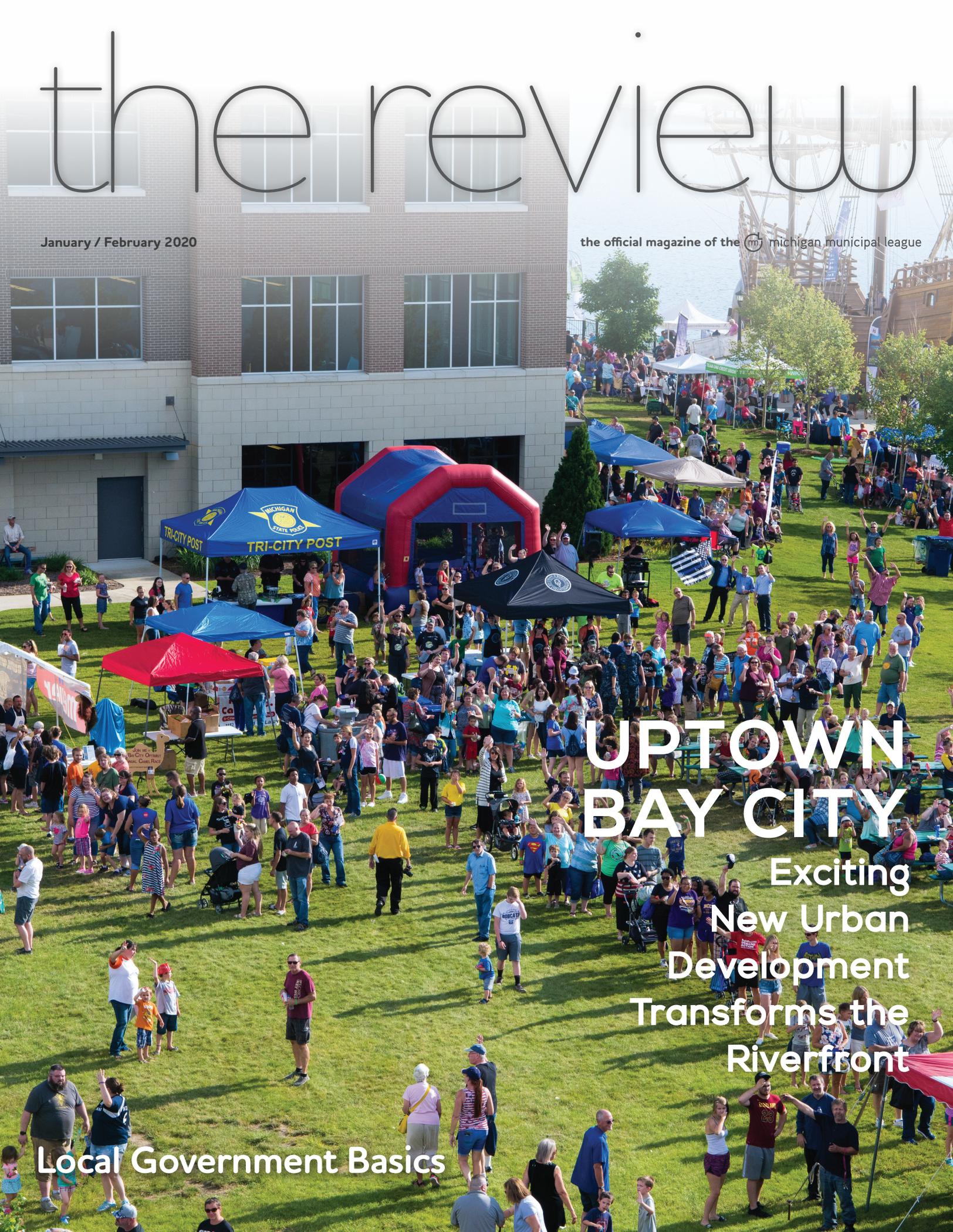


the review

January / February 2020

the official magazine of the  michigan municipal league



UPTOWN BAY CITY

Exciting
New Urban
Development
Transforms the
Riverfront

Local Government Basics

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Al Warr, project manager for Shaheen Development, and Dana Muscott, city manager for Bay City, worked collaboratively to make Uptown Bay City a reality.

Photo by Marie Hill

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the review

The official magazine of the Michigan Municipal League

Volume 93, 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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Please recycle this magazine

Reflections

As we launch into the third decade of the 21st century, if there was ever a good time for reflection, this might be it. I am sure we all shared the view that after September 11, 2001, life as we knew it would never be the same. We just couldn't predict how much it would change. The tragic events of 9/11 ushered in a more cautious and suspicious view of the world as new security norms invaded our daily lives and faraway wars became an ongoing reality.

At the same time, global economies were emerging, and manufacturing was declining, taking the middle class along with it. The delivery of goods and services were becoming progressively more knowledge-based. The evolution of technology was advancing at lightening speeds—seeping into our day-to-day lives and transforming the ways that we communicate with each other and conduct business. The economic fallout of 2008 rocked financial institutions and led to a housing crisis. The political landscape has become increasingly polarized. Traumatic historical events tend to take away our safety nets—real or perceived—shaking up society and demanding some serious self-contemplation as we adjust to new societal standards and expectations. Twenty years in, and societal norms hardly seem what they once were at the turn of the century.

Over time, these seismic changes were acutely felt at both the state and local levels. It became clear that our old systems and beliefs needed to give way to new governance models and ways to invest in communities and deliver services. Michigan communities have faced enormous financial challenges over the past two decades as the State diverted funds to address its own financial shortcomings. However, I remain as optimistic as ever about the future of Michigan and its communities as we look forward to the next decade.

Over time, the League felt the need to go through its own self-evaluation, rethinking its core mission and how best to provide support and services to our member communities. Investing in our communities, in particular, became an important economic message. With the reality of a whole new generation of young people choosing where they want to live before looking for a job, it required us to shift our priorities. Michigan was now competing globally for talent, and we had to build places where people would choose to work and live. We needed to begin coloring outside the lines—innovating and taking risks and opening ourselves up to world ideas—to forge a new path forward.

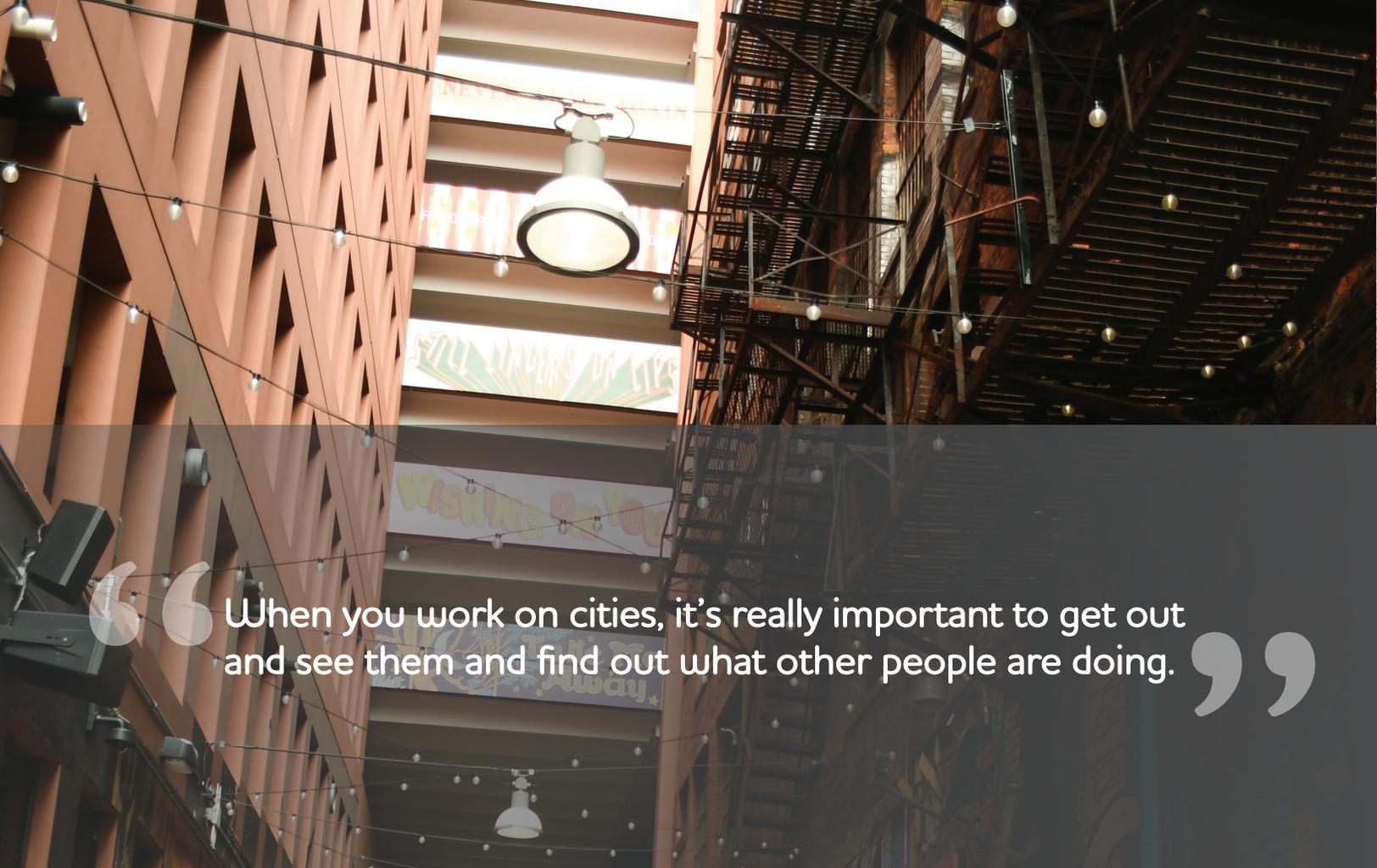
We have extraordinary examples in our communities—big and small—which demonstrate the kind of innovation that requires Michigan communities to remain competitive in today's world. Capitalizing on a 43-acre riverfront site that was functioning primarily as a manufacturing and industrial site, the City of Bay City was selected by its peers as the 2019 winner of the Community Excellence Award (CEA), for their development of Uptown Bay City. The city's long-term vision came to fruition, providing a mixed-use urban space that offers housing options, retail, and destination restaurants to attract generations to come. You can get more in-depth information about the project in our cover story.

Congratulations and a big welcome to all the newly elected officials! I can assure you that serving on council will be both a rewarding and a challenging experience. Whatever your reasons for choosing to run for office, you now have the influential role of being part of a collective body that will make decisions and enact policies that will have major impacts on your community. The League offers extensive training to help you navigate your new roles, so we hope that you will take advantage of these learning opportunities. View them at mml.org/events. We look forward to seeing you!



Daniel P. Gilmartin
League Executive Director and CEO
734.669.6302; dpg@mml.org





“ When you work on cities, it’s really important to get out and see them and find out what other people are doing. ”



Jia Ping Lee (right) joins Convention attendees on a tour of downtown Detroit.



Daniel Lim Jian Yi and Aufa Abd Rahman experience the Lansing legislative scene, downtown Detroit, and Traverse City.

MALAYSIAN EXCHANGE

Sharing Michigan Placemaking with Our International Counterparts

By Lisa Donovan

Daniel Lim Jian Yi knows that every day when he heads off to work as a senior program manager at Think City, a Malaysian organization that rejuvenates cities, it's going to be hot all day, all year long.

Before leaving for her job as a program manager with Think City, Daniel's colleague, Aufa Abd Rahman, loves to start her day with a breakfast of nasi lemak. That's a very spicy dish made with rice cooked in coconut milk and chili paste, combined with ingredients like anchovies, chicken, and boiled eggs—all wrapped in banana leaves.

For three weeks in September 2019, Daniel and Aufa left behind those comforts of home to travel to Michigan and explore how placemaking is done here. Hosted by the Michigan Municipal League, they were part of a first of its kind international exchange between placemaking organizations. League staff members graciously opened their homes to Daniel and Aufa to offer them an authentic American experience; gave them a grand tour of placemaking projects in cities like Ann Arbor, Ypsilanti, and Traverse City; and provided them with a first-hand look at the Michigan Legislature in action.

"We've learned to understand the American context," said Daniel, who joined Think City about nine years ago as part of the founding team. "Although the approaches and techniques are similar in terms of city making and regeneration, there are different complexities and demographics."

"I didn't want to expect anything," added Aufa. "I came here open-minded. I know it's totally different than Europe or other places."

How the Exchange Came to Life

The idea for this exchange was launched at Placemaking Week, held in Wuhan, China in November 2018. The conference brought together global urban thought leaders to reimagine the future of Chinese cities. League CEO and Executive Director Dan Gilmartin was a speaker at the event, and so was Jia Ping Lee, a renowned urbanist and program director of Think City.

Gilmartin was impressed with the similarity of Think City's city regeneration work to the League's placemaking activities and invited Ping to come speak at the League's Convention. She agreed, but she also had another idea in mind. She proposed doing an exchange to give staff who don't travel much a chance to see other programs and get some interesting life experiences. Gilmartin was intrigued by the idea.

"When you work on cities, it's really important to get out and see them and find out what other people are doing," said Gilmartin. "Getting more people exposed to innovative practices can only lead to better work here and make us better equipped to support our members."

Less than a year after the exchange idea was first hatched in China, Daniel and Aufa stepped off a plane at Detroit Metro Airport and began their Michigan experience.



The grants program was so successful that Think City was asked to expand its operations. They have expanded geographically into the cities of Kuala Lumpur and Johor Bahru. They have also increased the scope of their work into developing strategic master plans for larger areas of the cities.

Topping Off the Experience

Before Daniel and Aufa returned to Malaysia, they participated in the League's 2019 Convention in Detroit. They were joined by Jia Ping Lee, the woman who set the whole exchange idea in motion. She gave an engaging presentation on Think City's work at one of the General Sessions. All three had the opportunity to meet a multitude of League members, sit in on sessions, and go on a walking tour of downtown Detroit.

"I expected to see grime and I got shine!" exclaimed Ping. We're looking forward to hearing about the shine Think City has created in Malaysian cities when our League staffers return from their international learning adventure.

For more information on Think City, visit thinkcity.com.my. To view Jia Ping Lee's Convention presentation, visit convention.mml.org. 

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

The exchange idea also caught the attention of PlacemakingX, a global network of leaders who together accelerate placemaking as a way to create healthy, inclusive, and beloved communities. The League has gotten to know many of these leaders through our work. Placemaking sees the exchange as a beta test. We are the first organization to do such an exchange and, if it works well, it could expand out to placemaking organizations all over the world. This model is even more feasible if exchange guests stay in the homes of families in the host country, decreasing the cost of the trip and increasing the authenticity of the experience.

Reversing the Exchange

Sometime in the first quarter of 2020, the League is planning to reverse the exchange process and send some of our staff members to Malaysia for a first-hand experience on how Think City operates.

"A lot of issues they face may look different, but they're trying to offer the same kinds of positive experiences to people who live in the cities," said Gilmartin. "We're more alike than different."

Think City was established in 2009 by Khazanah Nasional Berhad, the investment arm of the Malaysian government. Their initial mission focused on the George Town Grants Program, where they provided grants for revitalization projects in the ancient city of George Town, a United Nations Educational, Scientific and Cultural Organization World Heritage Site. Much like the League's PlacePlans program, Think City's grants were used to engage the local community in the planning process that would lead to revitalized buildings, parks, and other public spaces.

"Think City preaches the power of small," said Daniel, whose background is in cultural studies, communication, and advertising. "We believe in doing a lot of small initiatives and projects to create a collective dynamic. It's easier to mobilize than coming in with a big project."

Personalization is also key to Think City's success. "Each project is customized based on the community and location," said Aufa, an architect whose skills are especially valuable when grants are given to property owners to restore heritage buildings.

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CALLING LOCAL GOVERNMENT LEADERS

You Can Be Part of the Independent Citizens Redistricting Commission

By League Staff



The League's Anthony Minghine (fourth from right) joined Secretary of State Jocelyn Benson to promote the application process for the redistricting commission.

Michigan voters last year amended the state Constitution to put responsibility for redistricting state legislative and congressional districts into the hands of a new Independent Citizens Redistricting Commission. Applications to serve on the commission are available now at RedistrictingMichigan.org, administered by the Secretary of State's office.

The thirteen members of the Commission—four Republicans, four Democrats and five voters who do not affiliate with either of the major political parties—will be selected from applicants in a random process. The commission will also hold a series of public hearings before considering maps and after the maps are drawn, and local government officials need to be ready to voice their views during that part of the process in 2021.

Anthony Minghine, deputy executive director and COO of the Michigan Municipal League, joined Secretary of State Jocelyn Benson for events to promote the application process and encourage participation in the new redistricting process.

No special training or qualifications are required to serve on the Commission. Members will listen to feedback from people across the state about how they want to be represented and work together to reach consensus across party lines to adopt final maps in a completely transparent process.

To serve on the Commission, you must be a registered voter and, in the last six years, not been a candidate for partisan elected office or an officer or member of the governing body of a national, state, or local political party. Most city officials are elected as nonpartisan and are eligible. Other eligibility criteria are available at RedistrictingMichigan.org.

“Members will listen to feedback from people across the state about how they want to be represented and work together to reach consensus across party lines to adopt final maps in a completely transparent process.”

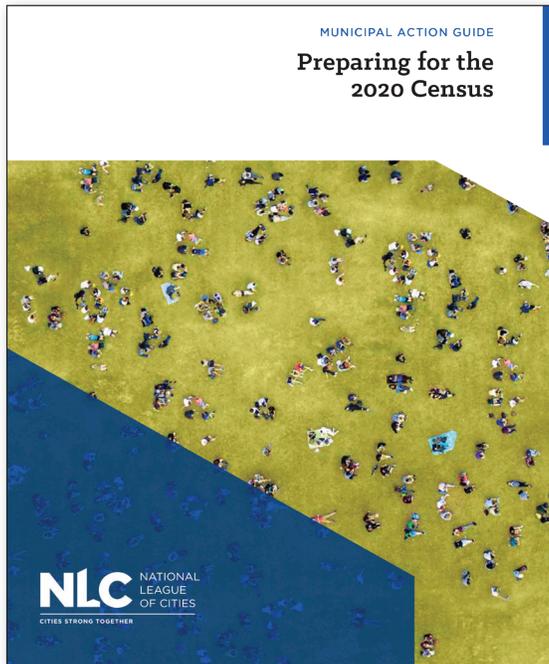
The Commission will use 2020 U.S. Census data to draw maps to meet strict criteria with districts that do not provide any political candidate incumbent, or party an unfair advantage and will have its own budget to hire legal counsel and mapping experts. The Commission-drawn maps will be used for the first time in the 2022 elections.

Thousands have already begun the application process. For more information and answers to questions, visit RedistrictingMichigan.org.

Preparing for the 2020 Census

By Alex Jones and Brian Egan

This is a partial reprint of the National League of Cities' Municipal Action Guide: Preparing for the 2020 Census. Reprinted with permission.



Even before the U.S. Constitution fully outlines the powers of the three branches of the government, it mandates a decennial count of all persons in the country. In 1970, U.S. Marshalls counted fewer than 4 million people through simple paper tallies during the first census. Today, a diversifying culture, new technologies, and demand for greater efficiencies have pushed the U.S. Census Bureau to innovate and adapt as it prepares to count more than 330 million people in 2020. As a local leader, understanding how your city, town or village will be counted and what you can do now to improve results in 2020 is paramount to the completion of a successful census in your community.

Why the Census Matters to Cities, Towns and Villages

An accurate census helps ensure fair representation at all levels of government. The primary constitutional purpose for the decennial census is to determine how many congressional representatives each state will have for the next decade and to ensure equal representation in the redistricting process. For instance, congressional districts and the boundaries of your city ward are determined by census numbers.

The census directly impacts the funding your city will receive over the next decade. Population counts and statistics derived from both the decennial census and other surveys determine the annual allocation of more than \$800 billion in federal investment across states, counties and cities. While many financial assistance programs and block grants, like the Community Development Block Grant (CDBG), are distributed to cities based on American Community Survey (ACS) statistics, the benchmark for all ACS data is the decennial census.

The census provides the most reliable and complete data for research, decision making, and planning for both the public and private sectors. Academic institutions, medical facilities, businesses of all sizes, and all levels of government rely on census data to inform their research, decision making and planning. While the decennial census only asks a few basic questions, the population counts and demographic data that it produces serve as a benchmark for most other current statistics that help us gain deeper insights into our communities. Following are just a few of the ways our communities rely on census data:

Governments (Local, State and Federal)

- Demographic composition of a community and constituency
- Education planning
- Procurement and provision of services
- Infrastructure & transportation planning



- Allocation of resources and a way to provide financial assistance where needed
- Emergency preparedness, disaster relief, and resiliency planning
- Characterization of built structures for zoning and permitting processes
- Measurement of the success and outcomes of local programs or initiatives

Major Community Stakeholders (Universities, Medical Facilities, Nonprofits, Utilities)

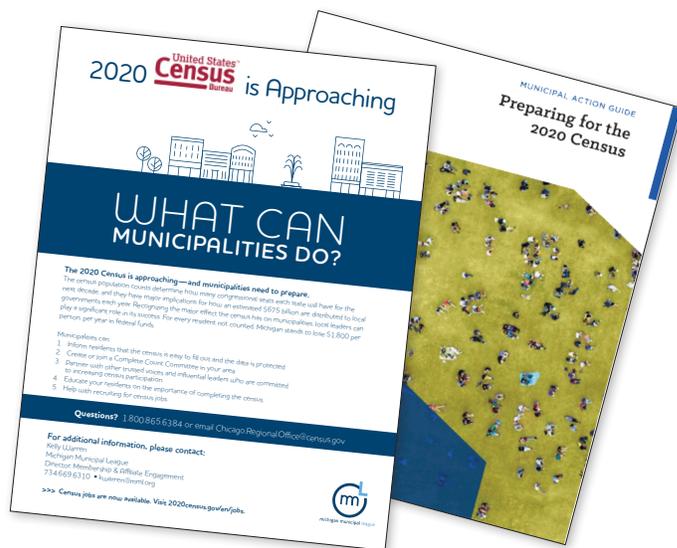
- Medical research and planning (public health tracking, vaccinations, disease control, etc.)
- Socioeconomic research on communities
- Design of educational curricula
- Statistics and metrics used in journalism and news reporting

Business Community

- Supply chain and logistics management
- Determining new markets and where to expand
- Forecasting sales and growth projections
- Location of retail outlets and logistics facilities
- Workforce development

What's New for the 2020 Census?

The 2020 Census will be the first to offer options for internet and phone responses. In previous modern-day censuses, people could submit their responses by mail using a paper questionnaire or, if they failed to self-report, they could respond in-person to an enumerator. In 2020, the Census Bureau will encourage households to respond through an online portal. This new response method may raise citizen concerns around data privacy and confidentiality. The Census Bureau houses some of the most secure servers within the



federal government and is working with the Department of Homeland Security and other federal cybersecurity experts to ensure that its systems are up-to-date with current threats. The 2020 Census will also allow people to provide their responses over the phone for the first time. Learn more about the internet and telephone response options under the “How Can People Respond” section.

There will be a greater reliance on technology to prepare for and execute the count. The census continues to reinvent itself to take advantage of new technologies with each passing decade, but the 2020 Census will feature significant technological advancements that local leaders should be aware of:

- **Lead-Up Activities:** The Census Bureau has increasingly relied on its partnerships with state and local governments to update its Master Address File (MAF) and ensure that every living quarter in the U.S. is included in the census universe. The Census Bureau has also turned to aerial imaging software from the National Geospatial Intelligence Agency and other agencies to supplant a large portion of costlier “in-field” activities, such as in-person canvassing of every street and road, to finalize the address file. These advancements will limit the presence of census employees in cities prior to the enumeration (or counting) process in 2020.

- Enumeration: In addition to a new online response portal, the Census Bureau is also introducing greater automation into the enumeration process. Census takers will be equipped with smart devices, and all door-to-door visits (called Nonresponse Follow-up, or NRFU) will be conducted digitally instead of with pen and paper as in previous decennial censuses. The electronic devices will allow enumerators to transmit the data they collect in real time, directly to the Census Bureau's IT systems. Census takers will also receive their daily assignments and report their hours worked electronically, reducing the need for a larger number of local census area offices.

The country is experiencing a period of heightened fear and deliberate misinformation. Most of the changes that will make the 2020 Census different from previous censuses are positive advancements. However, there are unmistakable challenges related to the current heightened climate of fear in many communities, ongoing misinformation campaigns, and database hacking attempts—both domestic and foreign. Trust in government remains at a historic low,

which compounds these challenges. Census advocates will spend the next two years preparing to counter misinformation campaigns that are designed to suppress response rates, exacerbate undercounts of certain populations, weaken American democracy and generally disrupt institutional processes. As the level of government most trusted by the public, local leaders can serve as invaluable trusted voices and champions by using both the bully pulpit and city social media channels to instill confidence in the census process and counter false information.

To read the complete Municipal Action Guide: Preparing for the 2020 Census, visit nlc.org/resource/cities-count-preparing-for-the-2020-census. 

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HOSTAGE

Addressing the Rise of Ransomware

By Taylor Gast

2019 was a banner year for cybercriminals targeting municipalities. In particular, the frequency and scale of publicly reported “ransomware” incidents targeting municipalities rose exponentially. In May, a ransomware incident effected Baltimore, and while the hacker demanded roughly \$75,000, the incident cost the city more than \$6 million to respond and recover. In Texas, the computer systems of 22 small towns were simultaneously hacked, locked down, and held for ransom in a coordinated effort by a single actor in late August.

It is estimated that more than two-thirds of ransomware attacks targeted state and local governments in 2019. Ransomware has become so prevalent that experts now view it as its own economy, where hackers advertise their services and customers provide ratings and even review the criminal’s customer service. As a result, ransomware and cybersecurity threats in general are now high on every municipality’s list of risks that must be addressed.

Ransomware and the Evolving Landscape of Threats

What is ransomware, and what can municipalities do to respond to it and other cyber threats? When your computer slows down, is running poorly, or is effected by malicious software, you might refer to the problem as a “virus.” A virus is actually one of several types of “malware.” Malware is a catch-all term for malicious software, regardless of how it works. There are more types of malware than we could hope to cover here, including viruses, spyware, adware, trojans, worms, and yes, ransomware. Some types of malware sit in the background and work discretely by, for example, collecting sensitive information on a computer system and sending it to the hacker. Others inflict an obvious, overt effect. Although ransomware comes in several varieties, it is often a hybrid that initially works in the background, and then reveals itself.

Ransomware can infect a municipality’s computer system in many ways. An employee might click a link or open an attachment in an email that appears to be trustworthy (“phishing”). They might visit a malicious website. Or, a criminal might use a more aggressive tactic targeting security flaws to install ransomware. After ransomware is installed on a system it will usually begin locking down (“encrypting”) the system’s files immediately, making them inaccessible. The ransomware will then show a screen informing the user that the system’s files will continue to be inaccessible unless the ransom is paid. The ransom typically requires payment in

the form of Bitcoin—a now infamous digital currency that is difficult to trace to its owner. Ransomware commonly includes a countdown timer coupled with language threatening to increase the ransom amount if the timer reaches zero.

The effected municipality’s security sometimes identifies and stops the ransomware before it encrypts a significant amount of the system’s files. The municipality might also be able to replace the encrypted files with backup copies. However, it is all too common that ransomware avoids detection, and backups are not available either because the malicious actor targeted them, or because the computer system’s backups are unavailable, insufficient, or even nonexistent.

Ransomware can hold services hostage, too. For example, in January 2019, just as a snowstorm hit Northeast Ohio, an Akron 311 service designed to let residents know when their streets would be cleared was taken down by ransomware.

To Pay or Not to Pay

When ransomware is successful, the victim municipality is faced with a difficult decision. The hottest topic when it comes to municipal ransomware has been whether to pay the ransom. Historically, law enforcement experts like the Federal Bureau of Investigation and IT experts have recommended not paying. Paying the ransom involves several risks. The criminal might demand additional payment, return the files in a corrupted or disorganized state, or refuse to return them altogether. The criminal might also attempt to re-infect the

municipality. Recognizing these risks, and hoping to diminish the broader “ransomware economy,” more than 225 prominent U.S. mayors signed a resolution not to pay ransoms to hackers during the 2019 annual meeting of the U.S. Conference of Mayors. Nonetheless, the most public examples of municipal ransomware continue to show mixed results. For example, none of the 22 Texas municipalities mentioned above paid in 2019, but several in Florida did. It can feel overwhelmingly costly or even impossible to recreate the encrypted files or effected systems.

The screenshot shows the 'Wanna Decryptor 1.0' ransomware interface. At the top, it says 'Oops, your files have been encrypted!' with a padlock icon. Below this, there are two sections: 'Payment will be raised on' with a timer showing 5/15/2017 16:25:02 and 'Time Left' of 02:23:58:28; and 'Your files will be lost on' with a timer showing 5/19/2017 16:25:02 and 'Time Left' of 06:23:58:28. The main text explains that files are encrypted and offers a 'Decrypt' button for free, but notes that full decryption requires payment. It specifies a payment of \$300 worth of Bitcoin to the address 15zGqZCT. There are links for 'About bitcoin', 'How to buy bitcoins?', and 'Contact Us'. At the bottom, there are buttons for 'Check Payment' and 'Decrypt'.

“...ransomware and cybersecurity threats in general are now high on every municipality’s list of risks that must be addressed.”

How Can Municipalities Address Cybersecurity Risks?

Municipalities should consider their preparedness for ransomware and other types of cybersecurity threats like those designed to provide a hacker with unauthorized access to sensitive information. A reasonable approach to information security involves a multi-layered approach with technical and procedural measures to prevent cybersecurity incidents and minimize their impact when they do occur.

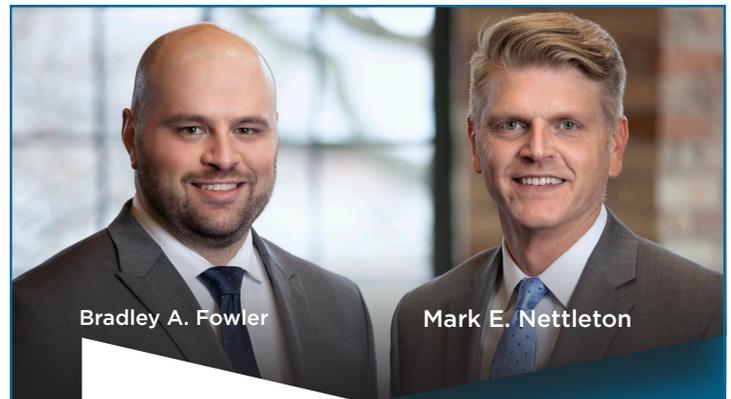
Regarding non-technical measures, a municipality should ask the following questions when considering its cybersecurity posture:

- Do we have an incident response plan? Is it updated and practiced?
- Have we identified a team of people (IT, legal, public relations, etc.) who will respond to an incident? How will our team make important decisions?
- Do we have cyber insurance coverage, and what does it cover?
- Do we require our third-party vendors to maintain adequate security measures and notify us of a data security incident? Do we understand our contractual obligations to third parties if we are a victim of an incident?
- Are we regularly reviewing internal and external security risks and implementing measures to mitigate or eliminate them?
- Do we offer periodic employee training on security best practices?
- Regarding technical measures, a municipality should consider the following protections:
 - Limit administrative privileges
 - Multi-factor authentication and strong password rules
 - Allow users to access only the information that is necessary for their role
 - Data mapping to inventory where information is stored
 - Penetration testing and vulnerability assessments
 - Encryption

- Regular and enforced patching and updating
- Network activity monitoring
- A strong data retention and minimization policy that is used

Finally, municipalities should recognize that cybersecurity threats will continue to evolve. Therefore, it is essential to implement best practices that will allow your municipality to adapt to the constantly changing landscape of threats. 

Taylor Gast is an attorney with Foster Swift Collins & Smith who regularly helps clients identify and respond to cybersecurity risks. He can be reached at 517.371.8238 or tgast@fosterswift.com.



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THE UNIQUE EVOLUTION OF MICHIGAN'S LOCAL GOVERNMENTS

By Christopher Johnson

Sometimes, it is hard to understand why we have so many different types of government in the State of Michigan. The answer can be found in our history and in our reluctance to change.

We can start with the time Michigan became a state in 1837. At that time, there were two competing views on local government. One view was that local government should be very limited to only certain enumerated tasks by statute. That position was championed by Judge John F. Dillon of Iowa and became known as "Dillon's Rule." The opposite view was that local government had some inherent powers of their own. This became known as "Home Rule" and was championed by Justice Thomas M. Cooley of Michigan. Since Michigan was granted statehood, the prevailing thought was to follow Dillon's Rule.

County Government

Michigan delivers many services through its county governments. Counties provide funding for the circuit court system (even though the State has one court system). In some counties, the Sheriff's office provides the main source of law enforcement. Counties also provide road systems. Counties only have delegated powers, meaning they may only provide those services that are provided in state law.

Township Government

The basic structure of Michigan local government in 1837 was township government. In many respects, township government is still the prevailing form of government in Michigan today. A township is governed by an elected supervisor, elected clerk, elected treasurer, and either two or four elected trustees, depending on the size of the township. The three elected administrators sit on the governing board of trustees and vote on matters before the board. Townships have delegated powers that are found in Chapter 41 of the Michigan Compiled Laws.





The answer can be found in our history and in our reluctance to change.



In 1947, the legislature established charter townships. These townships have a “charter” which is state law. Charter townships do not have individual charters. This type of incorporation provides some form of protection from annexation, but not an absolute protection. Charter townships have those powers which are delegated to them by state law and are found in Chapter 42 of the Michigan Compiled Laws.

Village Government

As time passed and population densities grew, there became a need to address services such as water supply, sewerage, streets, and roads. This resulted in the creation of villages. Villages are incorporated parts of a township. Village residents are part of the village and the township. Interestingly, a village may be part of more than one township. Villages come in two different types: general law villages and home rule villages.

General law villages are organized under the General Law Villages (GLV) Act. These units of local government also have delegated powers. Once again, there is no individual charter for GLVs. GLVs may only provide services that are in state law. State law serves as the charter for GLVs. The Michigan Municipal League has published a handbook for GLV officials. Member communities are encouraged to obtain one. Members who attend the Newly Elected Officials training receive a copy with their registration.

Home Rule Villages and Cities

The concept of home rule comes to Michigan in the form of the new State Constitution of 1908. In 1909, the Legislature passed the Home Rule Village (HRV) Act and the Home Rule Cities (HRC) Act. For the first time, villages and cities could create their own charter if it complied with the provisions of the HRVA or HRCA. These acts allowed local government to pick and choose which services they would provide to their citizens.

The concept of home rule was extended in the Michigan Constitution of 1963. Article 7, Sections 22 and 34 of the 1963 Constitution were the most significant steps that the citizens of the state have taken to allow their local governments to do what is best for their own local citizens.

Under the HRCA, a city has multiple options as to how to set up its government. A city can have a strong mayor system where the elected mayor has administrative responsibilities or a council/manager form of government. The manager form of government places administrative responsibilities in the hands of a professional manager. The HRCA contains several

requirements for a city charter, such as it must follow the Open Meetings Act. It has many optional provisions, such as a water works provision. It also has a few prohibitions such as no millage rate greater than 20 mills.

In addition to these basic units of government, there are hundreds of specialty governments such as school districts, intermediate school districts, district libraries, drainage districts, solid waste authorities, and mental health authorities.

Once established, people tend to hold on to their specific boundary rather than seeking combinations of government. At last count, we have 83 counties; 1,240 townships, of which 139 are charter townships; 207 general law villages; 46 home rule villages; and 280 cities.

Michigan has an abundance of government, but it will take a well thought out plan to move us through the 21st century. The fact remains that people are reluctant to change thinking from what they know. 

Christopher Johnson is the general counsel for the League. You may contact him at 734.669.6305 or cjohnson@mml.org



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Top 10 Legal Things that Make a Municipality Different from a Business

By Roger Bird and Eric Scheske

“Many activities that are acceptable in the private sphere are unlawful in the public sphere. Such unlawful activities can subject the individual and his or her municipality to various forms of punishment...”

Because most people who seek public office have spent their careers employed in the private sector, they often assume that the same rules apply to operating a local government as to running a business. This is a dangerous assumption. Many activities that are acceptable in the private sphere are unlawful in the public sphere. Such unlawful activities can subject the individual and his or her municipality to various forms of punishment, including fines, penalties, and—for the individual in extreme situations—jail time. Here are ten important distinctions between a business and a municipality that an elected official should remember.

10. Restrictions on profit endeavors

The municipality is restricted with regard to making profits; businesses are supposed to make profits. This does not mean that a municipality can never engage in profit activities, but there are political, prudential, liability, and legal reasons why a municipality should be careful before undertaking a project solely because it will improve a municipality's bottom line.

9. Potential restrictions on selling real estate

The municipality often cannot sell real estate without a public vote due to charter restrictions that require a vote when certain types of land (e.g., parks) or land of a certain value is being sold. In addition, some lands may have been gifted with restrictions on sales.

8. Public Employment Relations Act

The municipality's collective bargaining employees are subject to different procedures than private employer collective bargaining units.

7. Power of eminent domain

The municipality can take private property for fair compensation; businesses can only negotiate. It must be noted, however, that though the power of eminent domain is often tempting to exercise, the actual procedure can be quite complicated and can lead to costly litigation.

6. Charter

The municipality is subject to a charter which is difficult to amend; businesses are subject to articles of incorporation and bylaws that are much easier to amend.

5. Municipal Finance Act

The methods by which a municipality may borrow money are greatly restricted. In particular, a municipality cannot obtain conventional bank financing and instead must rely on unconventional financing methods such as installment purchase arrangements, capital leases, and public bond issues. Businesses can borrow money however they please.

4. Governmental immunity

The municipality has immunity from a variety of legal causes of action; businesses do not. This does not mean that a municipality can never be held liable for its actions, but as a general rule, it is more difficult to hold a municipality liable for torts (e.g., slip and fall accidents) than a private business.



CITY HALL

201

3. Open Meetings Act (OMA)

The municipal public body (usually the council or commission) must generally conduct its meetings in public pursuant to the OMA; businesses are not required to do so. The council may close a meeting to the public for a handful of specific purposes, but the closed meeting must clearly fall within the purposes and no other business may be transacted during the closed meeting.

2. Freedom of Information Act (FOIA)

Subject to limited exceptions, the municipality must disclose its documentation pursuant to FOIA; businesses are not required to do so.

1. Michigan and U.S. Constitutions

The municipality is generally subject to the Michigan and United States Constitutions (including the Bill of Rights). This includes free speech, freedom of religion, and civil rights provisions of the Constitutions. Businesses are not subject to constitutional restrictions. 

Roger Bird and Eric Scheske are attorneys for the city of Sturgis. You may contact Eric at 269.651.2445 or ericcheske@sturgislawfirm.com.



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A man in a grey suit and light blue shirt is smiling and clapping. He has a name tag that says "Abe" and "Member". In the background, a woman with glasses is also smiling. The scene is brightly lit, suggesting an indoor event.

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Uptown Bay City

Exciting New Urban Development Transforms the Riverfront

By Lisa Donovan



BAY CITY
pop. 34,932

“The Shaheen family didn't scrimp on any details. They added heated sidewalks, beautiful lighting, and calming fountains. Even if you don't live there, people go there to take pictures and enjoy the events.”

The Bay City community came together at Uptown for National Night Out.



Former Bay City Commissioner John Davidson, City Manager Dana Muscott, Economic Development Project Manager Sara Dimitroff, and Shaheen Development Project Manager Al Uarr celebrate Bay City's win in the League's 2019 Community Excellence Award competition.



A wide variety of entrepreneurs now call Uptown Bay City home, including (clockwise from top left) Uptown Grill, Cream and Sugar, Sushi Remix, and Live Oak Coffeehouse.



For more than a century, a hulking manufacturing plant churned out cranes on the shores of the Saginaw River as it flows past Bay City. Over the past few years, Uptown Bay City has sprung up in its place—a fresh, mixed-use development that’s attracting people from all over the region. This inspirational project propelled Bay City into the winner’s circle for the Michigan Municipal League’s 2019 Community Excellence Award!

“It’s an honor that we were chosen to be a finalist, then chosen by our peers for this award,” said Dana Muscott, city manager of Bay City. “Uptown is a great partner with the City of Bay City. It’s a fantastic place to visit, so we encourage everyone to come to Bay City to see what we’ve accomplished on this formerly blighted property.”

From Blight to Bright

The rebirth of the 43-acre site began when the city purchased the property in 2002. First, the city put considerable thought into establishing a vision for the site that would best benefit the city. The vision included improving the community’s economic development prospects; adding jobs, housing, and retail; attaching the site to downtown; and taking advantage of boat traffic on the river. They set out their vision in a Request for Proposals and encouraged developers to share their plans for bringing that vision to life. Shaheen Development, a community-based real estate development company in Saginaw, soon rose to the top of the list.

“The Shaheen proposal sparkled above the others,” said Muscott. “Their plan had it all—marina, hotel, residential, medical offices, restaurants, and shops. It’s a little community on the river.”

“We had been aware of the site and its challenges for quite some time,” said Al Warr, project manager for Shaheen Development. “In Saginaw, we had a lot of success converting industrial warehouses and brownfields to a great downtown revival. We saw how that stirred further investment in the city and wanted to be part of a similar project in Bay City.”

With a development agreement with the city in hand, Shaheen set out to make Uptown Bay City a reality. Right from the groundbreaking, they had great success in attracting quality tenants. Three anchor tenants—Dow Chemical Company, Chemical Bank, and McLaren Bay Region health center—were quick to sign up.

“Their commitment early on gave us significant momentum,” said Warr. “People could see that we had large buildings going up on site with major tenants.”

Phase 1 opened in August 2014 when Dow moved into its stunning new building. Now, there are about 20 businesses on site and all the retail space is leased. Stroll the streets of Uptown and you’ll encounter a variety of small entrepreneurs who have set up shop there. Sushi Remix, Cream and Sugar, Uptown Grille, and Live Oak Coffee House are just a few of the retailers attracted by the development’s energetic vibe.

“I can’t say enough about how wonderful the last year has been being a part of the Uptown community,” said Alayna Wesener, owner of Sushi Remix. “Our fellow business owners are all just as passionate and dedicated to building a vibrant community as we are. There is always something fun happening, which brings so much life to the community. We see new faces every day.”

The residential scene has taken off as well. Twenty condos priced at \$200-\$500,000 are all sold and 23 brownstones are all leased. That success has led to the construction of 100 more apartments in Phase 2.

“The Shaheen family didn’t scrimp on any details. They added heated sidewalks, beautiful lighting, and calming fountains,” said Muscott. “Even if you don’t live there, people go there to take pictures and enjoy the events. Uptown has hosted concerts, car shows, and outdoor markets. And boaters can pull up to the marina and go into Real Seafood to eat or run into a shop. People walk, drive, and boat there.”

The Money Side of the Equation

Obviously, it takes serious cash and incentives to make a project like Uptown Bay City rise from the ground. The city worked on the underground infrastructure and the riverwalk connecting Uptown to downtown, while Shaheen put up the buildings. Shaheen put a lot of money into the project and the city took advantage of funding sources including brownfield tax increment financing, Michigan Business Tax credits, and EGLE and EPA grants and loans. They also took out bonds for Shaheen, with the bond payments being captured from taxes.

“We used very creative financing to make sure no general fund dollars went into the project,” said Muscott.

Beyond Uptown’s Boundaries

The true test of a successful project may be how widespread its impact is on the community. In the case of Uptown Bay City, even businesses not located within the new development are impressed with what it has done for the community.

“Watching a vacant parcel that sat there for 20-plus years turn into residential and commercial and tie themselves into downtown has been incredible to watch,” said Bruce Falcon a financial planner whose office is in downtown Bay City. “It’s refreshing to see growth come to the city and become more like bigger cities like Ann Arbor and Grand Rapids.”

Uptown has also spurred development in the surrounding area. The local YMCA moved its location next to Uptown soon after Phase 1 began. And Columbus Avenue—one of the main roads that leads into Uptown—has seen a resurgence of interest in buying buildings there to bring businesses closer to the popular project.

“When people start to see that you’re improving property, they want to do the same,” said Muscott.

And there are a host of other positive outcomes, including a ten-fold increase in the property’s State Equalized Value; more than 400 full-time jobs; and private investment expected to reach \$100 million.

Formula for Success

The city’s success with Uptown was grounded in clearly defining their vision for the site and finding a developer with the imagination, resources, and experience to turn those plans into reality. They found the ideal partner in Shaheen Development.

“The city has always been very supportive since we got the RFP,” said Warr. “We have a great relationship with all levels within the city. We’ve had great success in Phase 1 and are looking to continue that relationship in Phase 2.” 

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



The Uptown Car Show is one of many popular events that attract people from Bay City and beyond.

Tackling an Underfunded Pension System?

Bonding May Be the Answer

by Joseph Hefele

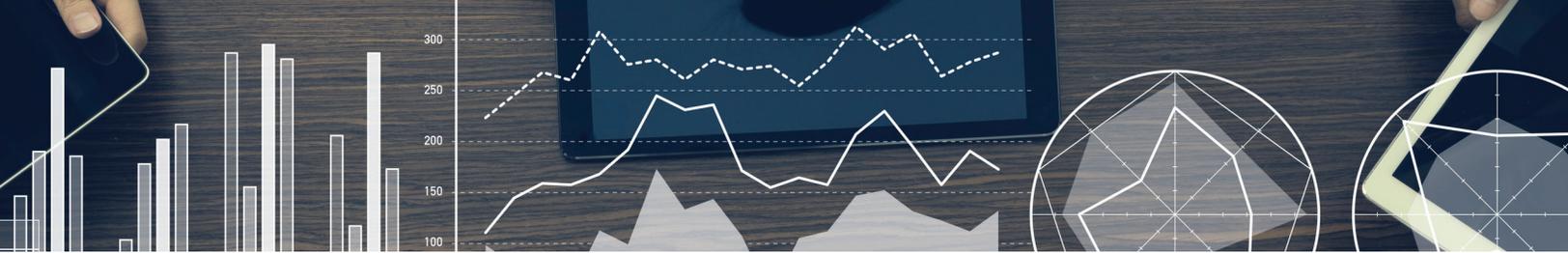


“The city was delighted to discover that such an option could save its taxpayers millions of dollars while resulting in an annual payment that allowed it to continue to offer the vital services its residents had come to expect from their tax dollars.”

The City of Rogers City, a small northeast Michigan community located along the shores of Lake Huron, was one of many municipalities experiencing an extreme financial hardship caused by an underfunded pension system. The city, with a general fund budget of \$1.9 million, had seen the annual required contribution into its pension fund climb to \$350,000, with the annual payment projected to grow to \$1 million in the not-too-distant future.

With pension assets less than 50 percent of liabilities and a total shortfall of \$6 million, city officials knew they needed to act. The State had already put them on a corrective action plan and the financial future of their community depended on it.

A few years ago, Rogers City worked with its unions on some concessions to its pension program, with the unions agreeing to an artificial cap on the final average compensation numbers used to determine retirement payouts. These concessions, while buying time to find a permanent solution, did not come close to addressing the problem itself, as some 80 percent of the city’s pension problem rested with those already retired—none of whom were impacted by changes to the current plan.



Rogers City worked extensively with its pension provider to financially understand its options—everything from closing its pension to new hires to contributing additional annual dollars. They came to the realization that none of these options was feasible. In short, it became clear that all options would result in the elimination of not only services, but entire departments, with bankruptcy a very real threat, even after those departments were axed.

One More Option

With nothing else left to consider, Rogers City officials turned their attention to bonding, reaching out to a financial advisor early on to determine what principal and interest payments might look like under such a scenario. The city was delighted to discover that such an option could save its taxpayers millions of dollars while resulting in an annual payment that allowed it to continue to offer the vital services its residents had come to expect from their tax dollars.

The concept is simple, really. The bond proceeds are invested in the pension system, erasing most of the unfunded liability. As long as the pension system return on investment exceeds the interest on the bonds, the municipality comes out ahead.

New Legislation Needed

Unfortunately, as local support grew for bonding, Rogers City came to realize that it was not a tool Michigan law provided to communities unable to meet a credit rating of at least double A. Faced with the realization that it could not meet this threshold, but that bonding was its only way out of dire financial straits, city officials began working diligently with Sen. Jim Stamas and Michigan Municipal League legislative affairs staff to change the law.



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Several trips to Lansing followed and by December 2018, new legislation was adopted by both the House and Senate and signed by former Gov. Rick Snyder. Among other things, the legislation dropped the credit rating threshold to single A.

Working with its financial adviser and bond counsel over the next several months, Rogers City took the many steps necessary to comply with the new legislation and put itself in a position to issue bonds. City officials worked with their union partners to close the pension systems to new hires, preventing additional pension liabilities. Comprehensive financial plans were drafted, discussed, and explained at public meetings. In September 2019, all the research, evaluation, and effort paid off as Rogers City closed on \$5.8 million in pension bonds, with an average annual interest rate of less than three percent.

A Brighter Future

With that sum now invested within the pension system and expected to average a return of between 5.8 and 7.3 percent during the 21-year repayment period, the city stands to save more than \$4 million while keeping annual costs manageable.

While bonding may not be the correct option for every municipality, and interest rates may not always be this low, the option was the perfect fit at the perfect time for Rogers City—providing for a brighter future that not long ago appeared hopeless. 

Joseph Hefele is the city manager for Rogers City. You may contact him at 989.734.2191 or jhefele@rogerscity.com.



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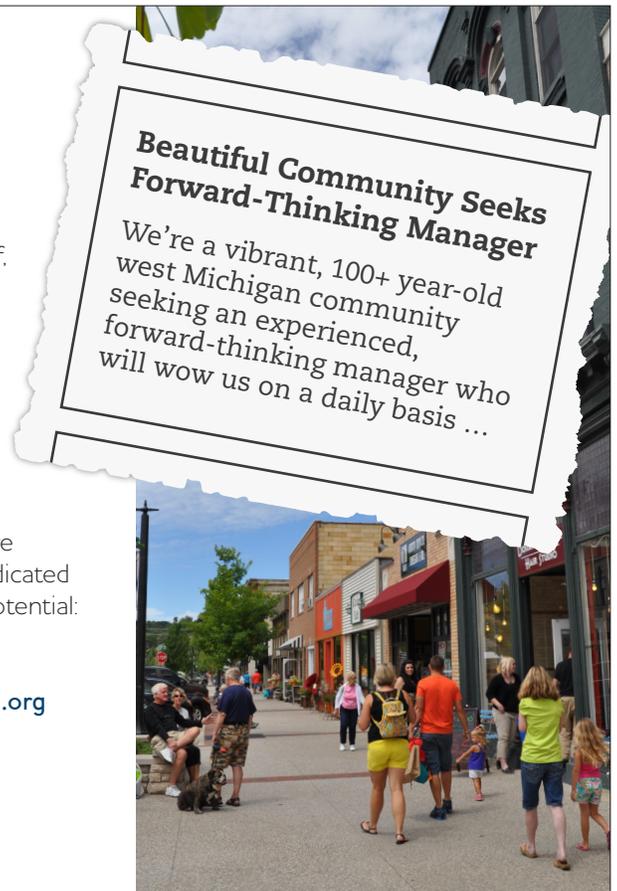
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For more information please contact Mandy Reed at mreed@mml.org

 michigan municipal league



Sue Jeffers is a legal consultant to the League. You may contact her at sjeffers1@me.com.

Claim for Unjust Enrichment Against a Governmental Body Is Not Subject to Governmental Tort Liability Act

FACTS:

Genesee County served as an administrator for certain employee health insurance plans. The Genesee County Drain Commissioner participated in this plan. After an audit by the parties' insurer Blue Cross Blue Shield of Michigan, it was determined that the collective insurance premiums, including those of the commissioner, exceeded the amount that should have been charged. A refund was made and the county deposited the money into its general fund. The commissioner demanded a proportionate share of the refund, which was refused by the county. The commissioner then sued the county for claims based in contract and in intentional tort. The trial court held that because of the six-year statute of limitations under MCL 600.5807, contract damages were limited to those that accrued after a specific date and that the claims sounding in tort were not barred by the Governmental Tort Liability Act (GTLA). The GTLA provides governmental agencies immunity from tort liability under certain circumstances. The Court of Appeals affirmed the trial court's ruling re: the contract claim but reversed with respect to the tort claim and concluded that the tort claim was barred by the GTLA.

The commissioner then amended his complaint to add an unjust-enrichment claim alleging that the county had "wrongfully and unjustly retained a portion of the refunds" belonging to him. The county asked the trial court to dismiss the unjust-enrichment claim on the basis that it was also barred by the GTLA. The trial court denied the motion and the Court of Appeals affirmed that decision. The county appealed to the Michigan Supreme Court.

QUESTION:

Does the GTLA bar a claim of unjust enrichment made against a governmental agency?

ANSWER:

ACCORDING TO THE MICHIGAN SUPREME COURT: NO The Court reviewed the history of a claim for unjust enrichment, noting that it is intended to correct the unjust retention of a benefit owed to another on the basis that a party "shall not be allowed to profit or enrich himself inequitably at another's expense." The Court noted that

the remedy for unjust enrichment is restitution and that a claimant may obtain a judgment for the amount of the wrongdoer's unjust enrichment. The Court contrasted the remedy for unjust enrichment from a tort action in which an injured party may seek damages for an injury for a breach of a legal duty and from a contract claim in which an injured party may seek damages for an injury caused by another's breach of contractual obligation. The Court stated, "Unjust enrichment, by contrast, doesn't seek to compensate for an injury but to correct against one party's retention of a benefit at another's expense." The Court made clear that a claim for restitution is a separate cause of action, independent from a tort or breach of contract. The Court further stated that the goal of a claim for restitution is not a claim for compensatory damages as in the case of a tort or breach of contract. The Court reasoned that since unjust enrichment sounds neither in tort nor contract and seeks restitution rather than compensatory damages, the GTLA does not bar the Commissioner's claim.

Genesee County Drain Commissioner v Genesee County, No. 156579 (July 18, 2019).

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League Medical Marihuana Report

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The High Cost of Providing Clean Water

By Rick Haglund

Local government officials say providing clean, safe drinking water to their residents is a top priority. “As a Great Lakes state, we want our water to be the best in the country, so we have the most stringent testing requirements in the country,” said Birmingham City Manager Joe Valentine. “I think that’s a good thing.”

But he and other municipal officials around the state are grappling with what promises to be an enormous cost to replace an estimated 500,000 lead service lines to homes in their cities, the result of a new state drinking water rule in the wake of the Flint water crisis. It’s estimated that the cost of replacing those lines, required by the new rule over the next 20 years, could cost about \$2.5 billion. That’s about \$500 million more than Gov. Gretchen Whitmer’s 45-cent-a-gallon proposed gas tax plan would have raised to fix Michigan’s crumbling roads.

This latest infrastructure crisis puts another financial burden on cash-strapped municipalities, and on residents who will likely have to foot the bill with skyrocketing water rates. “All communities want to eliminate lead and provide safe water service to their residents,” said John LaMacchia, assistant director of state and federal affairs for the Michigan Municipal League. “But what is the proper mechanism in which to pay for it? How do you deal with it at the local level?”

Stringent New Requirements

The new state lead and copper rule, adopted last year, dropped the allowable amount of lead in drinking water from the federal standard of 15 parts per billion to 12 parts per billion by 2025, the lowest in the country. The rule also requires

communities to test the fifth liter of water from the taps of homes with lead service lines, as opposed to just the first liter under the old rule.

If tap water in more than 10 percent of homes with lead service lines tested exceeds 15 parts per billion of lead, communities must take a variety of actions, including increased water monitoring and public education. Ultimately, all lead service lines connecting water mains to houses will be replaced by 2040, unless a utility can convince regulators it will take more time to replace the lines.

During an initial testing period this summer, five Oakland County communities exceeded the new state standard for lead in drinking water. Those communities were Birmingham, Hazel Park, Oak Park, Royal Oak, and White Lake. In Hazel Park, just four of 30 homes tested exceeded 15 parts per billion of lead, but that was enough to put the city out of compliance with the new rules. Communities that exceed the lead standard must replace lines at a faster pace than those that meet the standard.

Who Is Financially Responsible?

Hazel Park City Manager Ed Klobucher is highly critical of how the state implemented the new rule without offering any financial assistance to replace lead service lines, especially in low-income communities like Hazel Park. He said just one home, which experienced a water line break during the testing period, triggered additional action from his city. “No one wants to see anyone with hazardous drinking water, but this is not like Flint,” he said. “I don’t think the state thought about the ramifications of this decision all the way through.” Klobucher said Hazel Park, which must take an inventory

of its lead service lines, could have as many as 3,000 of them. The city has a population of about 16,500.

So far, the Michigan Department of Environment, Great Lakes and Energy has budgeted \$105 million to help communities with clean drinking water initiatives. The money includes a \$35 million drinking water revolving loan fund. But that's just a small drop in a very large bucket of financial liability. "Affordability is going to be a major issue," said Jim Nash, Oakland County's water resources commissioner. "Even in wealthy communities like Birmingham, there are people near the poverty level and seniors on fixed incomes."

A lawsuit filed last year by Nash and several Southeast Michigan cities and water utilities sought to overturn the rule. The lawsuit claimed, among other things, that the rule amounted to an unfunded state mandate under the Headlee Amendment of the state constitution. The other plaintiffs in the suit were the City of Livonia, Detroit Mayor Mike Duggan, and the regional Great Lakes Water Authority.

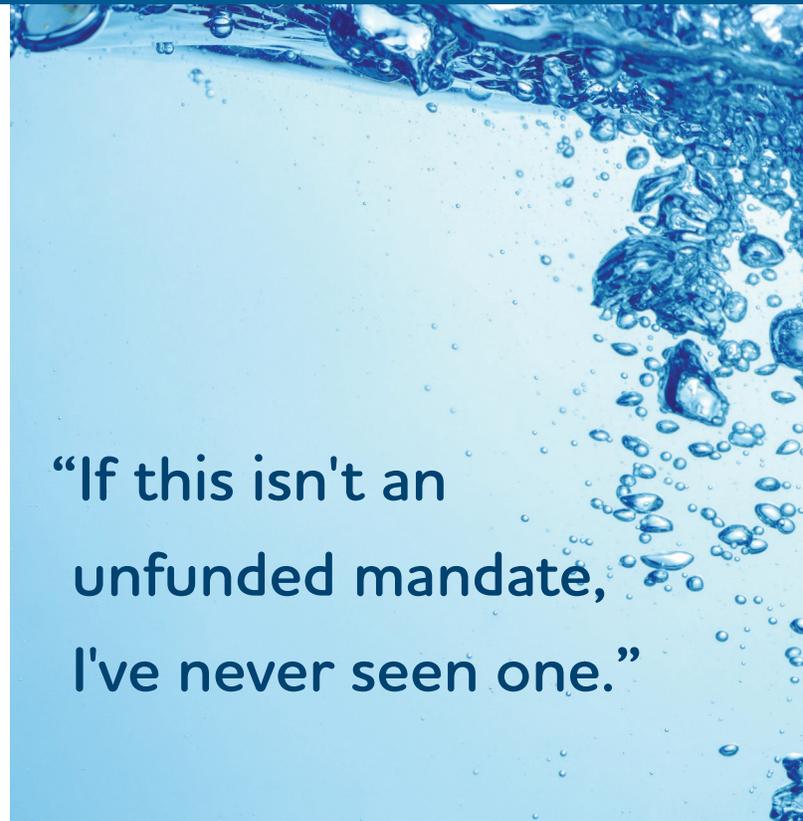
But the Michigan Court of Claims ruled in October that the new lead and copper rule was properly implemented. And it rejected the Headlee claim, saying the rule didn't amount to an unfunded mandate because cities are not required to provide drinking water to residents. That floored Klobucher. "It's an inexplicable ruling," he said. "If this isn't an unfunded mandate, I've never seen one."

Nash said the plaintiffs won't appeal the decision, but said he expects there will be litigation from ratepayers on a variety of legal issues. For example, boosting user fees to pay for lead service line replacement could be viewed as a tax under a 1998 state Supreme Court ruling and would require voters to approve them. Nash also said ratepayers with lead service lines might sue, claiming utilities don't have the legal right to enter their property and raise their rates. "It's going to happen," Nash said. "This needs to be understood by the state. If we're sued, we have to sue the state."

Klobucher and other local officials say the state needs to help communities pay for lead service line replacement. But that's going to be a hard argument to make to lawmakers, who have so far refused to appropriate sufficient funds to repair state-owned roads and who likely see water systems as a local responsibility.

Fixing the problem will be like solving "a Rubik's Cube in some ways," LaMacchia said. "We don't want to change the rule. It's about recognizing the rule is there. What are the ways we can best address it?" 

Rick Haglund is a freelance writer. You may contact him at 248.761.4594 or haglund.rick@gmail.com.



"If this isn't an unfunded mandate, I've never seen one."



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Small Placemaking Grants, BIG Impact

By Rebecca Bolen



Residents enjoy the Trout Lake Pride Gazebo.

Everyone in Michigan knows that “Up North” feeling—summer time, water, and relaxing in the outdoors with family and friends. The Upper Peninsula embodies that feeling, and every small community in it has its own variation of that familiar song. These communities all know what makes them special, however, investing in developing that feeling into physical attributes isn’t always easy with small tax bases and slowly declining populations.

The Eastern Upper Peninsula Regional Planning & Development Commission’s (EUPRPDC) 2015 regional Comprehensive Economic Development Strategy identified this challenge, and the Regional Prosperity Initiative (RPI) became a driving force behind overcoming it. Since 2016, RPI funds have supported placemaking projects throughout the Eastern Upper Peninsula.

RPI allowed regional planning agencies some latitude in implementing projects according to priorities identified locally.

The EUPRPDC and several other planning regions, used this freedom to develop mini-grants which could infuse local projects with much-needed cash support.

Mini-Grants to Jump Start Placemaking

The EUPRPDC developed the Community Development Mini-Grant program specifically to fund projects that showcase placemaking principles. Once a year, local governments, nonprofits, Downtown Development Authorities, and tribal governments submit applications for projects. A committee made up of volunteers from around the region reviews and scores applications based on accessibility, feasibility, and implementation of placemaking goals.

“We knew there were plenty of small projects that just needed an infusion of funds to make them a reality,” said EUPRPDC CEO Jeff Hagan at the onset of the program. To date, 31 small grants from \$2,000–\$4,000 each have made a big impact in over a dozen communities in Chippewa, Luce, and Mackinac Counties.

While the number of awards and available funds has fluctuated, the investment from RPI has been multiplied many times over. The inaugural awards quadrupled the \$24,000 granted to eight projects. In 2017, \$40,000 was distributed to 14 projects, which leveraged over \$80,000 in cash and in-kind match. Last year, after a very competitive review process, eight awards were made, for a total of \$20,000 granted, and over \$40,000 leveraged in cash and in-kind match.

Putting Mini-Grants to Work

The region's outdoor lifestyle generated a variety of trail and park projects which went beyond increasing recreational opportunities to further define each community's sense of place. The quality of life in our region is directly tied to the many outdoor recreation opportunities we enjoy. These awardees are all working hard to capitalize on these advantages to the benefit of residents and visitors.

- **Trout Lake Pride**—In 2016, Trout Lake Pride transformed the central intersection of Trout Lake with a gazebo and landscaping. With a legacy donation and a small grant award, volunteers quickly constructed the gazebo and planted flowers. The small park originally had a few benches and grills, but no major visual impact to identify it as a public space. Now, the park welcomes visitors and provides a peaceful place for relaxing.
- **Sault Ste. Marie Pocket Park**—In 2017, the Sault Ste. Marie DDA revitalized an empty grassy area on the main street with locally constructed picnic tables and bright, cheerful umbrellas. That space went from an awkward deadzone to a popular place for local office workers and visitors in the region to take a break and enjoy some sunshine.

The program has supported less traditional placemaking projects, which creatively enhance distinctive community traits.

- **Les Cheneaux Island Birding Platform**—This past summer, the Little Traverse Conservancy built a birding platform near the Aldo Leopold historic marker on Mackinac Bay in the Les Cheneaux Islands. While this project is located between the two downtowns of Hessel and Cedarville, the site brings together the history and natural beauty of the area with opportunities for birders to spot waterfowl and raptors common in the area.

Developing Grant Writing Skills

Another motivation behind developing this program was to help local organizations become more comfortable with grant writing. Many of our small communities do not have local

experience to bring to grant research and writing, and some found larger applications intimidating or unattainable, even if the resources were available for match. This longer-term impact has already been successful. Every year submissions have improved, and more communities feel equipped to go through the grant process.

The 2019 grant cycle closed at the end of October. Twenty-five applications requested over \$84,000. The committee worked hard to make the tough award decisions, with announcements going out in December 2019. A total of \$24,000 was granted. For more information, visit eup-planning.org/cdmgp. 

Rebecca Bolen is the Economic Development Specialist/Planner II for the Eastern Upper Peninsula Regional Planning & Development Commission. You may contact her at 906.635.1581 X118 or rbolen@eup-planning.org.



The Les Cheneaux Island Birding Platform is a great place to enjoy the area's natural beauty.

Prospecting in the Opportunity Zones Gold Rush

By Richard Murphy

Opportunity Zones—created by the federal Tax Cut and Jobs Act at the end of 2017—have all the features of a gold rush: things are moving very quickly, everybody is excited, and nobody actually knows if there really is gold in them there hills.

The best-case scenario that Opportunity Zones (OZ) have promised is a mechanism to bring investment into neglected, low-income neighborhoods, supporting local services and business development. However, because the incentive has no approval step, oversight, or even transparency for local or state governments, there's high potential for abuse. It could end up being yet another way that predatory capital investors extract value from communities already suffering from deindustrialization, racial discrimination, or both. Somewhere in between is the possibility that OZs have no significant impact, that there's very little fire under all this smoke.

The challenge facing communities is how to steer Opportunity Fund investors toward projects with true local benefit and put guardrails in place to prevent the worst—all without being able to see what, if anything, is happening with the incentive.

Where Are These Zones?

The Snyder administration had to designate a certain number of census tracts as OZs within the first three months after federal establishing legislation was passed, with very little information about the incentive or opportunity for on-the-ground input. A map of Michigan's zones is at <https://miopportunityzones.com/> and there is currently no way to add, delete, or edit zones from that map.

This means some municipalities and neighborhoods could see OZ investment (and have no way to opt out), and others never will. Many of the strategies emerging for communities to benefit from OZs do have application in other places—just without the incentive's boost to investor return.

If You've Got a Zone—What Does that Mean?

Opportunity Zones are a federal tax shelter that allows investors to avoid taxes on capital gains by investing those profits in business or real estate development in designated low- and moderate-income communities for multiple years. The greatest benefit for investors comes after 7 to 10 years of investment. The incentive was only authorized through the end of 2026, creating pressure for investors to move quickly and secure long-term investments. As a federal tax incentive, the only reporting required is between the Opportunity Fund investor and the IRS—local governments and states do not have any formal role in the process.

While most OZ investment activity so far appears to be in real estate development, the incentive targets capital investors, not developers directly. This is a point of difference from financing that targets particular development priorities, like MEDC's Community Revitalization Program (CRP) or MSHDA's Low Income Housing Tax Credit (LIHTC) allocations.

The newness of the incentive (and the suddenness with which it was created), the shot clock for investments, and the very large amount of capital that could theoretically be invested have created a lot of buzz and attention. There are several challenges this poses for municipalities, though each challenge can be addressed.



Green areas indicate Opportunity Zones in Michigan.



Rendering of the Gillespie Group's Capital City Market proposed for an area in Lansing's Opportunity Zone.

Who Is Going to Be Investing?

The OZ incentive does not apply to all investments, only to investments of capital gains within a short period of time after these gains are realized. An investor in an Opportunity Fund has to not just have a large enough capital gain to make the marginal tax benefit significant, but must be able to afford tying up those funds for as much as a decade. Most OZ investment is therefore expected to come from large-scale investors such as private equity funds, institutional pension or endowment funds, or extremely high net worth individuals—investors who tend to be looking into a community from the outside, have little connection or familiarity with the local context, and are concerned only with financial return.

Some local investors will have capital gains to use, however, and the OZ incentive could bring impact investing within reach for these investors. By moving a Main Street investment from negative return to merely below-market return, a combination of OZs and the emotional appeal of investing where they live may get some locals to bring some money home from distant and anonymous investments. One way to reach these stakeholders is by providing local attorneys and accountants, or the local community foundation, with information on the OZ incentive and potential local investments.

Make the Best Projects Easiest

While municipalities have no direct role in approving Opportunity Fund investments, they can use the tools they have available for directing any investment: local incentive policies, zoning ordinances, and capital improvements plans should provide clear and easy paths for developers and investors to do the projects the community wants to see happen. A combination of guardrails against harmful projects and incentives or promises of quick approval for beneficial ones can do a lot to steer investment.

This applies whether the project is financed through an Opportunity Fund or not—developers prefer easy projects over hard projects, so communities can use their tools to make the good projects easy. At the Michigan Municipal League's 2019 Convention session on OZs, Jill Ferrari from development firm Renovare put it bluntly: "If you're not in the Redevelopment Ready program, we're not even going to look at a project in your community."

Make the Projects Easy to Find

Another emerging best practice for Opportunity Zones is that communities should proactively market the projects they want to see happen. This has multiple purposes. Any municipality engaged in the Redevelopment Ready program will recognize the first best practice: putting your community on the map for investors who probably aren't going to find their way to you on their own. The second best practice is to keep those investors' attention on the projects that will provide the most benefit to the host neighborhood, rather than waiting to react to potentially detrimental projects. Finally, holding the local conversations necessary to identify, prioritize, and communicate those beneficial investment opportunities may trigger the interest of local investors who had previously overlooked opportunities right in their backyard.

One model for this marketing is the OZ Investment Prospectus popularized by Accelerator for America (<https://www.acceleratorforamerica.com/tools>). These documents combine community-wide economic and quality of life data, usually sourced from county or regional economic development organizations; walkthroughs of the district- or neighborhood-scale character and goals for each local Opportunity Zone; and descriptions of individual property or business investment opportunities within those zones.

In short, Opportunity Zones could be a beneficial catalyst to designated neighborhoods but could also be an example of what Jane Jacobs, author and urbanist, called "cataclysmic money," a large outside force that acts despite communities' interests rather than for them. The best defense may be a good offense in this case: getting out in front of the investors and leading them to the projects that will actually add value to our distressed neighborhoods and municipalities. 

Richard Murphy is a policy research labs program manager for the League. You may contact him at 734.669.6329 or rmurphy@mml.org.

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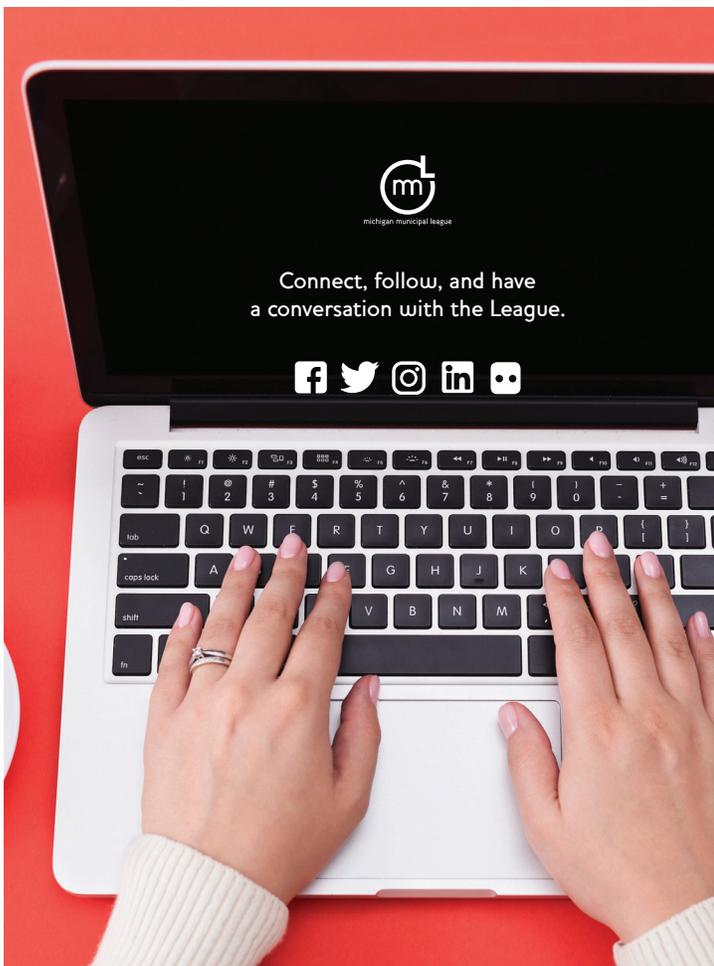
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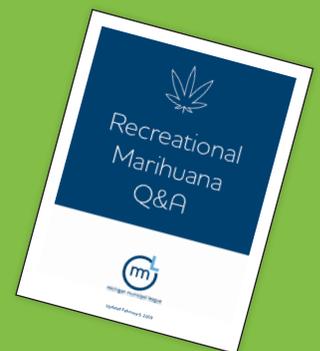
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Recreational Marihuana Q&A

Questions and answers from League training seminars and webinar.



The Q&A—plus our white paper, sample ordinances, and other resources—are available on the Marijuana in Michigan page at www.mml.org.

PUBLIC ACT 128 OF 2017 —SEPARATION RECORDS

The “Law Enforcement Officer Separation of Service Record Act” took effect January 15, 2018 requiring that former employing law enforcement agencies maintain records of the reasons for separation of a law enforcement officer. The officer has the right to review and appeal the records maintained. The officer has the right to provide a written statement relative to his/her reason for separating employment, and that statement must also be provided when his/her former employer’s separation documents are released.

A law enforcement officer seeking employment will be required to sign a standard waiver and provide the waiver to prospective employing agencies upon receipt of an employment offer. A prospective employing agency shall not hire an officer unless the agency receives the separation records.

See the League’s Fact Sheet: Police—Employment Separation Records at www.mml.org

Q. Who is responsible for putting items on the agenda for a council meeting?

A. The procedure for placing an item on the agenda is a local rule. The offices typically responsible are the clerk, mayor/president, and manager. Combinations of these offices are also common.

A typical agenda preparation provision looks like this (City of Fremont): “The City Manager and City Clerk shall prepare an agenda for each regular or special meeting of the City Council. The deadline for submitting items to the City Manager or City Clerk for inclusion on the Council agenda is 12:00 noon on the Thursday preceding the Monday of the Council meetings. Agenda items from Councilmembers should be submitted in writing by the same deadline. Depending on the complexity of the issue, and the need for any research and preparation, staff will attempt to include requested items on a meeting agenda within two meetings after receipt of the request.”

There are variations, such as for the City of Portage: “Any Councilmember, Mayor or City Manager may prepare items for consideration on the agenda of Council meetings. The Clerk shall prepare copies of the agenda of the business to be considered at each regular council meeting. No business shall be placed on the agenda by the Clerk unless received not later than 12:00 o’clock noon on the Friday preceding the meeting, except upon the approval of four (4) or more members of the Council.”

And the Village of Berrien Springs’ council rules: “The Village President, the Village Clerk and/or other responsible administrative officers or employees at the Village Hall, shall prepare the agenda or business for regularly scheduled Council meetings. Any other member or representative of committees, boards or commissions desiring to place a matter on the agenda shall notify the Village President, the Village Clerk, and/or other responsible administrative officers or employees at the Village Hall of such items by 4:00 p.m. on the Thursday preceding the next meeting. Items that the Village President or the Village Clerk does not receive by the stated deadline shall not be considered by the Council except upon the unanimous consent of the members present.”

The League has over 50 sample council rules of procedure. We can customize a search and send you samples with specific provisions. We also have sample agenda item request forms.

Q. Are emails public records?

A. Emails are public records if they are created or received as part of performing a public official/employee’s official duties. The Michigan Freedom of Information Act (FOIA) (1976 PA 442) defines a public record as “a writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time it is created.”

For more information, see the League’s Fact Sheet: Email and Retention of Records at www.mml.org.

Q. Who can swear in elected officials in a city or village?

A. City, village, township and county clerks; and judges, any notary public, and state senators and representatives can give the oath of office to municipal officials. The mayor/president, trustees/councilmembers, manager, etc. are not empowered to give the oath of office. Your charter or the Act that serves as your charter (General Law Village Act; Fourth Class City Act) will contain specifics on taking and filing the oath of office. Most municipalities use the oath of office from the Michigan Constitution. 

The League’s Information Service provides member officials with answers to questions on a vast array of municipal topics. Call 800.653.2483 or email info@mml.org or inquiry@mml.org.

Local Government Resources



michigan municipal league



By Kim Cekola

As a local government official, you have taken on a challenging role. For more than 120 years, the League has provided advocacy, education, and assistance to local officials to help them meet governance challenges. Your municipality's membership in the League provides you with access to these services, designed to help you understand your new responsibilities in local government.

Inquiry Service

The League works hard to remain out in front of new developments in local government. We provide personal research assistance and consult directly with our members each day. We supply critical information on core topics and serve as an information clearinghouse, helping to steer communities through the complexities of local governance. We have built an extensive library of sample ordinances, policies, contracts, employee handbooks, and fact sheets on key municipal topics. Any staff member or elected or appointed official in a member community may call the League for information. The inquiry service is one of the League's original services and has been used by 100 percent of our members. The most frequently asked questions relate to parliamentary procedure; requests for sample policies and ordinances; charter information; Open Meetings Act; and Freedom of Information Act. Hot topics include medical and recreational marijuana and social media.

Fact Sheets

These one-page information sheets offer a clear and concise explanation of a variety of municipal topics, and are often accompanied by sample ordinances, policies, or resolutions. In 2019, we created Fact Sheets on these breaking issues: Rental Housing Inspection Law, Remote Meeting Attendance (with sample policies), Industrial Hemp, Holiday Displays/Nativity Scenes, Gun Regulation (with sample personnel policies), and Fireworks (with sample ordinances). We have over 75 titles covering the Open Meetings Act, Freedom of Information Act, municipal liens, charter amendment and charter revision, budgeting, ethics, economic development, and the 1999 Bolt decision, to name a few.

Local Government Primers and Other Publications Handbook for Municipal Officials & Handbook for General Law Village Officials

These handbooks are essential reading material for both new and veteran elected and appointed officials, whether in cities, home rule villages, or general law villages. Topics covered include basics of public service; the structure and function of local government in Michigan; roles and responsibilities of officials; writing ordinances; running a meeting; financial operations, personnel and human resources issues, labor relations issues, and risk management. Numerous appendices cover the 1998 revisions to the GLV Act; a summary of other laws that affect municipal government; municipal Q&As, a sample budget ordinance, sample council rules, and summaries of the Open Meetings Act and Freedom of Information Act. Both handbooks are available on our website as pdfs, either as complete books or in individual chapters.



In addition, our Records Management Handbook (General Schedule #8) is the records retention schedule for cities and villages written by the state of Michigan professional archivists. It has been updated on a chapter-by-chapter basis over the last decade or so. Another book with everyday application for municipalities is Meetings: Agendas & Minutes. It takes you through typical local government practices (the ones that are a municipality's choice as a home rule entity) and statute requirements in regard to council rules.

Wage & Salary Survey

The League conducts an annual statewide pay and benefits survey of 143 municipal job titles. The survey is launched in July and the results are available in late summer. The results are available to full member communities who participate in the survey, with automatic access provided to managers, department heads, and elected officials. The data is the most comprehensive statewide public sector benchmark information of its kind. The searchable database allows users to search by position, population, and location, and perform side-by-side comparisons of results from selected municipalities. The League performs this wage and salary survey for the benefit of our member communities, and it is intended to be used by management employees, their designees, or elected officials working on behalf of member communities for official city/village/township business.

No Legal Opinion

We can provide lots of information and resources, including looking up statutes and past court cases. However, the one thing we are not permitted to do is to give legal advice. You must contact your municipal attorney if you need a legal opinion.

Contact us by email at info@mml.org or by phone at 800.653.2483. 

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



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Dearborn's Unified Dispatch Center



The City of Dearborn recently completed an innovative intergovernmental project: the creation of a state-of-the-art Unified Dispatch Center which incorporated five other communities within Wayne County (Westland, Wayne, Garden City, Inkster, and Melvindale).

As technology evolved, Dearborn looked to consolidate dispatch to maximize public safety resources while improving safety for our first responders and citizens. The timing for this project was crucial for many communities as new costs were on the horizon for infrastructure related to the enhanced 911 system. Utilizing grant funding, Dearborn was able to build out a state-of-the-art dispatch center large enough to incorporate multiple dispatch centers into a single facility.

Through this consolidation, each community benefits from having more dispatchers available to assist with emergencies; improved technology; ability to share crucial information which impacts multiple jurisdictions; and significantly reduced operating costs.

Replicability

With advancements in technology, and through the establishment of a task force of representatives from multiple city departments, the City of Dearborn was able to develop a plan to dispatch for a much larger regional area by leveraging technology and economies of scale. After consulting with experts and conducting our own research, the city developed a cost per call model which can be applied to any community.

While our project currently includes six communities, it can continue to expand utilizing the same model. The model can be applied to any Public Safety Answering Point (PSAP) throughout Michigan seeking to replicate cost savings and improved efficiencies.

Creativity and Originality

Prior to this project, Western Wayne County hosted more than 12 PSAPs. Using improvements in dispatch technology, Dearborn was able to consolidate a number of redundant PSAPs into one Dearborn Unified Dispatch Center. By seeking outside the box solutions, the city was able to provide a better dispatch service to its residents and first responders while saving costs through economies of scale and through reduction of redundancies between PSAPs.

Community Impact

The impact on Dearborn and the other five communities involved has been significant. First responders and citizens are now safer as we have more dispatchers and call-takers available in one center to handle large-scale emergencies. The project also allows public safety to rapidly share information which may have impacts on multiple jurisdictions. We have also had significant cooperation with our private sector partners, who have begun to participate in providing video feeds and information which is beneficial to the safety of our citizens. Finally, each community has reduced costs, which allows money to be spent on other important services.