

the review

March / April 2018

the official magazine of the  michigan municipal league

**Legislative Issues That May
Impact Your Community**

LOCAL GOVERNMENT RETIREMENT REFORMS

A Step in the
Right Direction?



the review

The official magazine of the Michigan Municipal League

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the review

The official magazine of the Michigan Municipal League

Volume 91, Number 2

We love where you live.

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The Power of the Collective Voice

Now in our third year, the League continues to allocate significant resources towards addressing much-needed reforms with the state's municipal finance laws through our SaveMICity initiative (savemicity.org). Working with our member communities and other local government organizations, we have been engaging in ongoing discussions, meetings, and research to develop a strong collective mouthpiece to advocate for impactful policy change with the State's financial model.

We expect our legislators to be able to make the tough decisions. Good policy comes from listening to all sides of the issue, creating task forces, having a thorough understanding of the topic, and looking at the benefits for the long-term. Certainly, each year new legislative sessions start off with feelings of optimism and a sense of earnestness. No one said it's easy making hard choices in today's political arena. We see the struggles at all levels of government. But diligent work can result in good public policy that will pay dividends for years to come.

Unfortunately, this didn't happen at the close of 2017. Following weeks of discussion, negotiations, and compromises, the Legislature passed a set of watered down OPEB (Other Post Employment Benefits) bills. I saw this as a legislative retreat from the issue of broader OPEB relief and reform representing a colossal missed opportunity, leaving many communities with an unsolvable fiscal problem. It's time to stop kicking the can down the road, stand up and make bold decisions that will have positive impact statewide for future generations.

Despite our disappointment, I want to stress that the League and its members remain committed to developing comprehensive reforms that balance the desire to manage costs while maintaining a quality municipal work force. It can be done. We will continue to advocate for real change. The citizens of Michigan deserve it. I applaud the indefatigable work of the League's Director of State and Federal Affairs, Chris Hackbarth, Deputy Director Tony Minghine, and Director of Communications Matt Bach, who will continue to press forward to get the changes needed to provide a more sustainable future for our communities.

Our advocacy efforts underscore the critical necessity of having our members involved. When each of your individual voices are heard, this adds to the collaborative will to make a significant difference. Legislators need to hear directly from you if we are going to develop well thought-out policies that will directly impact your community not only for today, but for years to come.

If you haven't made plans to attend the League's annual Capital Conference, I hope reading this persuades you to do so. We need you there! This is a yearly event that allows you to meet your legislators face-to-face, and network directly with other communities who have similar concerns. A broad range of topics relevant to all communities—big and small—will be up for discussion. It will include a comprehensive legislative update from the League's advocacy team, as well as dialogues around municipal finance reform, medical marijuana, infrastructure, smart cities, and more. Don't miss this opportunity. We look forward to seeing you there!



Daniel P. Gilmartin
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COMMUNICATING DURING A CRISIS

By Hannah Jones and Shanna Draheim



“As communities continue to face ever-evolving public safety challenges, it is important to be deliberate in thinking and planning for how to communicate with residents.”

On June 12, 2016, a man walked into Orlando's Pulse nightclub carrying an assault rifle and a handgun. He began shooting into the crowd of over 300 people, ultimately killing 49 and injuring 58. It was the worst mass shooting in American history at that time. Within minutes of the shooting, the Orlando Police Department (OPD) was on the scene, and over the next few hours relied on their adopted crisis management plan to communicate among public safety officials, with people in the nightclub (including the shooter), and with the public. Their use of social media—specifically Twitter—to share information with the public helped maintain calm in the community and avoid misinformation.

Has Your City Planned for the Worst?

Local governments communicate with their constituents regularly about municipal services and facilities, community events, policy changes, and other current events. This communication takes many forms, and is increasingly reliant on technology-based communication tools.

But what happens when communities are faced with an emergency? Are municipal systems able to effectively communicate information, ensure calm and stability, and create trust with their constituents? While none of us likes to think about the possibility of a disaster in our community, crisis management is an increasingly important part of public safety and communications strategies.

The Michigan Municipal League has been exploring how cities communicate during natural disasters, civic unrest, crime, terrorism or other crises to identify lessons communities can learn from their peers. We reviewed over a dozen examples from across the U.S., including short-term events such as the Orlando nightclub shooting and the September 11 attacks, as well as multi-day (or longer) events, such as the Baltimore riots and the 2017 flooding in mid-Michigan.

While each community is different and warrants a crisis communications approach that meets the needs of its residents and businesses, there are some strategies that have consistently made an impact on whether crisis communications are successful. Some key lessons the League has identified include:

- **Create a Crisis Communications Plan in Advance**
Pre-establishing a crisis communications plan, and training staff on those strategies, improves crisis response by ensuring the use of the right tools, better utilizing staff time during critical moments, and reducing confusion and misinformation with the public. The City of Orlando, for example, had a strong communications response to the Pulse Nightclub shooting because they had an existing crisis communications plan that was based on the needs

of their community demographics (over 60 percent of Orlando's population is under the age of 40, so they had pre-determined that Twitter would be a good method of real-time communication). Most importantly, the city practiced their plan in simulation drills so that during the actual crisis the response team operated smoothly.

Advanced planning also helps communities identify technology or other communications limitations, such as power outages or technology issues. During the San Diego wildfires, for example, the county had trouble communicating with responding firefighters from other jurisdictions because of radio incompatibilities. This resulted in a less effective response, and put both residents and responders in greater danger.

Local governments may also need to utilize other resources and volunteers during or after an emergency event. For example, since the 9/11 terrorist attacks New York City's emergency plan includes a list of volunteers with "essential skills" who can be called upon to help with things like traffic control, ferry landings, and assisting vulnerable citizens during a crisis situation.

- **Designate a Single Point of Contact for Communications**

Designating a specific point of contact for working with the incident command and communicating with the public helps reduce confusion and ensure that accurate and timely information is shared. During the September 11 terrorist attacks, then-New York City Mayor Rudy Giuliani was the primary spokesperson during press briefings, utilizing others to give technical updates or additional information as needed. While the state and Governor Pataki were involved and present, the mayor was the communications point person, which helped limit conflicting information and build trust with the community.

- **Provide Timely Updates**

While it may seem obvious, providing timely information to the public and media decreases the opportunity for rumors and misinformation to spread via social media and other outlets. During the Pulse Nightclub shooting, the OPD needed to create an explosion to gain entry to the club. They immediately tweeted what they had done and asked the public not to panic or block emergency phone lines reporting the explosion.

Conversely, during Hurricane Katrina public officials in New Orleans did not provide timely information to the public on storm impacts and emergency resources available, and there was insufficient information sharing between government agencies. The result was days of chaos and danger for residents.

- **Clear and Consistent Messaging is Essential**


Articulating a clear and consistent message is one of the most important parts of communicating during a crisis. Cities that focused on crafting and delivering easily understandable messaging during a crisis, and consistently repeating essential communication points, were more successful in reducing further danger, calming public fears, and managing the chaos of crisis situations.

For example, the mid-Michigan counties impacted by severe flooding in 2017 coordinated on messaging and information for their constituents on road closures, water damage, emergency services and response, and ultimately clean-up efforts. Each unit of government then made that information available through their own tools such as dedicated websites, Facebook, or emergency notification systems such as Nixle.

- **Engage with Media on Emergency Communications Planning**

Attention from the media during emergencies can be both helpful and harmful to the city's response. On one hand, the press can help relay important information to the public. On the other, they may contribute to panic by releasing incomplete or inaccurate information or even

hinder emergency response with their presence. For example, during a massive fire in Grand Forks, North Dakota, there were so many media helicopters in the air that the fire department could not use their own helicopters to fight the fires from the air. Communities can avoid these issues by working with the media in advance and including them in the city's official emergency communications planning process.

As communities continue to face ever-evolving public safety challenges, it is important to be deliberate in thinking and planning for how to communicate with residents. Crisis events are chaotic, and rapidly changing technology means social media and alternative news sources often compete with official information (and misinformation). Deploying some of the best practices described above can help ensure that communities have an effective emergency response, protect public safety, and maintain trust with residents. 

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Michigan's Medical Marijuana Emergency Rules

By David Harns



The emergency administrative rules for the medical marijuana industry were signed and released by Governor Snyder on December 4, 2017. These 33 pages of 51 rules provide the operational framework for the Department of Licensing and Regulatory Affairs (LARA) and the Bureau of Medical Marijuana Regulation (BMMR) to ensure the integrity of the operations.

These emergency rules are valid for six months and may be renewed for another six months, if necessary. LARA—in consultation with the Medical Marijuana Licensing Board (MMLB) and the Marijuana Advisory Panel (MAP)—has started the process for promulgating permanent rules, which will be more detailed and will provide the permanent regulatory framework moving forward. The permanent rules will go through the administrative procedure for the rule-making process that will include a public comment period and public hearings.

The entire set of emergency rules can be found on our website at www.michigan.gov/bmmr. Here is a closer look at some of the rules that might be of interest to local municipalities.

Rule 5. Application requirements; financial and criminal background

Before an applicant is granted a medical marijuana state operating license, they will be thoroughly vetted by BMMR. The applicant—as well as any officers, directors, and managerial employees of the applicant and any persons who hold any direct or indirect ownership interest in the applicant—will go through a financial background and full criminal history background check.

While the municipality certainly has the right to investigate an applicant's finances, regulatory compliance, and criminal history before giving local approval, it will most assuredly be duplicating the exhaustive work that will be done at the state level.

Rule 9. Pre-licensure investigation and proposed marijuana facility inspection

Before an applicant is issued a state operating license, they must first submit to a physical inspection and examination to ensure the safety, security, and integrity of the operation of the proposed marijuana facility. This inspection and examination is done at the state level, through the department's investigators, agents, auditors, or the state police. Before a business may open, the applicant will be required to submit a certificate of use and occupancy and proof of a fire safety inspection. A final inspection will be completed by BMMR and—depending on the jurisdiction—municipalities may play a role in determining compliance with any local ordinance or building permit inspection.



Rule 19. Temporary operation; limited circumstances; conditional

Some municipalities have allowed marijuana facilities—that would require licensing under the MMFLA—to temporarily operate while their owners seek licensure from the state. This is not a barrier to licensure if the municipality in which they are operating has adopted a previous medical marijuana ordinance and/or an ordinance that complies with section 205 of the MMFLA.

This temporary operation is not a permanent solution, though, as applicants continuing operation have a deadline of June 15, 2018 to obtain licensure under the MMFLA, which includes operating under an ordinance under section 205 of the MMFLA. If your municipality has not authorized temporary operation already, then there is no deadline by which you need to opt in to the MMFLA.

Rule 22. Stacked license

If an applicant has already been issued a Class C grower state operating license—which allows them to grow up to 1,500 marijuana plants in their facility—they may also apply to stack additional Class C licenses at the same marijuana facility, as long as they pay a separate regulatory assessment for each state operating license. This is the only marijuana facility license that may be stacked.

Rule 24. Operation at a same location-grower, processor, and provisioning center

Any combination of growers, processors, and provisioning centers may operate as separate marijuana facilities at the same location as long as the local municipality allows it. Co-located facilities do not necessarily need to be owned by the same licensee, but BMMR must authorize any proposed same-location operations and they must not be in violation of any local ordinances or regulations. If local regulations require it, additional inspections and permits may be necessary for local or state building inspection, fire safety, and public health standards.

BMMR has had many inquiries on this part of the rule: “The municipality shall not limit the type or number of marijuana facilities under section 205 of the act or prohibit the operation at the same location by local ordinance or zoning regulations.”

To clarify, this sub-rule only applies in this context, in relation to the co-location of licenses. The intent of this sub-rule is that the co-location permitted by state rule must not conflict with the local ordinance. Example: If a municipality does not allow for grower licenses to operate in the business district—but it does allow for provisioning centers to operate there—this rule cannot be used to force a municipality to allow a grower to co-locate with the provisioning center in the business district.




“Here is a closer look at some of the rules that might be of interest to local municipalities.”

Rule 26. Building and fire safety

An applicant’s proposed marihuana facility or a licensee’s marihuana facility may be subject to inspection by a state building code official, state fire official, or code enforcement official to confirm that no health or safety concerns are present. Applicants and licensees must comply with the Stille-DeRossett-Hale Single State Construction Code Act and may not operate a marihuana facility unless a permanent certificate of occupancy has been issued by the appropriate enforcing agency.

A marihuana facility may not be operated unless it has passed preclosure fire safety inspection by the Bureau of Fire Services (BFS). The department or the state fire marshal may conduct a BFS fire safety inspection of any marihuana facility at any reasonable time to ensure compliance with the national fire code.

Rule 42. Marketing and advertising restrictions

BMMR has set a baseline regarding marketing and advertising for medical marihuana facilities. Local units of government may be more restrictive if they choose. At the state level, a licensee is prohibited from advertising marihuana products where the advertisement is visible to members of the public from any public place. All marihuana products must be marketed or advertised as “medical marihuana” for use only by registered qualifying patients or registered primary caregivers and must not be marketed or advertised to minors aged 17 years or younger. 

David Harns is the public information officer for the Bureau of Medical Marihuana Regulation, within the Michigan Department of Licensing and Regulatory Affairs. You may contact him at 517.373.9280 or HarnsD1@michigan.gov.



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Mr. Shifman is aided by 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 J. 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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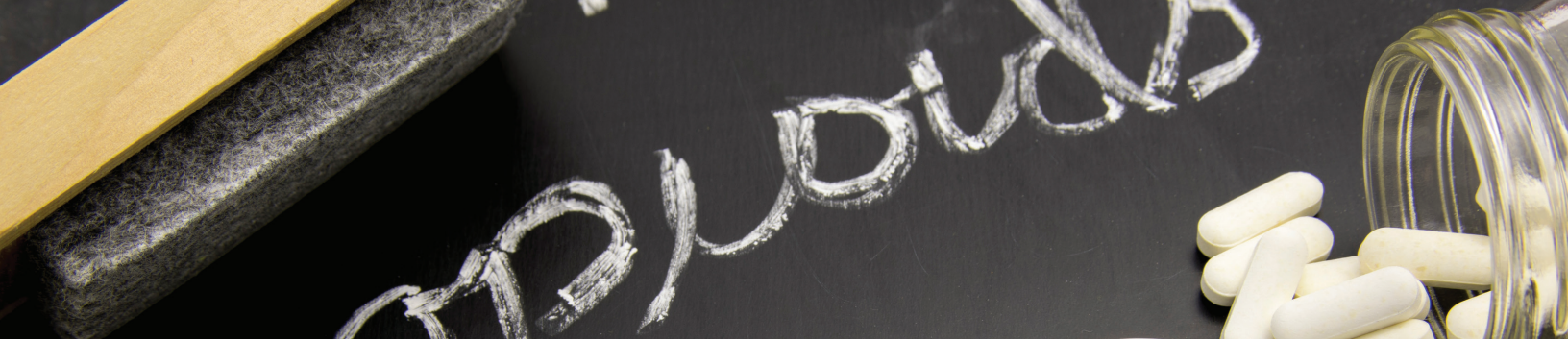
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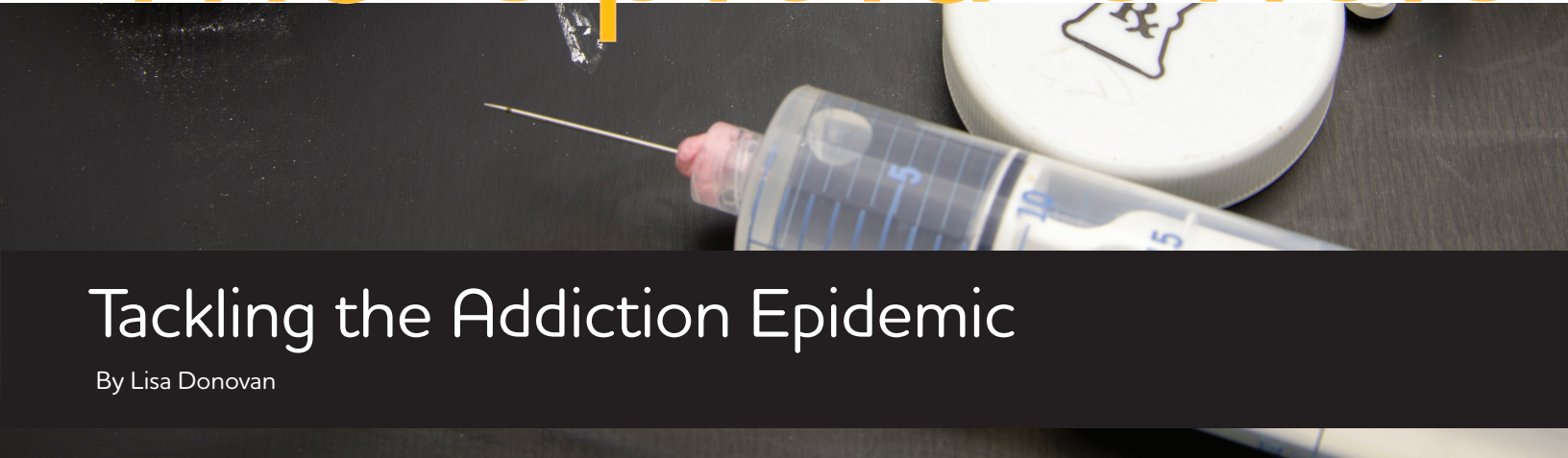
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The **Rx** opioid **Rx** Crisis



Tackling the Addiction Epidemic

By Lisa Donovan



Michigan ranks 10th nationally in per capita prescribing rates of opioid pain relievers. **Michigan ranks 18th in the nation for overdose deaths.**

The blare of police sirens racing to the scene of an opioid overdose has become alarmingly common in the United States. The numbers clearly show that the opioid problem has reached epidemic proportions. In 2015, 33,091 people died from overdosing in the U.S. That same year, Michigan experienced its third straight year of record drug overdose deaths, many of which are attributed to opioids. Deaths from drug overdoses reached 1,981 people, a staggering increase from 455 in 1999.

Each of these statistics represents a person—a mother, father, sister or brother—whose life has been forever altered by opioids. The numbers also paint a picture of dire consequences for their families and the communities where they live.

“A huge, huge financial burden is being carried by cities, townships, and states,” said Christopher Dore, a partner with the Edelson law firm in Chicago.

“**It all stems from pharmaceutical companies putting products on the market that they know are addictive.**”

How Did We Get Here?

Opioid drugs have existed for a long time. But a decade ago, large pharmaceutical companies began an aggressive marketing push to doctors, promoting opioids as effective, non-addictive medications for a wide variety of pain situations. But in fact, they are very addictive.

“That led to people unknowingly becoming dependent on these medications,” said Marci Scalera, director of clinical and SUD services for the Community Mental Partnership of Southeast Michigan. “After about two weeks of continued use, your brain starts to have physiological changes. Then your brain starts looking for the drug, and experiences intense cravings and withdrawal.”

That dependence often leads to another dangerous situation. When people can no longer get opioid prescriptions refilled by their doctor, they turn to pill mills—unscrupulous doctors willing to write the prescriptions—or street drugs like heroin.

What Can We Do About It?

There is no easy answer, but Scalera champions a three-pronged approach to get the opioid crisis under control:

1. **Prevention**—change doctors’ prescribing practices and educate consumers about pain medications.
2. **Treatment**—assist people who are currently dependent, including overdose prevention and rescue.
3. **Drug trafficking**—deal with illegal trafficking of opioids.

The State of Michigan took another step toward reining in the opioid crisis when Lt. Gov. Brian Calley signed a new law into effect in Dec. 2017. The new law limits the amount of opioids that can be prescribed; requires a “bona-fide” physician-patient relationship to dispense drugs; and requires those being treated for an overdose to receive information on substance abuse services. Health providers will also be required to use the recently upgraded Michigan Automated Prescription System, effective in June.

“By requiring doctors to look at the MAPS when prescribing, they can see if the patient is doctor shopping or misusing prescriptions,” said Scalera. “Likewise, there are algorithms that can identify a doctor who is prescribing a lot of drugs—unusually large amounts—which may mean they are a ‘pill mill.’”

Legal Response

Many believe that the current opioid epidemic is similar to our country’s tobacco crisis in recent decades. “It all stems from pharmaceutical companies putting products on the market that they know are addictive,” said Dore. “And they’ve done nothing to stop the mass distribution of pills.”

This situation has created major financial burdens for local governments. The more obvious burdens are the costs associated with police and fire personnel responding to overdose calls, as well as the Narcan they use to temporarily reverse the effect of opioids. One dose of Narcan typically costs \$2,000. More indirectly, municipalities face challenges with increased crime, a market for illicit drugs like heroin, and hard costs paid by local governments for treatment, long-term disability, paid leave, and more.

In response, several Michigan communities have joined forces against large pharmaceutical companies. In December 2017, Detroit, Lansing and Escanaba, as well as the counties of Macomb, Genesee, Saginaw, Grand Traverse, Delta, and Chippewa filed a lawsuit in U.S. District Court. They accuse the pharmaceutical giants of predatory practices, downplaying the negative effects of opioids, and lobbying doctors to over-prescribe to patients. They also demand that these companies be held accountable for the resulting epidemic. Earlier in the year, Oakland and Wayne counties filed a similar lawsuit.

“The epidemic has placed a huge burden on municipalities, so it’s important that they have a seat at the litigation to get the best settlement,” said Dore, whose law firm is working with communities in Michigan and other states that are considering filing suit.

Local Programs

Michigan communities have developed a variety of approaches to deal with the opioid crisis and—most importantly—save the lives of their residents.

Washtenaw County

Washtenaw County employs a collaborative approach based on the Project Lazarus Model. Project Lazarus, started in North Carolina in 2007, is a public health model based on the twin premises that overdose deaths are preventable and that all communities are responsible for their own health.

Some of the programs that have been put into action in Washtenaw County include providing Narcan to police officers, and training staff in libraries and other public places to use it on overdose victims; providing Big Red Barrels for safe disposal of unused prescription medications at police and sheriff’s offices; and adoption of the same, safe policies for prescribing pain medications at local hospital emergency rooms.

“We’ve gained huge ground in that we’re working very collaboratively in our region, partnering with law enforcement, universities, and researchers; providing training on overdose prevention, and reaching out to addicts,” said Scalera. “It takes a community effort.”



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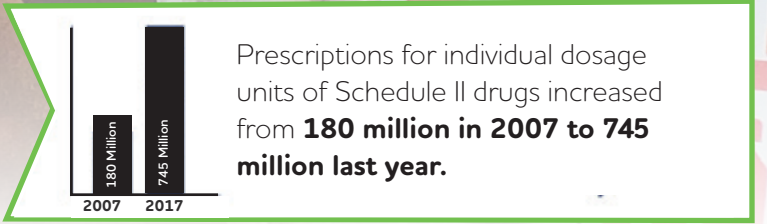
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City of Monroe

As the City of Monroe Police Department saw overdoses and deaths rise, so did their desire to do more for their community. Administrative Lieutenant John Wall began by borrowing a drug policy from Washtenaw County and modifying it to suit Monroe's needs. Then he trained his officers in the use of Naloxone, a generic version of Narcan. Every officer now has their own Naloxone kit, and it gets replaced as soon as they use it. Monroe's policy has a provision enabling officers to take an overdosing person into protective custody if they refuse to go to the hospital, but they have yet to exercise it.

Since August 2016 when Monroe's drug policy went into effect, the police department has saved 40 lives with Naloxone.

"Any one of these could have been a potential death, but quick intervention saved a life," said Wall. "We see it as a chance to get people the help and resources they need."

Grand Rapids

The Grand Rapids Red Project takes a little different approach. The Red Project began as an HIV prevention organization in 1998, so they've long had an active relationship with local drug users. Since 2008, they have been giving Narcan to the people they consider the real "first responders"—family members, friends, or people using drugs with the overdosing person. Initially, the Red Project had to rely on local physicians to provide them with Naloxone to distribute. But legislation introduced in 2014 allowed Narcan to be prescribed to anyone.

"It's great because we can get it into the hands of the people most likely to witness an overdose," said Brandon Hool, overdose prevention program manager.

The Red Project has given Narcan to more than 4,000 people, resulting in 700 reversals.

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



Escanaba Wins ‘Dark Store’ Taxation Appeal

By Stephanie Simon Morita

The saga of Menards’ 2012, 2013, and 2014 property tax dispute with the City of Escanaba continues. Currently, the parties are back before the Michigan Tax Tribunal (MTT) for the taking of additional evidence and a determination of value. Both parties are also represented by new counsel in the MTT, with their appellate counsel taking over in the current MTT proceedings.

Previously on May 26, 2016, the Court of Appeals reversed the MTT and sent the case back to the MTT after it found the MTT committed an error of law, “when it rejected the cost-less-depreciation approach and adopted a sales-comparison approach that failed to fully account for the effect on the market of the deed restrictions in those comparables.”


Specifically, the Court of Appeals required and permitted additional evidence to be presented to the MTT when it wrote: the tribunal shall take additional evidence with regard to the market effect of the deed restrictions. If the data is insufficient to reliably adjust the value of the comparable properties if sold for the subject property’s HBU [highest and best use], then the comparables should not be used. The tribunal shall also allow the parties to submit additional evidence regarding the cost-less-depreciation approach.

The Oct. 20, 2017 Michigan Supreme Court decision not to grant Menards’ request for leave to appeal the Court of Appeals’ decision effectively upheld the Court of Appeals decision.

Subsequent to the Supreme Court’s decision to deny leave to appeal, the MTT issued an order appointing a three-judge panel to hear the case, consisting of Judge Abood (the original judge and “at-large” MTT member), Gadola (attorney MTT member) and Marmon (attorney MTT member). The parties were then ordered by the MTT, on November 20, 2017, to brief “whether the Court of Appeals’ decision provides the parties with an opportunity to file additional valuation evidence, as opposed to merely revising and supplementing the previously filed evidence.”

Briefs were due to the MTT on this issue on Dec. 28, 2017. Menards, in its brief, argued that the parties should be allowed to present entirely new evidence including a new appraisal prepared by a new appraiser. Essentially, Menards has argued that it should be able to completely re-litigate the case. Escanaba, on the other hand, argued that the MTT cannot exceed the scope of the Court of Appeals remand order, and that the MTT is limited to determining the impact of the deed restrictions on the sales comparables as contained within Menards’ original appraisal. Escanaba also argued that, while the introduction of new information related to the appraisal is limited, the MTT has been ordered to take additional evidence as to the cost approach. Escanaba, as compared to Menards, has argued in favor of a much more limited approach to the introduction of new evidence, which also encompasses reconsideration primarily of already existing evidence.

“Whether and when this matter proceeds back to trial, and to what extent, remains to be seen.”

An in-person status conference occurred on Jan. 11, where the parties discussed their briefs, submission of evidence in advance of the hearing, and hearing dates. From the transcript of the hearing, it appears the parties have agreed that new complete appraisals will not be submitted and that evidence will be limited to determining the impact of the deed restrictions on the sales comparables, and the submission of cost less depreciation approaches for purposes of valuing the property. While the parties discussed a six-month time frame for the submission of cost less depreciation approach evidence, no formal dates had been set at the time this was written and a formal ruling from the MTT was still pending. Concurrently, there have been press reports that the parties have engaged in non-productive settlement discussions. Whether and when this matter proceeds back to trial, and to what extent, remains to be seen. 

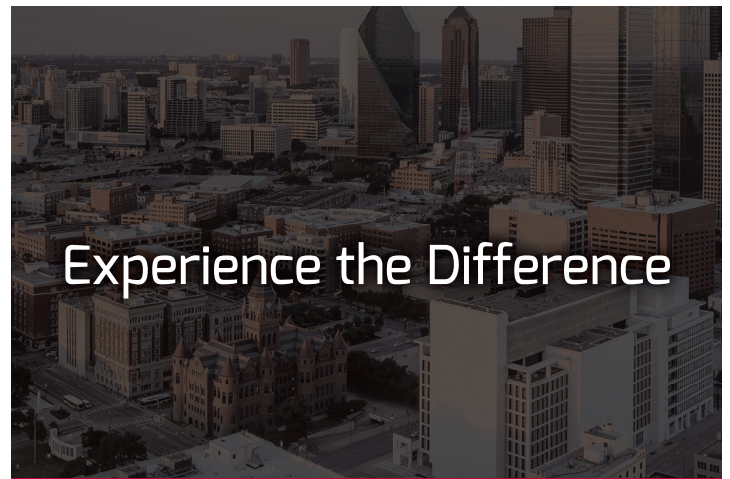
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COMPATIBLE ADVOCACY GOVERNANCE

By Steve Duchane & Sara Kandel

As interest in joint service and collaborations between local units of government increases, public administrators must find ways to move beyond traditional models of governance to high-efficiency and sustainable communities.

Elected officials can be loath to embrace a systematic change that requires the representation of multiple interests outside statutory lines, but in many cases the benefits outweigh the risks, and the risks that do exist are easily negated with proper research, analysis, and planning.

In Michigan, a funding crisis that left most cities with reduced capacity spurred the most recent push for shared service agreements, joint purchasing, and collaboration. The same holds true across the country, where the desire to leverage resources and reduce costs is the predominate reason communities pursue cooperative agreements.

The benefits of collaborating aren't limited to municipal governments. Public organizations across the board look to joint agreements to reinforce accountability; establish compatible policies; eliminate duplicate services; and better understand and respond to complex social issues.

Cooperative agreements have many benefits, but they aren't right for every community.

Determining the Value

The desirability of cooperative effort among governments depends upon the activity under consideration; the size of the jurisdictions; probable economies; and issues of home rule. Several other factors go into the feasibility of joint partnerships, including the initial makeup of the governing body, which is often debated and a prime focus of energy. The advantages and disadvantages of cooperation vary for each community and what may be appropriate in one government may be inappropriate in another.

Each government should consider its particular set of circumstances when weighing the possibility of entering into cooperative agreements. Through collaborative service sharing, governments may save money and maintain services that have insufficient revenue. Where cost reduction is not immediate, programs and services can see improved efficiency and lower administrative burden. On the other hand, the result may be a transfer of challenges to the new unit, which ends up facing the same issues that were faced by each city prior to the cooperative agreement. That can be the case in areas predominately funded by dying property tax revenue. In those areas, even the units with a new millage authority are still taxing the same reduced property values.

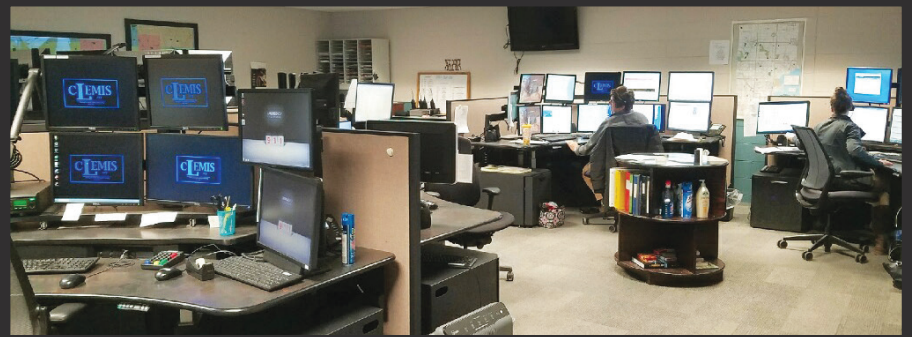
Because benefits are not a given, it's important for communities and organizations considering collaborations to research the success of similar ventures—both in their geographical area and in the type of service or program for which they plan to enter into a joint agreement. In addition, each organization involved should perform a survey of resources, economic climate, requirements, public opinion and expectations, and analyze the data that results before committing to a cooperative agreement.

Planning for Success

Once it has been determined that a collaboration will allow for the maintenance or improvement of a service or program, and that the collaboration is in the best interest of the organization and the people it serves, the success of the collaborative effort hinges on the quality of planning.

Communities should adopt an initial policy support position to clearly recognize joint partnerships as part of the service culture of the organization. They should also make it clear to all stakeholders and personnel that any service done collaboratively is done not as a challenge but as an


“...collaborations among local units of government have the potential to improve programs and services, reduce costs, eliminate waste, and improve quality of life.”



The call center operated by the Southeast Regional Emergency Services Authority (SERESA) provides 911 dispatch services. Photo courtesy of SERESA.



Photo courtesy of Recreational Authority of Roseville and Eastpointe (RARE).



extension of the objectives of the initiating unit and to encourage respect and value for the collaborative agency.

These policies should grant the new unit the authority to conduct business and make decisions; clearly define best practices guidelines, objectives and the purpose of the collaboration; institute practices that ensure transparency and openness between the organizations served; provide specialized training in multi-role governance ensuring that the skill set that encourages compatible advocacy effectiveness is developed; share the achievements and challenges with the originating and partner agency openly; and provide for equal representation in the governance of the new unit.

Once formed, collaborations among local units of government have the potential to improve programs and services, reduce costs, eliminate waste, and improve quality of life. A case in point is one Michigan community, where joint agreements and collaborative authorities made it possible to maintain public safety services, continue recreation programs, and plan for the future, despite extreme losses in revenue.


Case Study in Successful Collaboration

In 2008, Eastpointe, Michigan was facing a major funding crisis. Property values, the city's predominate source of revenue, plummeted almost overnight. Making the situation worse, new state policies were going into effect that would reduce revenues even further. It was a bleak time. Even with a severely trimmed down budget, if something didn't change, the city's ability to provide basic services would be compromised in less than two years.

With the direness of the situation in mind, Eastpointe embarked on four different collaborative ventures with

different partners in hopes of maintaining services and reducing costs.

- Southeast Regional Emergency Services Authority (SERESA) is a collaboration between Eastpointe and two neighboring communities to provide 911 dispatch services under state law PA 57 of 1988.
- South Macomb Oakland Regional Services Authority (SMORSA), established under the same law, made it possible for Eastpointe and a similarly sized nearby community to not only improve public safety levels, but guarantee them into the future.
- Recreational Authority of Roseville and Eastpointe (RARE), established under state law PA 321 of 2000, allowed both communities to continue recreation programs. Established under the same law,
- Sanitary and Solid Waste Disposal Authority, established under the same law, is an effort by Eastpointe and five local cities to reduce costs and increase efficiency.

All together, these initiatives reversed the city's balance sheet by \$4 million. 

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Modernizing Local Policy to Support Connected Communities

By Mark Rambo

Michigan communities are experiencing a significant influx of requests to install small cell wireless technology and distributed antenna systems (DAS) within their public rights of way. This new technology presents challenges and opportunities for communities as public demand for wireless connectivity is on the rise.

Understanding the Technology

A small cell is a relatively “small” low-powered cellular node that independently adds speed and capacity to existing cellular networks. Similarly, a Distributed Antenna System adds speed and capacity through a network of many connected nodes.

The deployment of small cell technology and DAS is quickly progressing to keep pace with increasing mobile devices, streaming video services, and the future data needs of autonomous vehicles.

Cisco reports that global mobile data traffic grew 63 percent in 2016 and has grown 18-fold over the past 5 years. Cisco also claims that mobile data traffic will grow at a compound annual growth rate of 47 percent from 2016 to 2021. The Small Cell Forum’s December 2017 Small Cell Market Status Report demonstrates that densification has already begun in today’s Long-Term Evolution networks and will intensify in the 5G era. The report also forecasts that

An Advanced Communication Data (ACD) employee installs a new small cell. Photo courtesy of ACD.



“Our model emphasizes collaboration, which speeds deployment and preserves local stewardship of the public right of way.”

between 2015 and 2025, new non-residential small cell deployments will grow worldwide at a compounded annual rate of 36% to reach almost 8.5 million. Additionally, by 2025, deployments will be 22 times higher than they were in 2015.

Current Regulatory Environment

At present, there is no state or federal legislation that specifically regulates small cells or DAS in public rights of way (ROW). In Michigan, the Metropolitan Extension Telecommunications Rights-of-Way (METRO) Act regulates telecommunication facilities; however, it expressly provides that poles, supporting structures, antennae, and ancillary equipment are not considered “telecommunications facilities” for purposes of the Act. Thus, obtaining a METRO Act permit does not entitle a telecommunications provider to install small cell or DAS infrastructure in the public ROW. Currently, communities have the ability to establish their own approval process for this technology.

As this article was being drafted, Michigan Senate Bill 637 of 2017 was under review by the Senate Energy and Technology Committee. SB 637 would enact the Small Wireless Communications Facilities Deployment Act and would significantly cap fees and local influence over the installation and operation of these facilities in the ROW.

The bill is backed by the telecommunications industry but local communities believe it is missing the vital conversation and compromise necessary to balance the interests of the public and private parties involved. Of significant concern is the broad definition of a collocation. Local communities are pushing for small cells to be collocated on existing facilities to reduce the number of new poles being installed in the ROW.

The Grand Valley Metro Council (GVMC) DAS Consortium, Michigan Municipal League, and Michigan Townships Association have proposed amendments to this legislation and collectively agree there should be reasonable and consistent regulation of DAS/small cell wireless facilities across Michigan communities. The proposed amendments draw from the model process developed by the GVMC DAS Consortium over the past two years.

Modernizing Local Policy

The GVMC is a council of governments dedicated to enhancing the quality of life of the people in West Michigan through collaboration among regional partners. In early 2016, many GVMC member communities received applications for DAS/small cell wireless facilities. Some were approved inadvertently under the METRO Act or under electrical permits,

A small cell in service. Photo courtesy of Advanced Communication & Data.

while many were denied or put on hold because it was an unknown technology.

In response, GVMC facilitated the formation of the GVMC DAS Consortium to further investigate this technology and attempt to establish a uniform and collaborative regulatory process for DAS/small cell wireless facilities.

The consortium's objectives were to be business friendly, create regional consistency, be good stewards of the public right of way, recognize the need for increased cellular capacity, and recognize individual community nuances.


Nineteen public entities financially backed this initiative. From that group, an ad hoc work group was established, comprised of the City of Kentwood, City of Wyoming, City of Coopersville, City of East Grand Rapids, Plainfield Township, Alpine Township, Cascade Township, Village of Middleville, Kent County Road Commission, and the Grand Valley Metro Council. This team was strategically selected to cover a broad range of stakeholders.

Advanced Communication & Data (ACD), Mobilitie, and Verizon were invited to discuss their technology and share their input on the proposed process, documents, fees, and approach. These telecommunication agencies were actively pursuing DAS/small cell wireless installations in West Michigan and brought valuable insights to the process.

The final deliverables created by the consortium included a model ordinance, model license, and fee schedule for DAS/small cell wireless facilities. Ultimately, a collaborative and consistent approach to permitting DAS/small cell wireless facilities has been achieved that both speeds the deployment of this technology while acknowledging the need for local stewardship of the right of way.

Since the creation of this model process, the consortium has grown to 24 communities. Approximately half of the consortium communities have adopted the model process; the other half are in process or reviewing. Within those communities that have adopted the model process, more than 80 new installations or co-locations have been installed or are in the pipeline to be installed.

Get Involved

If you would like more information about the activities of the GVMC DAS Consortium or copies of the model documents, please visit www.kentwood.us/das. 

Mark Rambo is the deputy city administrator for the City of Kentwood and chairperson for the GVMC DAS Consortium. You may contact him at 616.554.0770 or rambom@kentwood.us.



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Sue Jeffers is a legal consultant to the League. You may contact her at sjeffers@mml.org.

Member of Tribe Found Ineligible to Run for City Council under Michigan Constitution

FACTS:

In 2010, Fred Paquin pled guilty to a federal indictment of conspiracy involving the misuse of federal funds granted to the Sault Tribe of Chippewa Indians, a federally recognized Indian tribe. At the time, Paquin was serving as the Tribe's chief of police and as an elected member of the Tribe's Board of Directors. After serving his prison sentence, Paquin sought to run for a position on the City of St. Ignace's city council in the 2013 general election.

The Michigan Constitution 1963, art 11, § 8 provides: A person is ineligible for election or appointment to any state or local elective office of this state and ineligible to hold a position in public employment in this state that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust and conviction was related to the person's official capacity *while the person was holding any elective office or position of employment in local, state, or federal government.* (Emphasis added.)

On August 15, 2013, the Attorney General issued OAG, 2013-2014, No. 7273, concluding that the constitutional provision applies to a person convicted of a crime based on that person's conduct as a governmental employee or elected official of a federally recognized Indian Tribe, making Paquin ineligible for election or appointment to the St. Ignace city council. Paquin asserted that the constitutional provision did not apply to him since he was not convicted while holding an elective office or a position of employment in a "local, state, or federal government."

Paquin sued in state court and asserted that the Attorney General had cited no authority for its determination that a local, state, or federal government somehow includes a federally recognized sovereign Indian Tribe. The trial court dismissed Paquin's complaint, holding that Paquin fell under the constitutional provision as a citizen of Michigan, regardless of his status as member of the sovereign tribal nation.

QUESTION:

Does § 8 of Article 11 of the Michigan Constitution apply to a member of a sovereign political unit?

ANSWER:

The Court of Appeals recognized that the Sault Tribe is a sovereign political unit of government and that "Indian tribes are distinct, independent political communities, retaining their original natural rights in matters of local self-government." Nonetheless, the Court agreed with the Attorney General and the trial court in finding that the Tribe qualifies as a "local government" under § 8 of Article 11. The Court noted that in "seeking to run for an elective position in a Michigan city, [Paquin] was acting in his capacity as a Michigan citizen rather than a member of the Tribe. As a Michigan citizen, plaintiff is subject to the same laws as other Michigan citizens when seeking to run for an office in a Michigan municipality."

Paquin v City of St. Ignace, No. 334350 (October 19, 2017).

Note: Case has been appealed to the Michigan Supreme Court.

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Lansing Center - Lansing

June 22-24, 2018
MAMA/GLS Joint Summer Education Conference

Crystal Mountain - Thompsonville
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michigan municipal league



March 20-21, 2018 – Lansing Center, Lansing

Register at cc.mml.org

PREPARING LAW ENFORCEMENT TO HANDLE MENTAL HEALTH CRISES

By Emily Kieliszewski



Michigan first responders overwhelmingly support efforts to expand mental health and crisis training for law enforcement officials, according to a recent survey conducted by the Michigan Mental Health Diversion Council. “Mental health and crisis training gives officers the ability to recognize illnesses and diffuse situations that could become extremely dangerous,” said Lt. Gov. Brian Calley, who chairs the council. “We’ve had success in providing this training to law enforcement in recent years and I’m pleased there is support to expand this potentially life-saving training across the state.”

The survey was taken by officials within the Michigan Association of Chiefs of Police, Michigan Sheriffs’ Association, and the Michigan State Police. It aimed to gauge support and demand for mental health and crisis training for officers, who are often the first contact with a person in crisis. Nearly 150 law enforcement officers from across the state took the survey in the fall of 2017, with more than 65.75 percent being from city/township agencies, 33.56 percent from sheriff’s offices, and less than one percent of respondents serving in the Michigan State Police.

“Mental health incidents and calls for service for law enforcement are on the rise. It is vital that today’s law enforcement personnel have the training and resources to safely interact with people who are experiencing a mental health crisis,” said Ottawa County Sheriff Steve Kempker. “How our law enforcement personnel respond to these incidents will have an impact on how encounters are resolved and for the treatment of the person experiencing a mental health crisis.”

According to the survey, one third of agencies said they had not had mental health or crisis intervention training and nearly 66 percent of respondents agreed that this training is very important. Almost 100 percent of responding agencies would support training for their agency if it were provided by the state at no cost. Additionally, nearly 98 percent said they would support mandated training in police academies, and about 82 percent would support mandated training for certified officers.

Crisis Intervention Team Training

How can we create new hope for mental illness, the criminal justice system, and struggling communities? Lawmakers have started discussing ways to reduce the number of inmates in Michigan with mental illness, while communities and law enforcement officers are also looking for solutions.

What has proven successful is the use of a decades-old program called Crisis Intervention Team (CIT) training. While it's often referenced as an educational curriculum for law enforcement, it includes much more. CIT is a solution-focused community response to helping people with mental illness. It improves responses to people in crisis with the use of community collaboration, behavioral health staff training, family/consumer/advocate participation, and a vibrant and accessible crisis system. CIT programs work through developed solutions for safely redirecting people in crisis away from the judicial system and into the healthcare system, whenever appropriate.

While the CIT program depends on more than just education, the training for law enforcement officers is pivotal. The 40-hour course centers around 5 themes: Understanding Behavioral Health, Developing Empathy, Navigating Community Resources, De-Escalation Skills, and Practical Applications. The intensive training allows officers to learn from mental health professionals in their community who can counsel, problem-solve, and lend support when a


situation occurs. It also offers the officers a first-hand opportunity to hear from people who have experienced and recovered from mental health crisis, and learn from family members who have cared for loved ones with mental illness about what helps and harms a person in crisis. Officers leave with a new set of verbal de-escalation skills that can convince a person in crisis to get help or defuse a situation through words, body language, and approach. With the help of volunteers, officers also practice their skills in situations they're likely to encounter, and get immediate feedback from instructors and classmates.

Compassionate and Cost-Effective

As with any other new program or initiative, financially strapped local communities may be wary of cost. The key to a truly successful CIT program, in addition to strong local partnerships, is for CIT trained officers to respond to calls relating to persons with mental illness as just one part of their typical daily patrol duties. According to CIT International, this makes the CIT program cost efficient within the overall context of police services. There is no special unit requiring changes to the existing organizational structure: on-duty, already on-the-street patrol officers stay where they're at—but with more specialized training. The training itself is free and no costs are incurred other than the officer's time for the training.

CIT helps law enforcement, people with mental illness, and communities thrive by encouraging treatment to recovery. Officers stay safer and time-efficient when responding to mental disturbance calls while effectively meeting the needs of people with mental illness. The program also saves public money when individuals are diverted out of expensive jail beds and hospitals. In 2011, it was reported that housing an inmate with mental illness in Detroit cost \$31,000/year, when community-based mental health treatment cost only \$10,000/year.

Partnerships are key to starting a CIT program in your community. Programs are usually developed locally and can be designed to best fit the needs and resources of the community. Coordination and strong commitment among key stakeholders are essential: collaboration of law enforcement executives, mental health directors, care providers, and other community leaders increases the chances for real and positive outcomes. CIT requires a determined approach—but the benefits to communities can be more than worth the effort.

For more information on implementing a successful CIT program, visit www.citinternational.org to get started on your planning process. 

Emily Kieliszewski is the member engagement specialist for the League. You may contact her at 517.908.0302 or emilyk@mml.org.

“Mental health and crisis training gives officers the ability to recognize illnesses and diffuse situations that could become extremely dangerous.”

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Retirement & Benefit Act

A Step in the Right Direction?

By Brandon Fournier

“Reserving judgment is a matter of infinite hope.”

FITZGERALD, *THE GREAT GATSBY*

These are timely words as Michigan communities face dealing with the not-so-great GASB (Governmental Accounting Standards Board) 75 and Michigan’s recently adopted Protecting Local Government Retirement and Benefits Act, 2017 PA 202. The Act as adopted differs markedly from early versions introduced in the Legislature, which promised comprehensive reform, fiscal relief, and legal clarity for local governments confronted with overwhelming legacy costs in an uncertain legal landscape. But despite disappointment with the final version’s limited scope, a close reading of the Act shows that it provides communities with new tools to tackle the crisis of retiree health care funding and assists them in maintaining long term fiscal stability. Because of this Act, communities cannot afford not to use these tools moving forward.

As many readers know, in June 2017 Michigan’s local units of government became subject to the GASB 75 standard, which establishes a “cost method” for attributing the present value of employee benefit payments to specific years. The new standard also changes benefit plan assumptions used to determine annual OPEB expenses, and requires local governments to recognize deferred outflows and inflows by systematically factoring them into the calculation of expenses over an employee’s remaining years of employment.


In addition, the new standard requires a local unit’s entire net OPEB liability to be reported in the body of its financial statements rather in the footnotes. These new requirements do not impose any new costs on local governments, but they do have the effect of highlighting a community’s annual cost constraints and the long-term impact of providing retirement health care. While these are not new costs, they make transparent what, regrettably, some employers and employee unions have not wanted to look at: the “real cost” of retiree healthcare.

Advocating for Local Governments

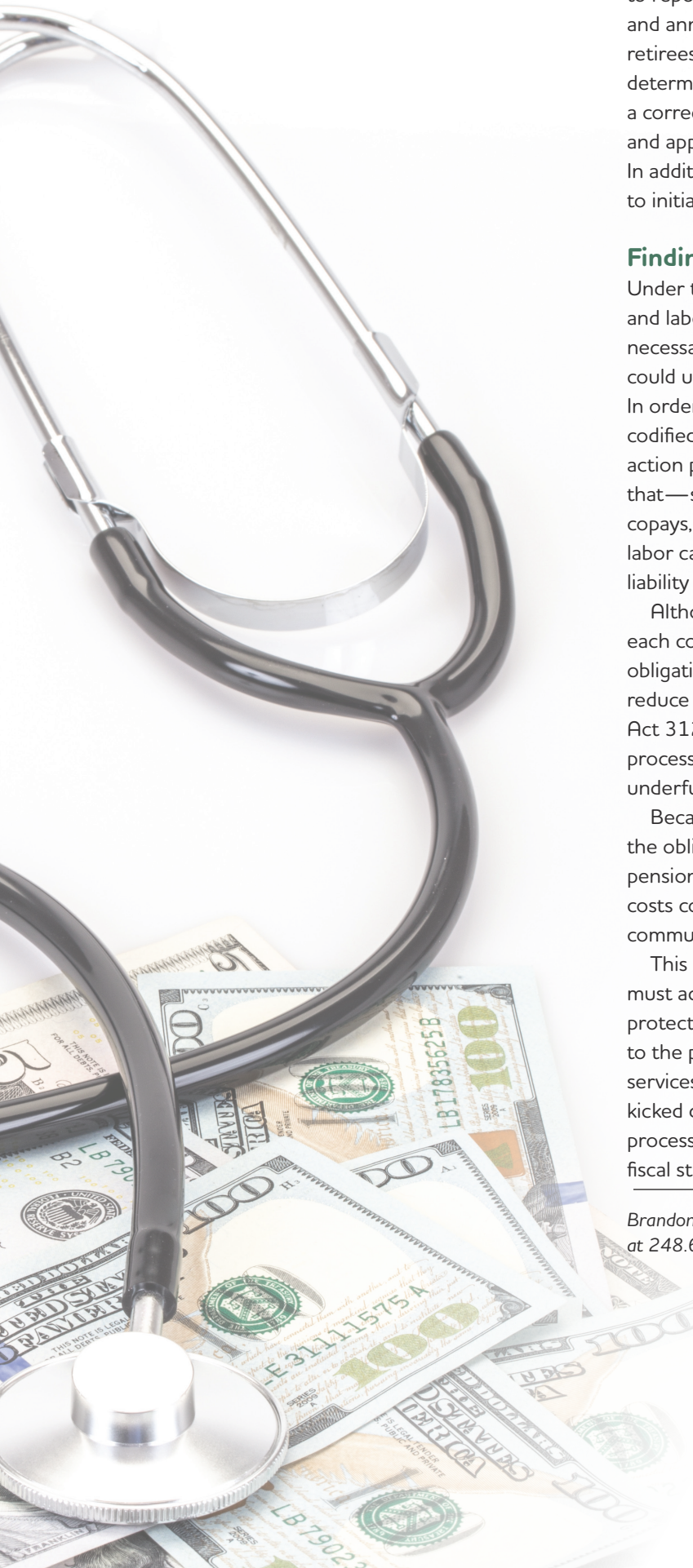
Armed with irrefutable data demonstrating the fiscal pressure on local units and a recognition of the currently muddy legal landscape, the Michigan Municipal League embarked on a campaign to obtain new statutory guidance and economic relief in order to provide a concise system of modernizing retirement health benefits. Unfortunately, the bill that was introduced drifted too far from those core objectives. Ultimately, after a successful effort by municipalities to resist untenably draconian proposals, the enacted version included the following requirements:

- Local units of government must thoroughly report to the Department of Treasury financial information, including funding of pension and retiree health care plans.
- The Michigan Department of Treasury will evaluate plans to determine which plans are underfunded. A retiree health care plan is considered underfunded if its obligations are less than 40 percent funded and the local unit of government's annual contribution is more than 12 percent of the unit's revenue. A pension plan is considered underfunded if its obligations are less than 60 percent funded and the local unit's annual funding contribution exceeds 10 percent of the unit's revenue. If a plan is deemed underfunded according to the foregoing tests, the community will be required to adopt a corrective action plan.
- The State Treasurer will provide waivers for the creation of Action Plans to communities with underfunded pension plans or retiree health care plans if they have approved plans to rectify the situation.
- A Municipal Stability Board is created, consisting of three experts appointed by the governor: one from local government, one from state government, and one representing employees and retirees. Each Board member must have relevant financial experience. The Board will assist communities in devising corrective action plans, and ultimately will approve or disapprove proposed plans.
- Retiree health care for new hires must be pre-funded after July 1, 2018; this also includes a requirement that a local unit of government pay retiree premiums due to current retirees receiving benefits.
- Issues arising under the Act or concerning the implementation of the Act will be subject to challenge in the Michigan Court of Claims.

As a former city manager, I clearly heard the collective sigh when the news of "transparent reporting" requirements from Lansing sank in the morning after the bill was adopted. But this statute, unlike previous legislative proposals mandating reporting of local government expenses, offers local leaders an opportunity to address benefit costs directly with local stakeholders, including retirees.



“This law is a sobering acknowledgment that communities must act today.”



The new reporting standards require local units to report the funding status of their retirement systems and annual operating costs for providing benefits to present retirees. Under the Act, a local government with a plan that is determined to be underfunded as outlined above must adopt a corrective action plan, which will be subject to the review and approval of the newly created Municipal Stability Board. In addition, the Act authorizes the Department of Treasury to initiate a review of a local government's retirement system.

Finding the Proper Balance

Under this framework, the common goal of management and labor should be to work collaboratively to achieve the necessary funding levels to avoid closer state scrutiny, which could ultimately lead to a Department of Treasury fiscal review. In order to achieve this goal, for the first time the Act has codified core principles that should be included in a corrective action plan—or adopted by local governments even before that—such as requiring cost sharing of premiums, adequate copays, and capping employer costs. Neither management nor labor can ignore this issue and must recognize this as a real liability and drain on revenue.

Although the legal backdrop on this subject remains fluid, each community is best qualified to evaluate its own legacy obligations and determine what options may be available to reduce costs. Also, controlling the current workforce and Act 312 employees' costs through the collective bargaining process is critical to avoiding a declaration that a plan is underfunded.

Because the new law clearly assigns to local governments the obligation to create a method of prefunding OPEB and pension costs, a local government's failure to contain these costs could have a harmful long-term impact on the community and its retirees.

This law is a sobering acknowledgment that communities must act today. They need to find the proper balance to protect the ability to pay for these benefits, provide services to the public, and maintain a stable work force to provide services to the residents. This is a problem which cannot be kicked down the road any further. This bill is a first step in the process to deal with these critical issues and the long-term fiscal stability of communities. [!\[\]\(e3f8612927870f2e0f9f5989e6dd3064_img.jpg\)](#)

Brandon Fournier is a partner with Shifman Law. You may contact him at 248.642.2383 or bfournier@shifmanlawmi.com.

Sexual Harassment

By Peter A. Letzmann

**WHY PUBLIC
EMPLOYERS SHOULD
BE CONCERNED**

“Employers must ensure that the culture in the workplace is a healthy and safe environment for all.”

Headlines abound in recent months about sexual harassment and misconduct. The #metoo and #TimesUp movements have raised awareness and demonstrated the extensiveness of the problem. All of this makes it clear that we must be thoughtful in our approach in dealing with the issue.

We know it's a problem and that it has reached every facet of our society. As local government leaders we have a responsibility to protect our workforce by creating the appropriate expectations and culture.

Sexual harassment includes unwelcome sexual conduct or communications that have the purpose or effect of substantially interfering with employment or creating an intimidating, hostile, or offensive employment environment.

"I did not mean it," "We were drunk," and "I was just flirting," are excuses that just don't work any longer, and never should have. The test is how a reasonable person would have perceived the conduct or communication, not what is the intent or belief of the perpetrator.

A second form of sexual harassment is referred to as "quid pro quo" harassment (i.e., "this for that"). This form of harassment involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: 1. submission to such conduct was made either explicitly or implicitly a term or condition of an individual's employment, or 2. submission to or rejection of such conduct by an individual was used as the basis for employment decisions affecting such individual.

Consequences to Employers and Perpetrators

Sexual harassment causes major disruption in the workplace. Employees may leave an organization if they perceive inappropriate behavior by a supervisor or colleague.

The financial consequences of replacing employees can be significant. Then there is the cost of defending claims brought by current or former employees, whether before state (Michigan Civil Rights Commission) or federal (Equal Employment Opportunity Commission) agencies or in civil lawsuits filed based on violations of state (Michigan Elliott-Larsen Civil Rights Act) or federal (Title VII of the Civil Rights Act) statutes. Such lawsuits have resulted in multi-million-dollar judgments and settlements against the perpetrators, supervisors, and the employing entity.

A perpetrator may lose his/her job and face criminal prosecution. Just touching another person can be a simple assault and battery misdemeanor.

Effecting Positive Change

What can be done? Employers must ensure that the culture in the workplace is a healthy and safe environment for all. This can be easily overlooked, but we must avoid negligent hiring—by failing to conduct a thorough background check. It is not uncommon for a former employer to withhold crucial information needed to make a sound hiring decision. This impediment can be overcome by requiring an applicant to authorize former employers to provide a copy of the applicant's disciplinary records and to discuss the applicant's employment record with the prospective new employer.

In addition, work rules must be comprehensive, clear, and apply not only to all employees, but to elected and appointed officials. The rules must clearly define unacceptable behavior and the consequences for any violations. Further, the rules must contain a strict prohibition against retaliation toward any employee who has filed a complaint or participated in an investigation.

Also important is extra training for supervisors, management, and elected and appointed officials, to act proactively, i.e., take steps to avoid sexual harassment and to respond quickly, objectively, and compassionately to any complaints of sexual harassment.

Finally, the culture of a safe and healthy workplace must emanate from the top. Leadership must not only endorse the concept but must demonstrate by their behavior that they mean what they say.

Response to Allegations

If work rule violations are reported or observed, an individual not working directly with the complainant or the alleged perpetrator, and who has received training on how to conduct an investigation, should initiate a prompt and fair investigation. The investigation should be documented, statements signed by the victim and witnesses, and evidence must be saved. The presumption of innocence should not be forgotten. A fair investigation is fair for both parties. Preferably, all investigations should be conducted by the same employee.

Further, depending on the circumstances, retaining a third party to conduct the investigation may be warranted.


If upon conclusion of an investigation, discipline, including discharge, is in order, keep in mind that public sector employees are entitled to “due process,” including the right of the accused to respond to the accusations or charges. Civil service rules, union contracts, and labor law may describe the necessary elements of such a determination.

If there is a determination that a work rule violation has occurred, an appropriate penalty—from oral or first warning to termination—must be imposed. If the employee is not terminated, counseling and a period of close supervision should be obligatory.

Of course, the disciplinary process is subject to appeal to various tribunals including arbitration, where applicable, and to state and federal courts. Those involved in the process should anticipate having their actions reviewed and “fly specked” by the accuser’s attorney or representative.

Some other considerations in providing for a healthy and safe workplace are the following:

- The personnel files of Michigan public servants (with the exception of law enforcement personnel) are subject to the Michigan Freedom of Information Act. Therefore, the perpetrator will have a “paper trail” of the misconduct. Job references need to be truthful.

- The courts have found that failure to provide a truthful reference when asked, followed by that person committing an offense or work rule violation that causes harm to another, may be the basis of a civil judgment. Specifically, the California Supreme Court in 1997 permitted a student who alleged sexual molestation by a teacher to sue that teacher’s previous employer which had provided that student’s school with a favorable reference. The former employer failed to mention in the reference that the school had received complaints of sexual harassment and improper touching by that teacher.
- Consider whether taxpayer money should go to pay for a judgment or settlement in sexual harassment cases or should taxpayer money be used to buy insurance against these cases for such employees. 

Peter A. Letzmann is a long-time local government attorney, educator, consultant and mediator. He may be reached at peter@letzmann.com



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How Will State Budget Pressures Impact Local Governments?

By Rick Haglund

“Municipalities know all too well that when the state needs to cut its budget, revenue sharing to local governments is one of the first targets.”

Michigan is in its ninth year of economic expansion following the “lost decade” in which the state recorded 10 straight years of net job losses. That’s good news, of course.

But economic growth can’t go on indefinitely. And the current expansion has run nearly twice as long as the average economic recovery in the state. A recession is a near inevitability. “We’re a manufacturing state and there’s nothing wrong with that, but we’re going to start to see the cyclical change soon,” Paul Traub, an economist in the Detroit branch of the Chicago Federal Reserve recently told *Crain’s Detroit Business*. “We will see the downturn impacting us before the rest of the U.S. economy. We’re already seeing layoffs and shift changes. Michigan is the canary in the coal mine.”

That’s leading experts to question how well Michigan is prepared to weather a downturn. The answer is critically important to local governments that depend on revenues from local property taxes and the state. Municipalities know all too well that when the state needs to cut its budget, revenue sharing to local governments is one of the first targets.

There’s mostly good news for local governments from University of Michigan economists, who are forecasting the state’s economic recovery from the Great Recession will last at least through the end of 2019.

But auto sales, critical to Michigan’s economic health, and job growth are expected to slow this year and next. The economists also said there are a number of risks that could sink their forecast. Among them are a possible spike in oil prices if political turmoil escalates in the Middle East, and severe international trade disruptions if the Trump administration pulls out of the North American Free Trade Agreement and takes the punitive actions it has been threatening against other trading partners.

State government general fund revenues, which provide revenue-sharing dollars to local governments, are expected to rise slightly, from \$10.47 billion this year to \$10.6 billion in

fiscal 2019, according to the U-M forecast. That slow growth, combined with increased general fund spending pressures, has experts worried about Michigan’s ability to navigate rough economic waters.

Viability of State’s Rainy Day Fund

A recent report by the Citizens Research Council of Michigan says actions by the Legislature have baked in some expensive future spending from the general fund. And although the state has been replenishing its rainy day fund since the Great Recession, the CRC said “current deposits are insufficient for anything beyond a very mild economic downturn.”

Michigan usually depletes the fund, formally known as the Budget Stabilization Fund, during recessions. The fund held nearly \$1.3 billion in the 2000 fiscal year, but it took just three years to spend it all as the state fell into an extended economic slump. And a mild recession in 1990 drained the fund, which contained \$400 million, in just two years. Today the rainy day fund balance is about \$700 million.

The CRC is recommending that lawmakers continue depositing money into the fund and remove the contribution cap, should it be reached. State law limits the amount of money in the fund to 10 percent of combined general fund and school aid revenues, or about \$2.2 billion.

New State Expenses Looming

Bolstering the rainy day fund is important because of legislative-enacted diversions from the state general fund that will pressure state financial resources over the next few years, even if the economy keeps growing, according to the CRC.

In 2015, the Legislature passed a \$1.2 billion-a-year road funding package that boosted fuel taxes and vehicle registration fees. But by fiscal year 2021, \$600 million—half of the overall spending—will come from income taxes that would have otherwise gone to the general fund.


Many businesses are still paying the old Michigan Business Tax in order to claim approved tax credits that are no longer available under the state's 6 percent corporate income tax. "Those credits reduce potential revenues by around \$600 million annually and will continue to drain discretionary resources for years to come," said Craig Thiel, CRC's research director.

Costs to reimburse local governments for a reduction in the business personal property tax, and increases in Medicaid and other general fund expenses also will put pressure on the general fund. The CRC estimates that more than \$2 billion in potential general fund revenue—20 percent of the total general fund—will be dedicated to general fund diversions and recent legislative mandates.

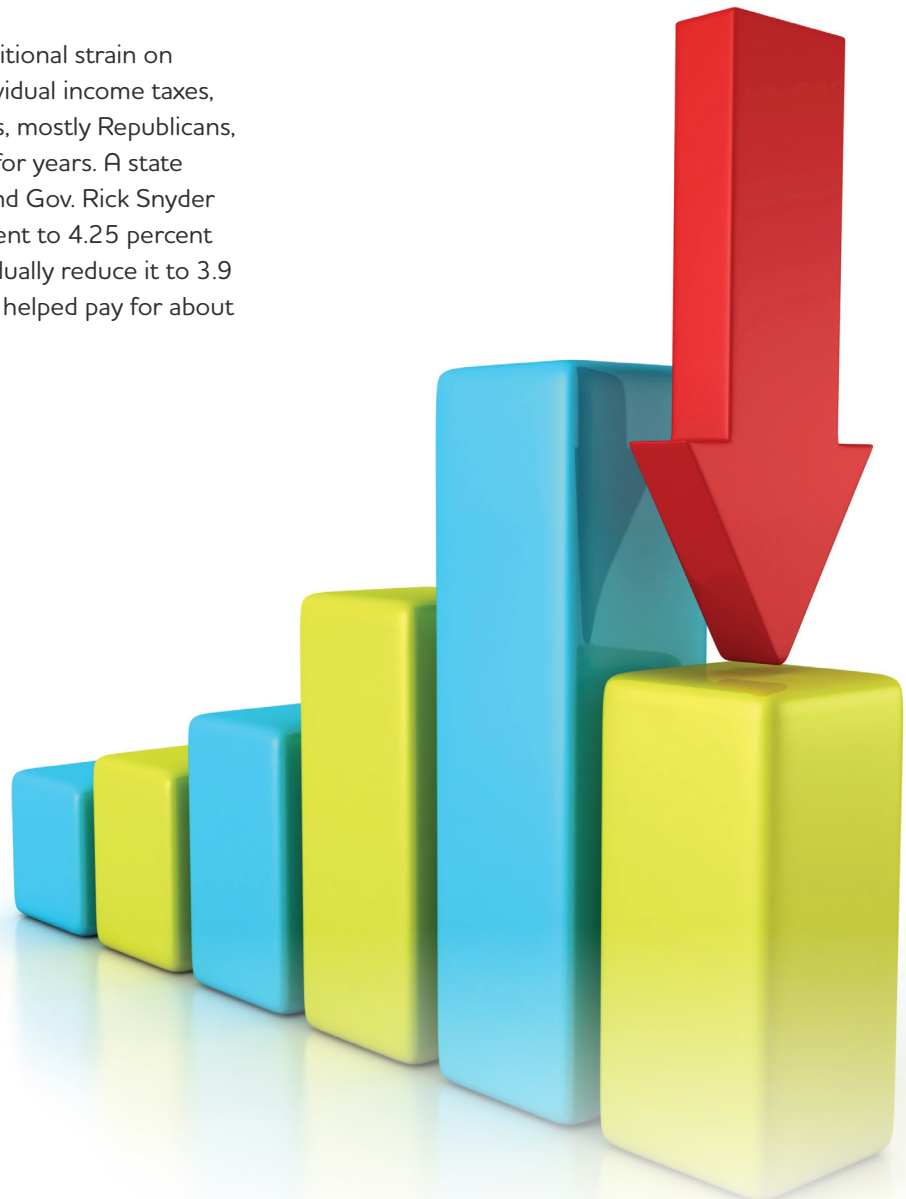
Possible federal spending cuts could hit "dozens of state-administered programs," including food stamps and Medicaid, making it even more difficult to balance the state budget in future years, according to the CRC.

And the state Legislature could put additional strain on the budget should it push for a cut in individual income taxes, according to U-M economists. Lawmakers, mostly Republicans, have been itching to trim the income tax for years. A state tax overhaul enacted by the Legislature and Gov. Rick Snyder in 2011 dropped the rate from 4.35 percent to 4.25 percent and froze it there, scrapping a plan to gradually reduce it to 3.9 percent. Keeping the rate at 4.25 percent helped pay for about \$1.6 billion in business tax cuts.

Lawmakers last year considered phasing out the individual income tax, which this year is expected to contribute about \$7.2 billion to the \$10.4 billion general fund revenue budget. A vote to roll back the income tax rate to 3.9 percent over four years was narrowly defeated. But this being an election year, lawmakers could again attempt to cut taxes.

That would be a mistake, Traub said, and would likely strain the budgets of local governments still recovering from Michigan's one-state recession in the 2000s. Traub said Michigan's long-term prosperity is threatened by more tax cuts. "We should be investing in infrastructure and human capital," he said. 

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



BE AMAZED, BE PROUD

Bessemer's Master Plan and Brand Represent a New Beginning

By Charly Loper and Terry Kryshak

Like many cities across the State of Michigan, Bessemer is struggling financially. But the city didn't let economic hardships hinder their progress. Instead, the city put a great deal of focus on community-led initiatives to develop a much-needed Master Plan and brand.

Bessemer hadn't developed a Master Plan since 1964, but the community recognized the importance of having a single document to help guide the community moving forward. When the community went out for bids for a contractor to develop the Master Plan, they realized the city's coffers weren't large enough to have an outside entity complete the entire plan. Instead, the community developed about half of it internally and contracted with North of 45 to complete the more technical items, such as the land use guides.

In February 2017, almost 1,000 surveys were sent out with city water bills to determine citizens' wants and needs. There were 47 multiple choice questions with space on the back for written comments. Questions ranged from demographics to economic development to city services to medical marijuana. By the March 15 deadline, 296 surveys were returned, which is just over a 30 percent return.

After reviewing the surveys, there were still some questions about how the community wanted to progress, so the city hosted a charrette. This community event had about 20 posters scattered around the auditorium with results of the survey and additional questions. Participants could write on any of the posters. There was also a series of "looks" posters where people could vote on which type of look they liked for things like trails, downtown landscaping, and new buildings.



Transforming Feedback Into Action

City Manager Charly Loper and consultant Pat Coleman took the public feedback, as well as feedback from one-on-one interviews and submissions from local organizations such as the Friends of the Trail, and created the Master Plan. The plan was adopted by the Planning Commission in October 2017.

"We are all passionate about our love for our city, and our new Master Plan is a living document that is critical for revitalization," said former Mayor Kathy Whitburn. "It is our guide that brings life to words. There truly is nothing more exciting than to see the minds of many come together to create and put into action the words on paper."

A critical component of the Master Plan was establishing a brand identity. Bessemer's brand was developed decades ago and was very dated. Once again, the city didn't have funds to contract with a design company, and so they turned to their citizens.

Loper invited a diverse group of 12 citizens to participate on the Branding Committee. Members of the committee had lived in Bessemer from one year to over 50 years, most age groups were represented, and they came from diverse walks of life, including local business, education, homemakers, retirees, and active employees. Many of the participants had never worked with branding but they all picked it up quickly with their enthusiasm for the community.


The Branding Committee relied heavily on the Michigan Economic Development Corporation's Marketing and Branding Strategy Guide to shape the meetings. The meetings started by people sharing what Bessemer meant to them, the history of the city, their views for the future of Bessemer, and where

they saw opportunities and obstacles. The committee then asked similar questions around the community and brought those thoughts back. These ideas were used to start drafting tag lines and logos. The concepts were vetted and new options were created, culminating in a consensus on the brand. The new logo features the BE in Bessemer framed by the city's towering bluffs. A variety of slogans, such as Be Amazed and Be Proud, are also part of the branding campaign.

Unveiling Our New Creation

The Branding Committee created a visual presentation of this new brand and shared it with the Downtown Development Authority (DDA) to gauge their reaction. After receiving unanimous support from the DDA, the Branding Committee presented the recommendation to the Bessemer City Council on Sept. 5, 2017 and received unanimous endorsement from that body as well.

On Sept. 28, 2017, the brand was revealed to the entire Bessemer community at an evening event hosted by a local business as part of Bessemer's Pumpkinfest celebration. Approximately 70 people attended the event and once again the committee had overwhelming support as they began implementing the brand.

Even though Bessemer is a small community in the Western Upper Peninsula with a small budget, by relying on the talents of individuals in the community, we too were able to make positive strides. 

Charly Loper is the city manager for Bessemer. You may contact her at 906.663.4311 or charly.loper@bessemermi.org.

Terry Kryshak is a city councilor and a member of the Branding Committee. You may contact him at terry.kryshak@bessemermi.org.



Bessemer residents share their ideas at a Master Plan Open House.

THE LAB REPORT

Ideas, initiatives, and activities from the League's Civic Innovation Labs

Lessons From the Michigan Vacant Property Campaign

By Richard Murphy



A blighted building in Kalamazoo was transformed into an attractive, productive part of the community.

From dangerous buildings and overgrown lots to volunteer engagement and upper story rehab, the Michigan Vacant Property Campaign has provided guidance and technical assistance to communities around the state since 2012.

The Civic Innovation Labs team has been representing the League in this work, and it's been a valuable opportunity both to assist members in tackling specific issues as well as get new ideas from our members' local efforts.

While the Campaign's funding ended in late 2017, many of these resources—and the individual partners' expertise—remain available for the benefit of local communities.

The Campaign's Work

In 2012, with places across the state struggling with properties that were vacant, foreclosed, blighted, or all three, the League joined forces with three other partners to create the Michigan Vacant Property Campaign. Those partner organizations all have deep expertise in helping local communities deal with these challenges and build on local assets: Flint-based Center for Community Progress (CCP); Detroit-based Michigan Community Resources; and Community Economic Development Association of Michigan (CEDAM), based in Lansing's REO Town.

The Campaign offered direct consultations to communities, ranging from conference calls to discuss local issues and provide quick guidance, to one-on-one support from one of the

Campaign organizations on a particular issue, to day-long site visits by the entire Campaign team. Often, additional partners such as MSHDA and MEDC field staff or Michigan Historic Preservation Network were invited along to these calls or site visits. Nearly 50 communities received some form of direct assistance over the course of the Campaign.

The Campaign also used these one-on-one consultations to identify common needs and provide resources to broader audiences, in the form of publications and conference sessions.

Site Visits Offer Outside Eyes

The site visits—fifteen over the Campaign's five years—put the partners on the ground with community stakeholders for a full day. This offered an opportunity to delve deeply into local needs and provide tailored recommendations, both on the spot and in a written follow-up report. However, the Campaign was often able to create connections within the community by nature of being an outside perspective: this is something that communities can potentially replicate.

The site visits typically started with a tour of the community and introduction to the local blight and vacancy concerns, led by local staff. With this context, the Campaign partners moved on to perform two or three focus group sessions with representatives of the community. Depending on the local needs (discussed prior to the site visit), these focus groups might include landlords, civic groups, local anchor institutions or employers, elected and appointed officials, or other identified



An Allegan streetscape project brought new life to downtown.

stakeholders. Significantly, city staff were usually not included in these focus groups, to avoid the potential for feelings of personal criticism in either direction.

The focus groups revolved around a few open-ended questions—What are the local vacant or blighted property needs? What’s being done already that’s working? What else is needed? Participants were given room to express their thoughts, often exposing significant opportunities.

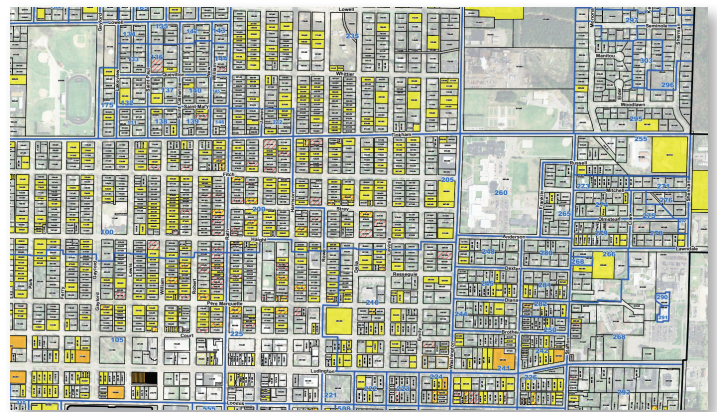
During one site visit, city staff lamented during the introductory meeting that they didn’t have community support for using stronger blight enforcement tools—and focus group participants repeatedly and independently voiced a desire for the city to get more proactive around blight enforcement, but didn’t think the city had the resources. The Campaign identified this consensus goal so that local staff could move forward with developing these programs.

In another community, the Campaign discovered a communication gap when we noticed a number of issues where some stakeholders touted progress on issues that others mentioned as open problems. One group of stakeholders bemoaned vacant storefronts in downtown while another group talked proudly of the several new businesses that were in the process of opening in those same storefronts. Some spoke despairingly of a large brownfield site, while others mentioned that the village had recently secured major EPA funding for that site, and had industrial users inquiring about reuse.

In these cases, the Campaign provided as much value locally by connecting the dots between resources already in the community as we did by bringing outside technical expertise. Communities interested in this kind of facilitation can potentially find the appropriate skills in their local county, COG staff, or planning consultants, then use the results of this engagement to seek targeted technical assistance.

Toolkits for Common Problems

While every community’s situation is somewhat unique, many of the needs tackled by the Campaign had common themes across communities, leading to the creation of resources that can be accessed and referenced by communities across the state. These resources are available at the MVPC website, <http://michiganvacantproperty.org/>.



Sample blight map.

The *Michigan Blight Elimination Guidebook* walks local leaders through the process of developing a strategy to deal with local blight issues. *Michigan Communities and Squatting* addresses legal considerations and strategies for addressing illegal occupancy of vacant properties, and the *Trespass Primer* outlines legal issues around trespassing, with a focus on considerations for community groups that want to clean up or maintain vacant private property. These documents include valuable information from both community development and legal perspectives; local governments should consult their planning staff and municipal attorney about how to use these resources in specific situations.

Additionally, the Campaign has compiled case studies and sample ordinances from various communities. These address specific programs ranging from code enforcement and vacant property registration to pop-up retail and entrepreneur contests for filling vacant storefronts.

Additional Resources

While the MVPC is not able to offer site visits or group consultations at this time, communities can look to the individual partners, and some upcoming conferences, for ideas or support with their vacant or blighted property needs.

MVPC Partners

- Community Economic Development Association of Michigan (CEDAM): <http://cedam.info/>
- Michigan Community Resources: <https://mi-community.org/>
- Center for Community Progress: <http://www.communityprogress.net/>
- Michigan Historic Preservation Network: <http://cmhpn.org/>

Events

- Reclaiming Vacant Properties Conference, Milwaukee, WI, May 2018: <http://reclaimingvacantproperties.org/>
- Small Town and Rural Development Conference, Crystal Mountain in Thompsonville, MI, April 2018: <http://rural.cedam.info/conference/>

Finally, any community grappling with vacant properties should engage with MEDC's Redevelopment Ready Communities® program. Depending on the local context, communities may also benefit from engaging the Michigan Main Streets program, identifying and leveraging historic buildings, or reviewing the resources available through the United States Department of Agriculture and Rural Development (USDA-RD). 

Richard Murphy is a civic innovations program coordinator for the League. You may contact him at 734.669.6329 or rmurphy@mml.org.



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Elected Officials Academy Will Bring You Up to Speed



By Ian Perrotta

Running a city can be like driving a bus—the job is constant, people depend on you, and plenty of things can go wrong. Fortunately, the Michigan Municipal League’s Elected Officials Academy (EOA) is there to steer you in the right direction.

When I became a city councilmember for Hamtramck, I was basically a rider on the bus who started driving it. I was familiar with the route and passengers, so to speak, but while I knew how to manage my own life and finances—the equivalent of driving a car—being responsible for the well-being of my friends and neighbors was an entirely new experience.

Newly Elected Officials Training

If I was like Sandra Bullock’s character in the movie *Speed*, the EOA was Keanu Reeves. Shortly after joining city council, I attended the Newly Elected Officials training and received a crash course on how to keep the bus moving. It was there that I was given an overview of basic local government and briefed on the roles and responsibilities of elected officials.

The training also taught the fundamental rules of local governance, including restrictions around lobbying, the Freedom of Information Act (FOIA), and the Open Meetings Act (OMA). The last rule is like the requirement for the bus in the movie *Speed* to remain above 55 mph. If you don’t conduct business above a certain level of public scrutiny, things can blow up.

Core Weekender

Once I learned how to control the bus, I attended the Core Weekender in Frankenmuth. This was like the part in the movie between explosions, where you learn how all the pieces fit together and what it will take to not end in disaster. By the end of the eight-credit, two-day event, I had learned fundamental information about financial management, leadership roles and responsibilities, the legal framework of municipalities, and planning and zoning.

Building Confidence

I won’t ruin the ending of *Speed* for those who haven’t seen it, but I can say it’s a lot like the MML Convention: there are a few plot points/credits left to tie up, but by this time you’ll have all the knowledge necessary to get the passengers safely off the bus and on with their lives. And much like the ending of any movie, there will be a celebration.

After attending the required courses, you will be a Level One graduate of the Elected Officials Academy. Regardless of your experience coming into the job, with the skills you have acquired you can be confident in your ability to effectively govern your city.

And when it’s all over, you might even see your name in the credits. 

Ian Perrotta is a councilmember for the City of Hamtramck. You may contact him at 412.848.1280 or iperrotta@hamtramckcity.com.



EOA Advisory Board members Brenda F. Moore, Saginaw councilmember, and Lois Allen-Richardson, Ypsilanti councilmember.



EOA Core Weekender & EOA Advanced Weekender

Grand Haven, May 18-19, 2018

Elected Officials Academy

The Elected Officials Academy is a four-level program that recognizes your education and leadership accomplishments. After successfully completing each level of the Academy, the League will recognize your achievement. Of even greater importance is the fact that your community will benefit from the education and experience that you gain. Your acceptance of the challenge of learning will better equip you to fulfill the important responsibility of volunteer leadership. You will be able to demonstrate leadership competence to your community and peers as you carry out your duties as an elected community official.

Level One: Education Award is to encourage and recognize the efforts of local elected officials to obtain fundamental information regarding Michigan municipalities.

Requirements:

- 3 Advocacy Credits
- 4 Conference Credits
- 8 Core Course Credits
- 10 Elective Credits

Level Two: Leadership Award is to encourage and recognize the efforts of local elected officials to build on the core knowledge obtained in Level One, to enhance their leadership skills and to continue their dedication to excellence in community leadership.

Requirements:

- 3 Advocacy Credits
- 5 Conference Credits
- 6 Leadership Credits
- 16 Elective Credits

Level Three: Governance Award is to encourage and recognize the efforts of local elected officials to achieve an outstanding level of education and leadership beyond that of Level Two, and their continuing dedication to excellence in community governance.

Requirements:

- 3 Advocacy Credits
- 8 Conference Credits
- 10 Leadership Credits
- 24 Elective Credits

Level Four: Ambassador Award is to encourage and recognize the exemplary service of locally elected officials to their community, to the communities of the state of Michigan, and to the Michigan Municipal League.

To receive the Ambassador Award, elected officials must have served on a governing body of village, city or urban township for more than one term, and have received the Level Three Governance Award and accumulated an additional 50 credits beyond that required for Level Three.

For more information, or to enroll in the EOA, please visit eoa.mml.org

Q: What's the difference between an initiative and a referendum?

A: Initiative means the power to propose ordinances and to enact ordinances. Referendum means the power to reject ordinances adopted by the council. Initiative and referendum processes are found in city and village home rule charters and certain state statutes. Out of the 323 home rule charters (city and village), 248 cities and 24 villages have initiative/referendum provisions. For non-home rule chartered municipalities (General Law Villages and Fourth Class Cities), the practice is more limited. Not to entirely confuse matters, but an initiatory petition can also be filed for a charter amendment, a complete charter revision, or to change incorporation status (i.e. change from a village to a city).

General Law Village Act

For instance, while the General Law Village Act does not provide for citizen initiated legislation, it does provide for referendums on specific ordinances. The GLV Act allows for referendums on these five types of ordinances: reducing the number of trustees from six to four; changing the clerk's position from elected to appointed; changing the treasurer's position from elected to appointed; assigning duties of other officials to a manager; and combining police and fire entities.

Fourth Class City Act

In the Fourth Class City Act, a petition for a referendum may be filed on an ordinance determining salaries of elected officials (MCL 87.40).

Home Rule Charter

Here is a sample charter provision on a specific city's initiative and referendum process:

- **Petitions**

An initiatory or referendary petition shall be signed by not less than fifteen percent of the registered electors of the city. The petition shall be signed within 45 days before the date of its filing with the clerk. All such petitions shall be approved as

to form by the clerk before being circulated for signatures. No such petition need be on one paper but may be the aggregate of two or more petition papers. Each signer of a petition shall sign his or her name, the date of signature and place of residence by street and number. The circulator shall attach to each petition an affidavit stating the number of signers, that each signature is the genuine signature of the person whose name it purports to be, and that it was made in the presence of the circulator. The petition shall be filed with the clerk, who shall within ten business days, canvass the signatures sworn to by the circulator to determine their sufficiency. If the clerk finds the petition contains an insufficient number of signatures of registered electors of the city, or that they are improper as to form, or not in compliance with the provisions of this section, the clerk shall promptly notify the person filing petition in writing. A period of 10 business days after the notice shall be allowed for the filing of supplemental petition papers. When found sufficient and proper, the clerk shall present the petition to the council at its next regular meeting.

- **Council procedure**

Upon receiving an initiatory or referendary petition from the clerk, the council shall, within thirty calendar days, either: a) If it be an initiatory petition, adopt the ordinance as proposed in the petition or determine to submit the proposal to the electors of the city; b) If it be a referendary petition, repeal the ordinance to which the petition refers or determine to submit the proposal to the electors of the city.

- **Submission to electors**

Should the council decide to submit the proposal to the electors, it shall be submitted at the next election held in the city for any purpose, or, in the discretion of the council, at a special election. The result shall be determined by a majority vote of the electors voting on the issue, except in cases where a different vote is required by law.

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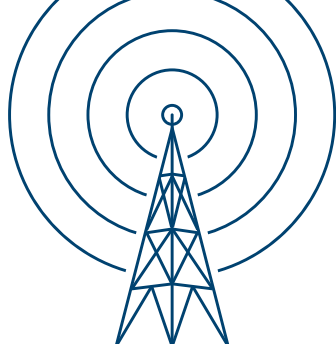


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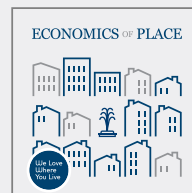


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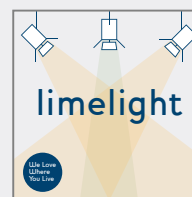
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