complex economy here and there are a lot of different factors that can affect it."

Initially, the brothers had planned to consolidate the business last November but decided to hold off because they didn't want their new employees to be without jobs around the holidays.

"Both my brother and I have been in the position of having lost our job at unfortunate times," Shah said. "We are businessmen, but we try to be humane in our





business. We kept them on through the holidays and we found that our team in Hillman was fabulous and hardworking. We decided to give it a go and stay put.”

Shah even decided to move to the tiny community along with his wife and two children, commuting to Chicago for business when necessary. His brother still lives in the Chicago area. While the change from Chicago to Hillman is an adjustment, Shah says he enjoys the slower pace. Shah and Haq immigrated to the United States in the 1990s from Pakistan. While Hillman may not have that much in common with Chicago, it does remind Shah of his hometown in Pakistan.




“It felt like home,” Shah said. “I grew up in a small town. My grandfather and father were farmers. It’s peaceful here and sometimes I hear moos from the cows and it reminds me of my days in Pakistan.”

Small Town, Big Advantages

While Hillman is a quaint small town, it had a few things that made it stand out when it comes to operating a business. “I think one way we were attractive is that we have a fairly low millage rate and low water and sewer rates,” Post said.

Hillman also has a program called the Hillman Economic Loan Program, a revolving loan fund that the Chaudarys were able to utilize. “These things all make us attractive,” Post said. “We also have great coverage when it comes to WiFi and the Internet, with three different providers and lots of fiber and upgraded lines in our area, which isn’t typical for many rural areas.”

The company’s Breads by Anna is performing well and is featured on the shelves of Meijer and other larger retailers. Other big plans are in the works for a former Mrs. Glee’s brand called Incredibean. Shah said that brand will be on the shelves of a large organic grocery store soon. The company also plans to expand Breads by Anna to include not only mixes but already-made baked goods. Baking equipment has been installed in the Hillman location to test production of the baked goods.

“We are pretty excited about the future,” Shah said. “We have big plans with the Incredibean line, including using Michigan beans. It will be a very good thing for our business, our town, and Michigan farmers.” 

Rene Wheaton is a freelance writer. You may contact her at 810.444.3827 or renewheatanne@gmail.com.

A New Path to Code Reform

By Susan Henderson and Matthew Lambert

Michigan Serves as Testing Ground for New Users' Guide

Increasingly, local governments want to align their zoning regulations with their goals for placemaking, incremental development, livability, and economic success. They realize that conventional standards established in the 20th century have completely failed to solve these issues; however, there are often gaps in political support, staff capacity, and budget to hire consultants for a major rewrite of their ordinances. The vast majority of local governments in the U.S. have limited budgets and staff, so the issue becomes how to deploy zoning reform broadly, with the least impact on capacity.

Form-Based Codes (FBC) for local governments are the zoning gold standard for placemaking, but FBCs are not accessible to many communities across North America for reasons of capacity—either staff or political. While most current zoning-focused RFPs include form-based elements, and the spread of FBCs has accelerated, thousands of

municipalities and counties continue to guide development with zoning that is antithetical to community goals. At present, FBCs have a scaling problem: how can we accelerate the reform of existing codes by local governments in a politically and economically sensitive way?

We began solving for this problem when we were commissioned by the Project for Lean Urbanism to write a Lean Code Tool a few years ago. Through this process we delved deeply into the issues of capacity. The Lean Code Tool was concerned with simple hacks to existing codes, focusing on barriers to walkability, finance, and regulatory burdens. The tool was conceived as a way to evolve existing codes, step by step over time, increasing the aggressiveness of reform as capacity increases. We saw a very high level of interest in the tool over the last two years, but the tool was oriented toward like-minded coders already familiar with the goals of the Lean Urbanism movement, without much additional background.

Experimenting in Michigan

Our Project for Code Reform team began to think about ways to provide tools for a broader range of local governments to take ownership of their own zoning reform. To craft a solution, we partnered with the State of Michigan (including the Michigan Municipal League and the Michigan Economic Development Corporation). Through the PCR development process, we tackled the question of how best to address the needs of Michigan's cities and townships, and heard the experiences of a number of localities at different scales. While we had expected to primarily hear about technical challenges, participating localities often discussed issues of capacity. We determined that the solutions need to scale along with capacity and complexity. Michigan had already seen a number of FBC implementations in communities with greater capacity. Simpler tools for lower capacity situations were the missing piece.

Developing Great Places

The League's new Developing Great Places web page offers a wealth of resources to help communities with dynamic placemaking activities.

- The how-to guide for Michigan's local leaders, produced by CNU's Project for Code Reform
- Guidebooks on placemaking, *Redevelopment Ready Communities*®, and RFQs and RFPs
- Real-life success stories
- And much more!

For more information, visit
placemaking.mml.org/great-places



The Lean Code Tool gave us a framework from which to approach incremental code reform that we matched with analysis of the Michigan context. Aiming for a wider range of supportive actors in local governments, we expanded upon the technical aspects of the Lean Code Tool to produce an accessible, user-oriented guide that balances actionable reform with background and guidance.

User-Friendly Guide

The product is a usable tool for local government staff and elected officials, as well as planning consultants who work for municipalities. While created for Michigan townships, villages, and small cities, the code reform principles and techniques can be applied to communities throughout the U.S.


The Users' Guide to Zoning Reform is broken into two critical pieces—one which allows a local government to solve for discrete, specific problems, and the second which provides a set of basic zoning district templates for common walkable place types within the state. If a planning director is building the case for reform with their elected officials, the first tool is the initial step. The guide offers background on zoning reform, instructions and process, and a series of code reform steps addressing streetscape, form, use, frontage, and parking.

Getting the Most Out of the Guide

Mary Madden of Ferrell Madden, one of the primary authors, identified the importance of “knowing where you are” when you begin to solve for zoning problems. Some problems are very specific to main streets, or downtowns, while others are unique to the neighborhood. The concepts of Place Types is built into the guide, targeting the code reform steps as well as helping local governments understand and orient policy around the character of place. The process for using the guide is to first determine where you are, then assess local support and capacity, and finally select solutions based upon a combination of the first two criteria.

For those with strong political support and staff capacity, a Resources section includes minimal model districts that can be combined to create many solutions for municipalities of different sizes. The Resources section includes instructions on how to map the model districts relative to place type. The model districts were crafted to be used for a simple main street condition by itself, for a main street plus adjacent urban neighborhoods, and for a complete downtown with adjacent urban neighborhoods. These districts aren't examples of FBCs but are urban in character and simple in structure. It would be easy enough to add the illustrations if a local government had the capacity, but our goal was to develop districts that could be simple text amendments.

The guide leads users through the code reform process and provides tools for local governments lacking the capacity to develop a full Form-Based Code. Through many discussions in the PCR process, we strongly agreed that not every community needs a full FBC. Given the time and resources required to overhaul zoning, we felt that the prudent approach is to eliminate barriers to desirable development first. The door remains open for FBCs, but learning from the Lean Urbanism Movement, it is the barriers to development that most degrade our cities and towns. The guide provides a path to remove barriers and enact the minimal standards necessary to promote thriving downtowns, main streets, and adjacent neighborhoods.

Download your copy of *The Users' Guide to Zoning Reform* at <https://www.cnu.org/sites/default/files/PCR-9-15-18.pdf> 

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The Legal Defense Fund: High Impact Cases

By Kim Cekola and Bill Mathewson



IN THE BEGINNING

The Legal Defense Fund was formed in 1983 through the efforts of the Board of Directors of the Michigan Association of Municipal Attorneys, including John J. Rae, former city attorney of Midland, working with the former MML general counsel William L. Steude, and the Michigan Municipal League Board of Trustees.

The Legal Defense Fund (LDF) is an advocacy program for Michigan's local governments in the courtrooms. It provides support and assistance to municipalities and their attorneys in court cases where the issues have an extensive impact on both the municipality involved in the case and other municipalities in the state. LDF cases represent a broad range of issues such as medical marihuana; protecting local zoning authority; reducing municipal liability; protecting local cable television franchise authority; clarifying and protecting local interests regarding the Open Meetings Act and the Freedom of Information Act; and local control of billboards.

How the Fund Works

The Fund is governed by a 13-member board of directors, consisting of the chair, vice chair, secretary-treasurer, directors of the Michigan Association of Municipal Attorneys, and the president and executive director of the Michigan Municipal

League. The board meets regularly to review applications for assistance from cities, villages, and urban townships that are a member of the Fund. Designed to assist, not replace, the municipal attorney, the LDF offers various types of aid. Assistance is given at the discretion of the board, and can consist of:

- Amicus curiae (friend of the court) briefs financed in whole, or in part, by the Fund;
- The provision of legal counsel designated by the boards; and
- Such other assistance as the board may deem reasonable and proper.

The League Board of Trustees established operating rules and procedures for the Fund that are aimed at identifying those cases which could affect the organization, operation, powers, duties, or financing of Michigan's local governments. These rules and procedures include:

- Whether the case involves important questions of law, the favorable decision of which could provide substantial benefit for a significant number of Michigan local governments
- The extent to which the case, at its current level, would serve as a persuasive precedent in similar future litigation or controversy before the courts or other adjudicative bodies having jurisdiction in the state of Michigan
- Whether aid is currently being provided in other litigation or controversies involving substantially similar issues or questions of law.


Top Cases

The LDF's first publication, *The Top 25 Cases/25 Years of Excellence!*, was published in 2008 in celebration of its 25th anniversary. Our second publication, *A Summary of 12 Recent Cases*, highlighted significant cases from 2008–2011. Our current installation, *The Top 13 Legal Cases Consequential to Michigan Municipalities*, picks up from where we left off. The cases in the current installation represent wide-ranging issues—from campaign financing to the regulation of billboards; from “dark store” undervaluation issues to home rule authority related to blighted properties and municipal ordinance authority. The involvement of the LDF in each of the cases has provided a means by which the municipal voice is heard in the courts.

The summaries in our most recent publication were written for an audience of non-attorneys. We wanted to make the cases understandable, digestible, and relatable. A copy of the booklet was mailed to every League member. If you would like additional copies, you can download them from our website at www.mml.org/pdf/legal/LDF_Top_13_Cases.pdf, call the League at 800.653.2483, or email a request to kcekola@mml.org.

Membership

Any city, village, or township that is a member of the Michigan Municipal League may join the Legal Defense Fund for a modest annual fee. The fee is 10 percent for a municipality's annual

League dues (with a minimum amount of \$50). Currently, 85 percent of League members are also members of the LDF. Members seek assistance by filling out an application (available at www.mml.org/legal/legal_defense_fund.htm) and sending it to Christopher Johnson, the fund administrator. The important part of the application is describing the statewide impact of your case. Of course, not all cases are “wins,” but the LDF impact is formidable and favorable. And, the Michigan Supreme Court now routinely requests the League to file a brief. 

Kim Cekola is the research specialist/editor at the League. You may reach her at 734.669.6321 or kcekola@mml.org.

Bill Mathewson is the retired general counsel and consultant of the League.

“League staff did an excellent job of laying out the issues succinctly.”
— Christian Wuerth, Milford Village Manager



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Municipal Statistics

533 cities and villages in Michigan

1,240 townships in Michigan

- **1,101 general law townships**
- **139 charter townships**

280 cities

- **265 home rule charter cities**
- **4 fourth class cities**
- **1 special charter city**

253 villages

- **46 home rule villages**
- **207 general law villages**

In the last decade, six villages have reincorporated as home rule cities.

Q. Can we change a regularly scheduled meeting of the commission? It appears we will not have a quorum present at our next meeting.

A. The Open Meetings Act requires that any change in the schedule for regular meetings must be posted within three days of the meeting at which the change is made (MCL 15.265(3)). In addition, notice for the rescheduled meeting stating the date, time, and place of the meeting must be posted at least 18 hours before the meeting.

This heightened requirement was added in 2012: the notice must be posted 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 public meeting agendas or minutes, on a portion of the website that is fully accessible to the public. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings and accessible via a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled public meetings (MCL 15.265(4)).

Last of all, check your charter and council rules of procedure to make certain there are no additional requirements contained in either. And as always, it's a good idea to check with your municipal attorney.

Q. Do we have to hold a roll call vote on every matter considered by council? And, do we have to read every ordinance and resolution in its entirety before a vote can be taken?

A. The answer to both of these questions is, "it depends." There is nothing in state law requiring a roll call vote on all matters before council nor for the full reading of every ordinance or resolution. It depends on your local charter as well as your council rules. Some municipalities require roll calls on every vote; some require full readings of ordinances and resolutions. It is under local control.

Q. Is a "committee of the whole" considered to be a meeting of the council under the Open Meetings Act? Do we need to publish notice and take minutes?

A. Yes. Often referred to as "work sessions," many communities find these meetings a useful tool to address long-term and ongoing matters. Regardless of what they are called, if there is deliberation toward a decision, they most likely fall under the definition of a meeting in the Open Meetings Act, so they must be posted and minutes taken. And, the meetings must be open to the public except for those issues that by law are permitted to be addressed in closed session. As with all Open Meetings Act questions, remember to check with your municipal attorney.

Q. Is the public allowed to participate or comment at a work session of the council?

A. Yes. Although work sessions are intended to provide opportunities for council/board members to study difficult issues, gather and analyze information, and clarify problems, whenever a governing body holds a meeting, as defined by the Open Meetings Act, it must be posted and people must have an opportunity to address the governing body (MCL 15.263). Making those in attendance aware of the general purpose of a work session—to study issues, not to take action—often helps.

Conducting work sessions under the Open Meetings Act helps to minimize the public's concern that decisions are not made "in the sunshine." This perception can be addressed by making it clear that council holds work sessions for difficult issues, but nonetheless, these sessions are open to the public and no action is taken except in a regular meeting.

The League's Information Service provides member officials with answers to questions on a vast array of municipal topics. Call 1.800.653.2483 or email info@mml.org or inquiry@mml.org.



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Muskegon's Western Market is a collection of 17 small-scale retail shops. The project was created as a way to attract visitors to downtown Muskegon, and to provide low-cost start-up opportunities for local businesses. These small retail spaces—or “chalets”—range from 90 square feet to 150 square feet with rents between \$1,325 and \$2,125 for the entire season. With a waiting list of interested businesses, Muskegon formed a committee to curate the selection of stores at the Western Market, ensuring a balanced assortment of vendors and products. The chalets are sited to activate a key vacant lot downtown, and they help to strengthen the presence of walkable, urban retail in Muskegon. Muskegon's Western Market is designed, built, and managed by city staff, and operates from May to October, with a holiday market in November and December.

Replicability

This project is a quick, low-cost means of introducing additional retail options in a community of any size. Muskegon's Western Market was inspired by both holiday-themed markets in large cities and retail revivals

in small villages. Such a concept is highly adaptable; any number of chalets can occupy anything from vacant land, to the edge of an underused parking lot.

Creativity and Originality

While many know retail as big box stores and strip malls, small projects can still make a big impact. In today's unpredictable retail environment, taking small, incremental steps is critical to ensuring a resilient place. However, the true creativity and originality of this project comes directly from the small business community. Our vendors are the ones that bring Muskegon's Western Market to life and allow for a project like this to thrive.

Community Impact

In a city that lost much of its traditional downtown core to urban renewal and an urban indoor mall in the 1970s, the impact of the Western Market is transformational—perhaps even a bit radical. Following the mall's demolition, large vacant lots lined many downtown streets and the resulting shortage of available and affordable retail space left a gap difficult to fill. Western Market allows for a wide range of business owners to open up shop in a prime location on Western Avenue—the city's Main Street.