HANDBOOK FOR

General Law Village Officials

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Preface

We Love Where You Live.

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

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

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

Daniel P. Gilmartin
CEO & Executive Director

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Chapter 1: Welcome to Public Service

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

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

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

For starters:

- **Read the General Law Village Act (1895 PA 3)**—the charter for your village. It can be downloaded from the Michigan Legislature website at legislature.mi.gov. It can also be retrieved through the League's website, along with an index of the Act prepared by the League.
- **Know the duties and limitations of your office and of the village.** This requires familiarity with the state and federal constitutions, local ordinances, and the court cases interpreting them—as well as the General Law Village Act (GLV).
- **Know your village.** Know its history, operations, and finances. Review all reports from the village president (and/or manager if your village has one), department heads, and boards and commissions.
- **Be familiar with the village plans.** Review the master plan, the parks and recreation plan, and the infrastructure and economic development plans. The village may also have a number of other documents outlining its goals, objectives, and plans.
- **Be aware of current state and federal legislation, pending court cases, and other factors that may affect local issues.** The Michigan Municipal League frequently sends materials to help you stay up to date.
- **Talk to people with differing points of view and relevant information.** Your constituents, officials in neighboring villages, cities, and townships; and county and state officials will all have important and different perspectives on each issue.

Making Decisions
No government official can always make decisions that please everyone. Honest people have honest differences in opinion. Making decisions is not always easy; it takes hard work and practice. However, each trustee must eventually "stand up and be counted." It is this process by which your constituency judges you and holds you accountable.

Responsibilities of an elected official
The specific duties of village officials as established in the GLV Act are set out in the next chapter. However, all elected officials share certain responsibilities. First and foremost, trustees must remember they are elected to make decisions **as a collective body**, not to act as individuals or apart from the council. Together, as well as individually, it is their responsibility to:

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

Observe
Take a tour of the village with the rest of the council, the manager if your village has one, and department heads. Such a tour is especially valuable for newly elected officials. They often discover parts of the village never seen before, learn where the legal boundaries are, and see where major trouble spots are now and where they might develop. There is really no substitute for first-hand observation.

Establish priorities
Each request should be examined in terms of citizen demand, financial cost, benefit to the entire community, availability from other sources, and even political expediency. A balance should be maintained between the flexibility required to reorder priorities when conditions require, and the firmness required to resist changing the programs to meet the momentary whims of special interest groups in the community.

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

In council meetings, it is important to:

- **Look attentive, sound knowledgeable**, and be straightforward and meticulously honest.
- **Be familiar with a systematic and efficient way to handle business brought before the council**. The president, manager, or clerk will have prepared a concise and easily understood agenda outlining for you—and the public—the order in which items will be considered during the meeting. This agenda may allow the public and the trustees themselves to bring up additional items of business for discussion. Your copy of the agenda may come with a packet of background material prepared to assist you with your decision.
- **Bring all appropriate documents, notes, and memoranda to the meeting**. Arrange the material in the same order as the agenda so pertinent information can be found easily.
- **Have a reasonable knowledge of parliamentary procedure and of the rules of procedure the council has adopted and follows.** This will keep the meeting moving smoothly and efficiently, with a clear indication of each item's disposition. However, too much attention to procedure can slow down the meetings with complicated rules.
- **Eliminate personal remarks**
The general atmosphere of any council meeting should be relaxed, friendly, efficient, and dignified. Sarcasm, innuendoes, and name

calling should be avoided in interactions with the other trustees, staff, and the public. This does not mean falsehoods, misinterpretations, distortions, and challenges to your integrity or honesty should be left unanswered. They should be answered—and sometimes vigorously—but these rejoinders should address the facts rather than the qualities, or lack of them, of the person being addressed.

Interact with Citizen Boards and Commissions

Establishing commissions, boards, and other citizen committees is often helpful in resolving the complex issues facing village councils and is an important means of encouraging citizen participation. The purpose of these groups is to sift and analyze data and then make recommendations. These types of boards are created at the discretion of the municipal body and should be set up with care. The board members should know exactly what they are responsible for, what their authority is, and what they are supposed to accomplish. The board should have bylaws or meeting rules that establish basics such as how members are appointed, how long they serve, and the number that constitutes a quorum. Both board members and trustees should **keep in mind that citizen boards are advisory in nature, and that the ultimate decision making authority rests with the council**. Court decisions can narrowly define the Open Meetings Act (OMA) to include a committee in the definition of a public body; thus, according to the OMA, committee meetings must be posted and all OMA regulations followed.

The council's decision may not always coincide with the board's recommendation. Trustees must be concerned with the total system and the effect of these decisions on other policy areas. Changes recommended by a planning board, for example, may not have considered traffic problems that would be created.

Appointments to Citizen Boards and Commissions

It is important to select the best possible people to serve on village boards and commissions.

- Select people who will have the interest, time, and energy to devote to the responsibilities assigned to that board.
- Look for citizens interested in the welfare of the entire community, rather than those with a narrow interest or an axe to grind.
- Choose people with an open mind, who are willing to listen, and are not afraid to express themselves—not based on their particular point of view.
- Try to reflect the diversity of the community on each board.

Work with the Village Manager

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

In actual practice, a clear-cut separation is difficult. Trustees do direct the village manager from time-to-time to follow certain administrative practices, and the manager does, at times, influence policy. The council and manager should discuss this interaction and, wherever possible, establish clear guidelines to help keep

these functions separated. Each must recognize that occasionally these functions will overlap.

The council is responsible for policy decision making. This is not always easy or pleasant, but it is necessary. As much as possible—except in routine matters—the trustees should make the decisions themselves with as much help from citizens, the manager, and the staff as they can secure. They shouldn't pass this responsibility to the manager with instructions to "take care of the matter" unless there is a policy to serve as a guideline.

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

Relationship with Employees
Perhaps one of the most important jobs of the council is to hire, evaluate, and retain competent staff—and to compensate them fairly. This three-part chore may require the assistance of other professionals. An evaluation process between the council and the manager, if your village has a manager, or directly between council and department heads if there is no manager, is the tool to keep everyone working on the same page. Fair compensation avoids the revolving door.

The second step is to trust the staff's professional judgment and to recognize its authority and responsibility. Staff is hired for its expertise. They have the training, experience, and information the council does not—and need not—have.

Talk with Citizens
Direct interaction with your constituents is both politically and practically prudent. Municipal officials need to be accessible, concerned, and open minded—and you will be if you talk not just with friends, but also with people you do not know well or at all. Include people representing various economic levels, professions, occupations, and cultural backgrounds. Be prepared to receive unsolicited information and criticism from citizens who seek you out.

Citizen Engagement Policies
Establish formal engagement strategies for important policy initiatives and planning projects. Effective engagement strengthens the community, improves government-citizen relationships, builds capacity, and eases program/policy implementation.

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

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

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

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

Tips for meeting with citizen groups:
- Find out as much as possible about the group before meeting with them.
- Prepare thoroughly.
- If you are asked to give a speech, be brief. Ten to fifteen minutes is plenty. Allow enough time for questions from the audience.
- Be forthright and willing to meet issues head-on without dodging or flinching.
- If you don't know the answer to a question, say so. Faking it may bring about embarrassing repercussions later.
- Don't promise to take action. If the rest of the council doesn't agree, if some legal obstacle crops up, if, after further investigation, it seems that the first set of facts was not accurate, you will find it impossible to follow through despite your best intentions.
- Be warm, friendly, and interested in the citizens' concerns. Follow up on requests for action even if it is to inform the group that a requested action is not possible.

Cooperate with other governmental units
More and more of the problems a council must face extend beyond the legal boundaries of the municipality. Many—water and wastewater treatment, solid waste disposal, healthcare, and drug abuse, for example—cross municipal, township, county, or state boundaries and must be solved either at a higher level or cooperatively by several different units. Working with other units and agencies may be easier if you initiate meetings rather than wait for them to occur.

Communicate with the Media
If you have had little or no experience with members of the press, whether newspaper, radio, or television, you may suddenly realize that public figures live in a different world than the rest of us. Anything you say in public—whether seriously or jokingly—can appear online, or on the TV screen the same day. A poor choice of words, made on the spur of the moment, may be used to distort your opinion on a public issue. It is important to learn to work with the press effectively and comfortably.

Tips for working with the media:
- **Be honest.** Covering up or distorting statements and actions are guaranteed to establish poor relations with the press.
- **Never say "No comment."** It is always better to say that you don't have all the facts yet and are not prepared to publicly discuss the issue at this time.
- **If you do not know the answer to a question, say so.** Offer to refer the reporter to a staff person with more information or offer to call back later with more details. If you are going to call later, be sure to ask when the reporter's deadline is, and call promptly.
- **Be consistent.** Do your best to maintain the same position on

public matters from one meeting to the next. If the facts have changed, or you have thought through an issue and come to a rational change in opinion, be sure to carefully explain that to the media.

- **Be cautious**. Even though you may trust a reporter, remember that reporters have a story to get and that what you, as a public official, say or think or do is news.
- **Do not make statements "off the record."** They will only come back to haunt you later.
- **Be positive in your attitude toward the press.** The media can help the village president, manager, and council communicate the work of the village to the citizens of your community. A good working relationship can be established if the council is open in its dealings with the press. Under the Open Meetings Act, the press is entitled to attend **all public meetings**. Provide members of the press with copies of reports, recommendations, and other documents related to the business of the village and initiate contact with reporters rather than waiting until they come to you.

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

Section 1: Local Government
Chapter 2: Structure of Local Government

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

Villages in Michigan are organized primarily to establish local regulatory ordinances and to provide local services such as fire and police protection, public works, and utilities. Certain local duties required by the state are performed by the embracing township, including assessing property; collecting taxes for counties and school districts; and administering village, county, state, and national elections. Most villages (206 of 252) are still governed under the General Law Village Act. Charters for villages are the exception, although any village may adopt a home rule document under the Home Rule Village Act

Cities
Cities must perform the basic, state-required duties as well as provide their own services. In addition to being responsible for assessing property and collecting taxes for county and school purposes, cities are responsible for registering voters and conducting all elections within their boundaries. The greater independence of cities in maintaining local regulations and functions and state-imposed duties accounts for the creation of many small cities in Michigan. The trend has also developed in villages to seek incorporation as cities whereby they achieve a separation of jurisdiction from the township. As of 2024, Michigan had 281 incorporated cities and 252 incorporated villages—a total of 533 municipalities. Of this total number, 323 had adopted home rule charters.

In 1895, adoption of the Fourth Class City Act created two types of cities: those of 3,000 to 10,000 population, which came under the Act, and all others which remained “special charter” cities. As of 2024, all but one “special charter” city (Mackinac Island) has reincorporated as home rule cities. As of 2024, four cities continue to be governed by the Fourth Class City Act.

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

There is no basic difference between a fifth class home rule city and a home rule city,

other than the population differential and the statutory requirements that fifth class home rule cities hold their elections on an at-large basis (wards are not permitted). If all the territory of an organized township is included within the boundaries of a village or villages; the village or villages, without boundary changes, may incorporate as a city or cities as provided in 1982 PA 457.

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

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

The process of incorporating as a city can originate either with the village council or with residents and is found in the Home Rule City Act (PA 279 of 1909) and the State Boundary Commission Act (PA 191 of 1968). A village must demonstrate to the State Boundary Commission (SBC) that good faith efforts have been made to resolve issues with the township. The SBC assumes a mutual agreement, or an Act 425 Conditional Transfer Agreement, has been discussed by the village and township to no final conclusion.

The first step in seeking incorporation is to submit a petition to the SBC, which triggers three separate meetings:

- A legal sufficiency meeting for the state-appointed SBC members to review the petition to determine if the adjustment is appropriate based on the merits of questionnaire responses and the facts;
- A public hearing held in the general area of the proposed adjustment; and
- A recommendation meeting of the full SBC to deliberate and make one of three potential decisions:
    - A recommendation to the LARA director to deny the petition.
    - recommendation to the LARA director to approve a modified petition.
    - A recommendation to the LARA director to approve the petition.

Within forty-five days of the LARA Director's decision, opponents could force a referendum on the incorporation.

City Charter Commission
If the LARA Director finds in favor of incorporation, the electorate of the proposed city elects a charter commission either at a regular or special election or at the same election as the vote on whether to incorporate. The charter commission shall be responsible for submitting a proposed charter to the governor after review by the attorney general. The proposed city charter is then presented to the electorate of the proposed city to approve or reject. Approval of a proposed city charter must be obtained within three years, or the process must start over.

Home Rule

Home rule generally refers to the authority of a city or village to draft and adopt a charter for its own government. Under Michigan's Constitution, the Legislature must provide for the incorporation of cities and villages by general law. Michigan's Legislature did this by enacting the Home Rule City Act and the Home Rule Village Act, both of 1909.These limit the rate of taxation and restrict the borrowing of money and contracting of debt. The voters of each city and village have the power to frame, adopt, and amend charters in accordance with these general laws. Through their established representative government, they may pass laws and ordinances pertaining to municipal concerns subject to the constitution and general laws.

By 2024, 277 cities and 46 villages had adopted home rule charters, making Michigan one of the leading home rule states in the nation.

Charters

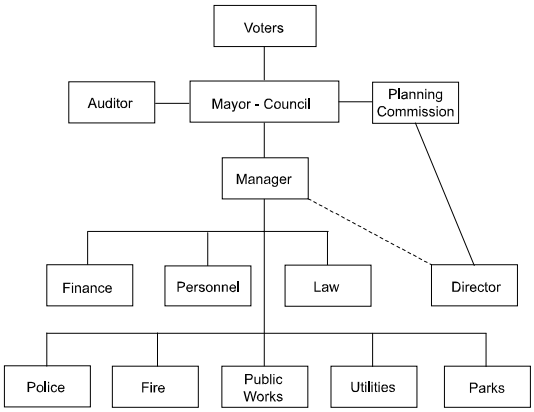
The responsibility for enacting charters lies with locally elected charter commissioners, subject to legal review by the governor under statutory requirements. Since charters may only be adopted by local referendum, the voters themselves make the final determination about the design of their government. The Michigan Municipal League renders informational assistance on charters through its inquiry service, and several municipal attorneys have become specialists in drafting charters.

Form of Government: Cities

Council-Manager Form

Among Michigan home rule cities, close to 200 use the council-manager form, in which the elected council appoints a professionally trained and experienced manager to administer the day-to-day operations and make recommendations to the city council. The council makes all policy decisions, including review, revision, and final approval of the proposed annual budget. The council may dismiss the manager if duties are not being performed satisfactorily.

Council-Manager Form

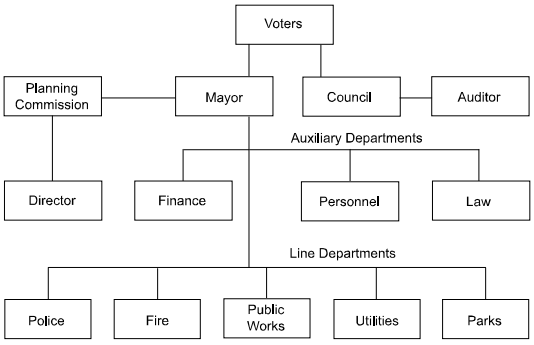


Mayor-Council Plan

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

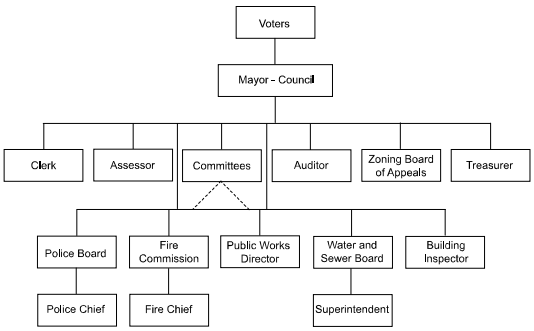
The "strong" mayor form is most often found in larger cities where the directly elected mayor, who is not a member of the governing body, appoints and removes the key administrative officials (those who, by charter, report directly to and assist the mayor); often has variations of veto power over council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

Strong Mayor Form



The "weak" mayor form is found generally in smaller cities and villages. The mayor (city) or president (village) is a member of the governing body, chairs council meetings, and normally is the municipality's chief policy and ceremonial official by virtue of the position of mayor/president rather than through any specific authority extending beyond that of the trustees/councilmembers. The mayor also serves as chief administrative official, although department heads often operate more or less independently with only general coordination. There is no central administrator by formal title, such as city manager.

Weak Mayor Form



Election/Selection of Mayor
Mayors in about half of Michigan's home rule cities are chosen directly by the people, in at-large, city-wide elections (including all strong mayor communities). In the remaining cities, council chooses the mayor from among its ranks to serve a one- or two-year term.

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

Most Michigan cities have at-large elections for councilmembers, rather than ward elections where voters in each ward (geographic section of the city) elect a councilmember or members.

Selection of Administrative Officials
The trend in Michigan home rule charters is to appoint, rather than elect, administrative officials who must have technical competence. In council-manager cities and villages, the manager appoints and removes department heads, sometimes with council approval, depending on charter requirements. In the weak mayor form, council approval of appointments is generally required.

Form of Government: Villages
General Law Villages
Of the 252 villages in Michigan, 46 have home rule charters, and 206 are governed under the General Law Village Act (1895 PA 3). Under the GLVA, existing villages in Michigan were reincorporated and standards were set for future incorporations. The general law village, still the most common by far, has the typical weak mayor-council form of government.

The village president is elected at-large, serves a two-year term, and is a full voting member of the village council. In 1974, the Act was amended to provide for four-year terms for the six trustees—three of whom are elected biennially, unless a village exempted itself prior to January 1, 1974. Further significant amendments to the GLVA passed in 1998—the option to reduce council from seven to five members and to appoint the clerk and treasurer.

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

essential. However, the president and clerk need not be directly elected by the people but may be “elected” by the village council. The home rule village form of government offers flexibility that is not found in the GLVA provisions. Home rule village charters in Michigan are as diverse as the communities that adopt them.

Chapter by League staff

Section 2: Roles and Responsibilities

Chapter 3: Duties of Village Officials

"AN ACT to provide for the government of certain villages, to define their powers and duties...."

The General Law Village Act, PA 3 of 1895, serves as the charter for 206 Michigan villages. This Act not only defines the powers of general law villages, but also the roles and responsibilities of the elected and appointed officials of those villages.

Roles of Elected and Appointed Officials
The mix of elected officials and administrative staff having a common purpose, but each having a different role and a different perspective makes governing a village a complicated process. When you add in personalities that may also conflict, it is clear that a hefty dose of goodwill and teamwork is needed for a general law village to function efficiently.

The information provided here should not be considered legal advice. Rather, it is "nuts and bolts" information, based on the experience of officials in Michigan general law villages. You are urged to consult your village attorney for legal advice.

Village Council
"The legislative authority of villages shall be vested in the council." (MCL 65.1). Villages operate as governments of law within a system of constitutional federalism and a complex network of federal and state laws and regulations. At the top are the guarantees and restraints found in the U.S. Constitution and federal legislation and regulations. Next are the Michigan Constitution, statutes, and regulations.

Based on a professional understanding of the law and the interrelationships of various levels of the law, your village attorney will be able to assist you in determining which laws are applicable and how they apply to your village and to your role as trustee.

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

- **Ordinances** are formal actions by the council and constitute local legislation. Ordinances carry the force of law and may impose penalties on violators. If the council wants to change a duly adopted ordinance, it must amend, repeal, or rescind the ordinance. The clerk is required by state law to maintain an ordinance book, and from time to time a village may compile or codify all of its current ordinances and publish that compilation or code. (See Ch 5—Local Ordinances)
- **Resolutions** are less formal than ordinances, and are often used for short-term matters, such as adopting the annual budget. A resolution may be used to state the council's position, such as in support or opposition to a piece of state or federal legislation. When the council wishes to commend a citizen or commemorate an occasion, it acts by resolution. Resolutions are a part of the permanent record of the village.
- **Motions** are used to introduce a subject or propose an action to the

council. For example, a trustee might say “I move that the ordinance (or resolution) be adopted.” Once a motion is made and seconded, it can be discussed and acted upon (See Ch 4—Successful Meetings).

The League maintains a collection of sample ordinances. Many are available on the League website at mml.org, or may be obtained by emailing info@mml.org or calling the League at 800-653-2483. Your village attorney should review all ordinances, including samples you receive from the League, to provide you with guidance on the language, the relevance of state statutory requirements, and the application of case and constitutional law.

Some ordinances, such as a zoning ordinance, require that a public hearing be held prior to enactment. In other instances, it may be advisable to hold a public hearing, even though it may not be mandatory. In some villages, council rules of procedure require an ordinance to be read aloud several times before it is adopted. This may be a full reading of the entire ordinance—which can be quite lengthy—or only a synopsis. The introduction of the ordinance is usually considered the first reading, and a second reading occurs at a subsequent meeting when the ordinance is actively considered. Law does not require these readings, but they do provide an opportunity for public awareness and input. The council rules of procedure may authorize the suspension of one or more readings to avoid verbatim readings of lengthy measures or emergency actions.

Rules of Procedure

Section 65.5 of the GLV Act **requires** the council to adopt “rules of its own proceedings.” As a new trustee, you should become familiar with any rules of procedure already adopted by previous councils. These rules help in running an efficient and genial meeting and in dealing lawfully and effectively with the public and the media. The rules of procedure should indicate the sequence of the council agenda as well as the procedure for holding public meetings. See Appendix 4: Rules of Procedure for General Law Village Councils.

Rules of procedure should be adopted by a majority vote and reexamined regularly. When the village council meets following the election of trustees, the council’s rules of procedure should be reviewed by the new council, amended as the members desire, and adopted as the current rules of procedure.

Trustees should become very familiar with the requirements of the Michigan Open Meetings Act. For example, Section 3 of the Act states that “a public body may establish reasonable rules and regulations in order to minimize the possibility of disruption” in the taping, broadcasting, or telecasting of the proceedings of a public body.

Many local governments in Michigan adopt the latest edition of *Robert’s Rules of Order* in addition to their council rules. Most people are familiar with it, and it offers a framework for your meetings. Robert’s Rules should be consulted as a last resort, after state law and council rules. If possible, the village president should appoint a parliamentarian to assist the council in following Robert’s Rules.

Citizen Participation in Council Meetings

The president, council, and citizens should keep in mind one important difference between villages and townships. Townships may hold an annual town meeting where citizens may participate and vote. This is not an option for villages. Only the president and the trustees may introduce an agenda item and vote on matters brought for action.

The village council agenda should include an opportunity for members of the public to address the council. Under Section 3(5) of

the Open Meetings Act, “a person shall be permitted to address a meeting of a public body under rules established and recorded by the public body.” Sample rules of procedure are printed in Appendix 4.

Public Hearings

Council rules should also include a procedure for public hearings. Public hearings offer citizens an opportunity to be heard —which is a a strength of a representative democracy. Even if not required by law, a public hearing can be useful in helping village officials understand how their constituents feel and why they feel that way.

Public hearings are a formal meeting of the council to obtain input from the public, and are a legal requirement for some matters, such as adoption of the annual budget or changing the local zoning ordinance. They should be viewed as a serious effort on the part of village officials to secure as much information as possible about a topic before a final decision is made. A hearing may either be a part of a regular council meeting or be held at a special meeting called for that purpose.

Suggestions for Public Hearings:
Encourage citizens to participate in the discussion of the issue. Although limits may have to be placed on how long any individual may talk, everyone who wishes to be heard should be allowed “their day in court.” Public hearings can be tiring and it is tempting to close discussion before everyone has spoken. Resist this temptation. It is better to err in the direction of permitting “overtalk” rather than “undertalk.”

Avoid debating with citizens at a public hearing. The purpose of the hearing is to **receive** their information and/or opinion. You will have your opportunity later to state your position and rebut any information or argument you may feel needs it. Give the appearance—and feel it, too—of encouraging individuals to express themselves. You can help by looking directly at the person talking and by using nonverbal cues such as nodding affirmation and physically leaning in the direction of the speaker. At the same time, avoid such negative nonverbal cues as scowling, reading, checking your phone messages, talking to another trustee, or using facial expressions that suggest ridicule or contempt.

Avoid being trapped by the idea that the number of citizens who speak on one side of an issue or the other should determine the nature of the decision. Although the number speaking on one side or the other may be one factor influencing a solution, this should not be the only factor. There is no easy way to determine the extent to which speakers represent their claimed constituents; the other side may be far more numerous but far less vocal. Decisions should result from careful balancing of the facts and arguments both from the point of view of those directly concerned and of the community at large, with all citizen input given equal consideration if not equal weight.

Operating in the “Sunshine”

A basic premise of democracy is that the public’s business is conducted in public. This requirement is particularly necessary in a representative democracy. Two pieces of legislation enacted in 1976 spelled out the people’s right to know and set limits and parameters on a council’s actions. These are the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA). The policy of the state of Michigan is that the public is entitled to full and complete information regarding the affairs of government and the actions of those who represent them.

The OMA requires that all deliberations and decisions of a public body shall be made in

public—with only a few, very specific exceptions. By the same token, FOIA states that all persons, except those in prison, upon "written request" have a "reasonable opportunity" to inspect, copy, or receive copies of the requested public record of the public body. This sounds easy—however, the problem arises in the definition of terms. For example:

- What is a public record?
- Are personnel records of public employees subject to FOIA?
- What is a reasonable opportunity?
- Does an employee/officials have to stay at village hall all night to accommodate a FOIA request?

The answer to these questions is: "It depends." Documents may be kept confidential only when there is an actual detriment to the municipality. General guidelines and reference materials are available from many sources, including the League's Resource Center. However, when specific circumstances arise that make you question the appropriateness of a closed session or the necessity to post a meeting or whether to release a document, the safest course of action is to follow the guidance of your village attorney.

Powers of Elected and Appointed Officials

Powers of the council

The GLV Act establishes the council as the legislative authority for the village. It is important to remember that this authority is granted to the council as a whole rather than to individual trustees. Most of the powers granted to the council are permissive in nature rather than obligatory. The Act allows the council to:

- reduce the number of trustees from six to four. The proposed ordinance must be voted on and adopted at a meeting that occurs not less than 10 days after the initial meeting or public hearing at with it was considered. It requires adoption by a vote of two-thirds of the council. It cannot take effect for 45 days following adoption, during which time a petition signed by 10 percent of the registered voters can force a referendum on the issue. There are additional requirements regarding the timing of the ordinance and the effect on the term of sitting trustees. (MCL 62.1). A sample ordinance to reduce the size of council is available in Appendix 8 of this handbook.
- change the position of clerk and/or treasurer from elected to appointed. (MCL 62.1) The proposed ordinance requires adoption by a vote of two-thirds of the council. It cannot take effect for 45 days following adoption, during which time a petition signed by 10 percent of the registered voters can force a referendum on the issue. Sample ordinances to appoint the clerk and treasurer are available in Appendices 6 and 7 of this handbook.
- provide for the appointment of additional officers not provided for in the charter and prescribe their duties. (MCL 62.2, 62.3)
- appoint individuals nominated by the president. (MCL 62.2)
- act on resignations, determine vacancies, and make appointments to fill vacant offices. (MCL 62.10 - 62.13)
- provide for compensation of village officers (by ordinance for the president and council). (MCL 64.21)
- exercise all legislative authority. (MCL 65.1)
- select one member of the council to serve as president pro tempore. (MCL 65.3)
- hold regular meetings, at least one each month. The president or three members of the council can call

special meetings as needed. (MCL 65.4)
- create or abolish offices. (MCL 65.5)
- vacate, purchase, lease, and sell property. (MCL 65.5)
- order public improvements. (MCL 65.5)
- appropriate money, i.e. adopt a budget (MCL 65.5) (See Appendix 9), and levy taxes sufficient to support the budget (MCL 69.1) but not to exceed:
    - general operating, maximum 12.5 mills before any Headlee rollback (MCL 69.1) and subject to Truth in Assessing.
    - highways, maximum 5 mills before any Headlee rollback. (MCL 69.2)
    - cemeteries, maximum 2.5 mills for grounds purchase and 1 mill for operation before any Headlee rollback. (MCL 69.4)
    - garbage collection, maximum 3 mills before any Headlee rollback. (Garbage Disposal Act, 1917 PA 298, MCL 123.261)
- audit and allow accounts, i.e. authorize payment of bills. (MCL 65.7)
- by two-thirds vote, increase taxes and impose special assessments. (MCL 65.5)
- employ a village manager and enter into an employment contract with the manager. (MCL 65.8)
- adopt ordinances providing for the safety, health, welfare, and good government consistent with Michigan and/or federal laws. (MCL 67.1)
- The style of the ordinances and the requirements for publication are set out in Chapter VI of the GLV Act. The council may also set penalties for violation of these ordinances. (MCL 66.2)

The League's website can provide samples as starting points for drafting language for your ordinances. However, it is imperative that your village attorney at least reviews, and preferably prepares, the final draft for the council to consider. If your ordinance is challenged in a court of law, it is the village attorney who will defend the village action.

- grant licenses and set the terms and conditions under which a license will be granted and/or revoked. Determine the amount to be charged for the license. (MCL 67.2)
- establish public parks and grounds and provide rules for their use and vacating. (MCL 67.4, 67.6)
- supervise and control all public streets, bridges, sidewalks, alleys, etc. (MCL, 67.7-67.23), including:
    - assessment of costs to benefiting property owners. (MCL 68.32-68.35; 69.5)
    - regulation of signs and awnings. (MCL 67.11)
    - condemnation of private property. (MCL 67.12, 73.1 et seq.)
    - vacating of streets and alleys. (MCL 67.13)
    - determination of grades, paving, curbs and gutters, etc. (MCL 67.15-67.16)
- provide for and/or regulate the planting and trimming of trees. (MCL 67.21)
- provide for and/or regulate street lighting. (MCL 67.21)
- provide for village lighting. (MCL 72.1-72.9)
- establish, construct, and maintain sewers and drains. (MCL 67.24-67.34)

- establish and maintain public wharves, piers, and levees; and regulate navigable waters, including licensing of ferries. (MCL 67.35-67.40)
- purchase, improve, and care for cemeteries. (MCL 67.55-67.64)
- establish and maintain a fire department. (MCL 70.1)
- establish a police force and adopt rules governing the powers and duties of the police officers. (MCL 70.13-70.16)
- establish a department of public safety. (MCL 70.18)
- designate a street administrator and/or establish a department of public works. (MCL 71.12-71.14)
- incur debt. (MCL 69.21-69.25)
- condemn private property for public use. (MCL 73.1-73.5)
- alter village boundaries. (MCL 74.6)

Powers of the Village President

The GLV Act also establishes the duties and responsibilities of the village president. Some administrative duties of the president may be transferred to a village manager. (These duties are noted in **bold face.**)

The village president:

- serves as chief executive officer, with supervisory authority over affairs and property of the village. (MCL 64.1)
- serves as a voting member of the council on all issues. (MCL 64.1)
- presides at council meetings. (MCL 64.1, 65.2)
- gives the council information concerning the affairs of the village and recommends appropriate actions. (MCL 64.1)
- sees that laws relating to the village and ordinances and regulations of the council are enforced. (MCL 64.1)
- is a conservator of the peace and may exercise power to suppress disorder. May command citizen assistance to help enforce ordinances in emergency and disaster situations. (MCL 64.2)
- may remove any appointed officer or suspend any police officer for neglect of duty. (MCL 64.3)
- may examine all books, records, or papers of the village. (MCL 64.3)
- performs all duties prescribed by village ordinances. (MCL 64.3)
- calls special meetings of the council (three trustees may also call special meetings). (MCL 65.4)
- approves synopsis (or entire proceedings) of actions taken at council meetings prior to publication. (MCL 65.5)
- authenticates, by signing, all ordinances. (MCL 66.3)
- nominates the clerk and/or treasurer for council appointment if village has changed from an elected to an appointed a clerk and/or treasurer. (MCL 62.1)
- signs certification of assessment roll and amount required to be raised by general tax and special assessment. (MCL 69.13)
- warrants the treasurer to collect taxes. (MCL 69.15)
- countersigns disbursement warrants. (MCL 69.24)
- nominates a harbormaster (if needed) for appointment by council. (MCL 67.39)
- directs the fire chief. (MCL 70.4)
- appoints police officers and personnel with the consent of the council. (MCL 70.13)
- nominates a chief of police for council appointment. (MCL 70.15)
- nominates a director of public safety for council appointment. (MCL 70.18)
- nominates a director of public works for council appointment. (MCL 71.14)

- nominates non-elected officers for council appointment in accordance with the ordinance/ resolution creating the position. (MCL 62.2)
- fills vacancies of non-elected officials, with the consent of council. (MCL 62.13)
- concurs with the fire chief to order the destruction of a building, if necessary, to arrest the progress of a fire. (MCL 70. 11)
- signs boundary adjustment petition for presentation to the county commission. (MCL 74.6)
- prepares budget for presentation to council. (Michigan Uniform Budgeting and Accounting Act).

Powers of the President *Pro Tempore*
Each year, the village council appoints one of its members as president pro tempore. The appointment should be made on November 20th or as soon as possible thereafter. When the president is absent, the president pro tem presides at council meetings and exercises all powers and duties of the president. (MCL 65.3)

If the office of the president becomes vacant for any reason, the council must appoint a president to serve until the next regularly scheduled village election; any qualified elector may be selected to fill the vacancy. The president pro tem does not automatically become president. (MCL 62.13)

Duties of a Village Manager
Of Michigan's 206 general law villages, 55 have a village manager. In determining whether to establish the position of a village manager, each village must decide what will best meet its needs.

Prior to 1985, a village council could only assign those duties to a manager not required by law to be performed by another village official. This limited the effectiveness of the manager. Act 173 of 1985 allowed the village council to assign to the manager, by ordinance, selected administrative duties otherwise performed by other village officials under the GLV Act.

In addition, the 1998 revision to the Act allows the council to employ a manager to serve at the pleasure of the council and to enter into an employment contract with the manager. The council may now pass an ordinance assigning the manager any administrative duty of the council or the president, including hiring, firing, and directing village employees or other appointed officials. The manager may also be given supervisory responsibility over accounting, budgeting, personnel, purchasing, and related management functions otherwise given to the clerk or treasurer. This ordinance, like the ordinances for appointment of the clerk and treasurer, only becomes effective 45 days after passage to allow for the filing of a petition signed by 10 percent of the electorate, or after the election if such a petition is filed.

The village manager may be designated as the chief administrative officer required by the Uniform Budgeting and Accounting Act (MCL 141.434) to be responsible for the preparation, presentation, and administration of the village budget. The manager may also be designated as the street administrator as defined in section 113 of 1951 PA 51, MCL 247.663.

The Work of the Village Attorney
An important, though not always visible, member of the village team is the attorney. Although the duties of the attorney are not spelled out in the charter, at the request of council they might include:
- drafting ordinances,
- preparing legal opinions,
- reviewing policies and procedures for compliance with local, state, and federal law,

- defending the village in a court of law,
- advising the council on legal issues, and
- prosecuting violators of village ordinances.

Often a general law village cannot afford to have the attorney present at all meetings. However, copies of agendas and minutes should be submitted for review to assure that the village is in conformity with the law and to keep the council from unintentionally placing the village in a questionable legal position.

When appointing a village attorney, the council should prepare a request for proposal, specifying exactly what the attorney will be expected to do for the village. Things to consider in selecting an attorney are:

- experience in municipal law,
- time available—attorney must commit time for village issues; discuss turnaround time for written opinions, ordinance drafts, etc.,
- fees—per hour versus retainer or
- references—other municipal clients.

The council also needs to establish a policy for contacting the attorney. A common practice is that only specific officials may contact the attorney without council authorization. For instance, the president or the manager (or the clerk if there is no manager) should make the contact.

The League's Inquiry Service and Legal Affairs Division do not give legal advice, nor do they render legal opinions. However, the legal staff will gladly confer with your attorney on any legal issues in your community or to offer guidance in drafting your own policies, regulations, or ordinances.

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

Duties of a Village Clerk

The office of clerk is a pivotal one, dealing with vital areas of village operation: records management, finances, and elections. The importance of recording and preserving the official action of the village's legislative body cannot be overstated. Years from now all that will remain of the village documents will be these records.

Traditionally, the village clerk has been an elected official. The 1998 revision of the GLV Act allows the council, by ordinance subject to referendum, to appoint the clerk (MCL 62.1). This allows the council to require specific job skills and experience for the position and makes the clerk accountable to the council. This option was made available so that the council could appoint a clerk who did not live in the village. Making the office appointed takes away the residency requirement (since the person does not have to be an elector). A sample ordinance to appoint a village clerk is available in Appendix 6. Many of the clerk's duties may be transferred to the manager by ordinance. In many villages without a manager, the clerk performs the day-to-day administrative duties.

- Keep the corporate seal and all records and documents not entrusted to another officer by the charter. (MCL 64.5)
- Serve as clerk of the council, record all proceedings, resolutions, and ordinances. (MCL 64.5)
- Countersign and register all licenses. (MCL 64.5)
- Make reproductions in accordance with the Media Records Act 1992 PA 116, MCL 24.401-24.403. (MCL 64.5)

- Administer oaths and affirmations. (MCL 64.5)
- Serve as general accountant. (MCL 64.6, 64.7)
- Collect claims against the village, present them to council for allowance and, if allowed, submit check disbursement authorization to treasurer. (MCL 64.6)
- Report tax or money levied, raised or appropriated to treasurer as well as the fund to be credited. (MCL 64.6)
- Make complete financial report to council as requested. (MCL 64.8)

The office of clerk can be the most controversial, and perhaps misunderstood, position in a general law village. Several steps can be taken to help resolve some of these issues:

- The clerk and council should discuss mutual expectations of the roles and responsibilities of each position. This can lead to cooperation and mutual respect.
- Network with other village officials. The Michigan Association of Municipal Clerks offers support for clerks. Help is often just a phone call away. By the same token, offer to assist new clerks in your area who may be having difficulty identifying roles and responsibilities.
- Attend educational programs about roles and responsibilities of officials, teamwork, and local government.
- Consider appointment of the clerk by the council, as allowed by the 1998 revisions to the charter. The ordinance may establish requirements for specific job skills and experience and make the clerk accountable to the council. It may also provide job security and continuity for this important position.

Duties of a Village Treasurer

Prior to the 1998 revision of the GLV Act, a number of villages amended the general law village charter to provide for the appointment of the treasurer by the council. This allows the council to require specific job skills and experience for the position and makes the treasurer accountable to the council. This option was made available so that the council could appoint a treasurer who did not live in the village. Making the office appointed takes away the residency requirement (since the person does not have to be an elector). With the 1998 amendments, the village now has the option of council appointment of the treasurer by ordinance, subject to referendum. A sample ordinance to appoint a village treasurer is available in Appendix 7. Duties of the treasurer may be transferred to the village manager by ordinance. The treasurer:

- Has custody of and receives all village money, bonds, mortgages, notes, leases, and evidence of value. (MCL 64.9)
- Keeps an account of all receipts and expenditures. (MCL 64.9)
- Collects and keeps an account of all taxes and money appropriations, keeping a separate account of each fund. (MCL 64.9)
- Performs duties relating to assessing property and levying taxes. (MCL 64.9)
- Makes periodic reports to the clerk and council as required by law. (MCL 64.10)

Changing your Charter

General law villages can amend the provisions of the GLVA (MCL 74.24) following the procedures outlined in the Home Rule Village Act, PA 278 of 1909, as amended (MCL 78.1- 78.28). An amendment must be approved by the village council, submitted to the governor's office for review, and approved by the village electors. Village councils interested in amending their charters should work with

their village attorney to assure that the procedure required in the state statutes is followed.

If the village needs to make substantial changes to the GLV Act, they might consider the possibility of becoming a home rule village and adopting their own charter. Villages can also become cities if they meet the standards designated by the state statute and if their citizens approve the change. The League has information on both of these processes.

Words of Wisdom

The following suggestions have been provided by experienced village officials: Realize you cannot solve every problem quickly. Looking at problems from the inside lends a different perspective when you are forced to look at all aspects. *Village Manager*

You have information citizens do not and you are charged with educating as well as listening to citizens. *Village Manager*

Get involved. Know what is going on. Communicate with other trustees. Review your meeting material prior to the night of the meeting. *Trustee*

When first elected, listen and observe. Don't challenge existing staff or practices in public until you have done your homework and know what you are talking about. It boils down to good manners. Often, "jumping the gun" on an issue causes it to be magnified in the media. *Clerk*

Show respect to other village officials, including those appointed rather than elected. Our clerk and treasurer are now appointed by the council. They are still officials. Don't treat them like they are your private secretaries. *Clerk*

Be professional. Don't turn village issues into personal issues. Communication and cooperation are the key. *Trustee*

Chapter by League staff

Section 2: Roles and Responsibilities
Chapter 4: Successful Meetings

Rules of Procedure

One of the most important actions a council takes is to adopt rules of procedure to govern its meetings. Every general law village is required by the General Law Village Act to adopt "rules of its own proceedings." MCL 65.5. These rules of procedure help the council to run an efficient meeting and to deal with the public and the media in a positive manner.

Council rules provide a detailed and specific set of guidelines that can be tailored to meet the unique needs of a particular municipality. There are several reasons to adopt council rules:

1. **Promoting fairness and transparency:** Council rules help to ensure that all members have an opportunity to participate in the decision-making process and that official actions are taken in an open and accountable way.
2. **Encouraging efficiency:** Council rules help to ensure that meetings are conducted in an efficient manner, which can save time and resources and allow the council to focus on the most important issues facing the community.
3. **Allowing for flexibility:** Council rules are typically easier to change than a charter amendment or state statute, which makes them a flexible and useful tool for local governments, allowing the council to respond quickly to new challenges.
4. **Supporting good governance:** Council rules help to ensure that meetings are conducted in a manner that is respectful to all members of the community.
5. **Supplementing charter requirements:** Council rules can help to supplement the requirements of the charter by providing a more detailed set of procedures for conducting council meetings and making official decisions.

By establishing clear procedures and guidelines, council rules help to ensure that meetings are conducted in a manner that is in the best interests of the community and that official decisions are made efficiently and in an open and transparent way. All municipalities should consider adopting council rules as part of their governing process, even if only to supplement their charter requirements.

Sample Council Rules Provisions

a. Notification of meetings
b. Regular and special meetings
c. Attendance at meetings
d. Agenda preparation and distribution (including the use of a consent agenda)
e. Discussion and voting
f. Public hearings
g. Parliamentary procedure
h. Conduct of meetings (decorum of trustees; disorderly conduct)
i. Citizen participation
j. Minute preparation
k. Committees (establishing; appointments; duties and responsibilities)

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

the council should adopt the rules of procedure by majority vote.

The rules should indicate the sequence of the council agenda as well as the procedure for holding public meetings. They might also include whether the mayor is entitled to speak in debate, any restrictions on abstentions, how items are added to the agenda, how the agenda is distributed, limits on speeches, and anything else involving how meetings are procedurally conducted.

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

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

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

Sample Agenda Outline
a. Call to order and roll call of council
b. Public hearings on ordinances under consideration
c. Brief public comment on agenda items
d. Approval of consent agenda
e. Approval of regular agenda
f. Approval of council minutes
g. Submission of bills
h. Communications to the council
i. Reports from council committees
j. Reports from municipal officers as scheduled, e.g., manager, attorney, etc.
k. Unfinished business
l. New business
m. Announcements
n. Adjournment

Open Meetings Act
The basic intent of the Open Meetings Act (OMA) is to strengthen the right of all Michigan citizens to be informed of government operations.

Briefly, the OMA requires that nearly all deliberations and decisions of a public body be made in public. The general rule of thumb is that the public's business should be conducted in public. It is important to deliberate when making decisions so that constituents know why they are being made. Deliberations and documents may be kept confidential only when disclosure would be detrimental to the municipality, not when the matter would be uncomfortable or embarrassing.

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

Closed Meetings
In order for a public body to hold a closed meeting, a roll call vote must be taken; depending on the circumstances, either two-thirds of its members must vote

affirmatively, or it must be a majority vote. (See Appendix 2: Overview of the Michigan Open Meetings Act). Also, the purpose for which the closed meeting is being called must be stated in the meeting when the roll call is taken. The law provides for closed meetings in a few specified circumstances:

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

Recording Minutes

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

- a statement of the time, date, and place of the meeting;
- the members present as well as absent;
- a record of any decisions made at the meeting and a record of all roll call votes; and
- an explanation of the purpose(s) if the meeting is a closed session.

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

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

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

Closed Meeting Minutes

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

Public Hearings

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

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

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

Even if not required by law, a public hearing can be useful in helping municipal officials understand how their constituents feel about a particular issue and why they feel that way.

Parliamentary Procedure

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

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

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

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

As a member of the public body, you have the responsibility to become familiar with requirements and restrictions under the OMA, your governing documents—especially your charter—and your council rules of procedure. There are some basic concepts that are common to all organizations: a quorum must be present to take legal action; only one main proposition can be on the floor at a time; only one member can speak at a time; the issue and not the person is always what is under discussion; and usually, a majority vote decides.

A motion is handled in the following manner:

1. A member is recognized and makes a motion by stating “I move...” (Never use “I want to...” or “I think we should...” or “I motion...” or “So moved.”)
2. Another member “seconds” the motion, without waiting for recognition. This means that another person thinks the subject is important enough for discussion and vote. (To expedite

business and avoid confusion when no second is offered, you might want to adopt a rule that eliminates the requirement for a second.)

3. The chair states the question: "It is moved and seconded that..." The motion now belongs to the assembly for discussion.
4. The chair asks: "Is there any discussion?" or "Are you ready for the question?" The motion is opened for debate, and the member who made the motion has first priority in speaking to the question. According to *Roberts Rules*, each member has the right to speak twice in debate but may not speak the second time until everyone has a chance to speak once.
5. The chair states "The question is on the adoption of the motion to..." the vote is taken by whatever means is established in your community. If by voice vote, "All those in favor say 'aye'. All those opposed, say 'no'."
6. The chair announces the results of the vote. "The ayes have it and the motion is adopted." Or "The nays have it, and the motion is lost."

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

Individual members should respect their colleagues and the chair, obtain the floor by being recognized by the chair before speaking, use correct terminology, limit remarks to the issue under consideration, raise concerns and objections during debate, and actively listen to citizen input and discussion.

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

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

1. **Main motion.**
- to introduce a subject, *make a main motion*

2. **Subsidiary motions assist the members in treating or disposing of a main motion.**
- to kill or reject a main motion without a direct vote on it, *move to postpone indefinitely*
- to change a pending motion, *move to amend*
- to send a pending question to a small group for further study, *move to commit or refer*
- to put off action or a decision until later in the same or next meeting, *move to postpone definitely*
- to change the rules of debate, *move to limit or extend limits of debate*
- to close debate, *move the previous question*
- to set aside the pending question temporarily in order to take up more pressing business, *move to lay on the table*

3. **Privileged motions deal with rights and privileges of members and do not directly affect the main motion.**
- to return to the printed agenda, *call for the orders of the day*
- to secure a privilege, such as ensuring your ability to see or hear, *raise a question of privilege*

- to take a short break in the meeting, *move to recess*
- to close a meeting, *move to adjourn*
- to set a time to continue the business to another day without adjourning the current meeting, *move to fix the time to which to adjourn*

4. **Incidental motions are incidental to the business at hand.**

- to endorse the rules, *rise to a point of order*
- to reverse or question the decision of the chair, *appeal*
- to question the correctness of a voice vote as announced by the chair, *call for a division of the assembly* (rising vote)

5. **Motions that bring a question again before the assembly allow the assembly to reopen a completed question.**

to give members a chance to change their minds, some motions can be redebated and revoted. The move must come from the prevailing side (yes if it was adopted; no if it failed), *move to reconsider*

- to change what was adopted at a previous meeting, *move to amend something previously adopted*
- to change the outcome of an affirmative vote, *move to rescind*

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

Original chapter by **Connie M. Deford**, retired city clerk of Bay City; revised by **Henry Ballout** and **John Gillooly** of the law firm Garan Lucow.

Section 2: Roles and Responsibilities
Chapter 5: Local Ordinances

The first, and most important, step in the preparation of an ordinance is to determine exactly what the village council wants the ordinance to accomplish. Often, local legislation is proposed on the vague idea that there "should be a law," with no clear understanding or articulation of what the ordinance should prohibit or require. Your municipal attorney should draft your ordinances. Knowing that this is not always possible, the attorney should at least be consulted before the ordinance is passed. After gaining a clear understanding of the village council's purpose and intent, the drafter must express the purpose in appropriate language, arranged in a readable and useable manner. Although the drafting of plain, accurate, and effective ordinances may be as much of an art as it is a science, it is an endeavor that one can get better at with practice.

Requirements of a Local Ordinance

An ordinance must advance a public purpose relate to local matters, and serve a lawful purpose, either as expressly provided for by law or as necessary for the general health, safety, and welfare of the community. The provisions of an ordinance must be consistent with state law; the ordinance may not conflict with or be preempted by a state law. The same holds true for federal law. A direct conflict exists if an ordinance permits what a state statute prohibits or prohibits what a state statute permits. An ordinance may not conflict with the provisions of a local charter.

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

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

Generally, resolutions implement ministerial functions of government for short-term purposes, while ordinances are intended to have a permanent and more general effect. Labeling a resolution an ordinance does not make it so.

Basic Adoption Procedures and Requirements

Assuming that there is proper authority to enact an ordinance, the ordinance must be enacted according to the procedures set

forth by statute or local charter. For example, notice and voting requirements must be observed. Also, ordinances must be published, printed, and authenticated by the local government as required by applicable laws. The statutes provide varying times within which an ordinance may become effective, depending upon the type of local government involved.

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

Voting Requirements
Unless otherwise provided by statute, an ordinance must be adopted by a majority vote of the elected members of the governing body. Under the General Law Village Act, an ordinance requires a majority vote to pass. However, it is important to be familiar with the exceptions to majority vote requirements. In the GLVA, the exceptions that require a 2/3 vote are:

- to reduce the number on council from six to four,
- to change the office of the clerk from elected to appointed, and
- to change the office of the treasurer from elected to appointed.

Publication
After an ordinance is adopted, it must be published in a local newspaper of general circulation before it becomes effective. As applied to ordinances, "publication" means

GLV Act ordinance provisions:

Ordinance style

The style of an ordinance shall be: "The Village of _____ ordains." (MCL 66.1)

Effective Date

An ordinance shall state its effective date, which may be upon publication, except that an ordinance imposing a sanction shall not take effect before the twentieth day after its passage or before the date of its publication, whichever occurs first. (MCL 66.1)

Voting

An ordinance, except as otherwise provided in this act, requires for its passage a majority vote. (MCL 66.1)

Recording

Upon enactment, each ordinance shall be recorded by the clerk in a book to be called "the record of ordinances," and the president and clerk shall authenticate each ordinance by placing his or her official signature upon the ordinance. (MCL 66.3)

Publication

Within 15 days after the passage of an ordinance, the ordinance or a synopsis of the ordinance shall be published in a newspaper circulated in the village. (MCL 66.4)

Immediately after publication, the clerk shall enter in the record of ordinances, a certificate under the clerk's hand stating the time and places of the publication. (MCL 66.4)

publishing a summary of the ordinance along with a designation of where a true copy of the ordinance can be inspected or obtained (MCL 66.4).

An ordinance must be published within the time period specified by statute. General law villages must publish ordinances within 15 days of passage in a newspaper circulated in the village (MCL 66.4).

Effective Date
Ordinances usually do not take immediate effect unless stated in the ordinance, particularly if they provide for penalties. The General Law Village Act provides that "an ordinance shall state its effective date, which may be upon publication, except that an ordinance imposing a sanction shall not take effect before the twentieth day after its passage or before the date of its publication, whichever occurs first." (MCL 66.1)

Reading Requirements
Reading requirements govern the number of times that an ordinance must be read aloud or considered by the local governing body, either in full or by title, and on how many different occasions. The GLV Act does not have requirements for reading ordinances; however, village councils may pass reading requirements if they choose. Typically, this is done by placing a provision in the council rules of procedure.

Adoption of Technical Codes by Reference
Various statutes authorize the adoption of specified technical codes by reference. A general law village may adopt a plumbing code, electrical code, mechanical code, fire protection code, building code, or other code promulgated by this state, by a department, board, or other agency of this state, or by an organization or association which is organized or conducted for the purpose of developing a code by reference to the code in an adopting ordinance and without publishing the code in full. The code shall be clearly identified in the ordinance and a statement of the purpose of the code shall be published with the adopting ordinance. Printed copies of the code shall be kept in the office of the clerk available for inspection by or distribution to the public during normal business hours. The village may charge a fee that does not exceed the actual cost for copies of the code distributed to the public. The publication in the newspaper shall contain a notice to the effect that a complete copy of the code is available for public use and inspection at the office of the clerk. (MCL 66.4). Efforts should be made to stay current—state codes adopted by reference should be readopted to reflect changes made in the codes as they occur.

Ordinance Amendments
The procedures and requirements that govern amendments as provided by state statute and other applicable laws should always be examined and followed:

- Amendments change, add, or delete material in an ordinance.
- Amendments should be drafted to conform to the titles and numbering system of the ordinance being amended. The definitions contained in the ordinance should be referred to and followed.
- It is not necessary to repeal an ordinance section or provision in order to change it. The particular section or provision only needs to be amended to read as desired.
- If an ordinance section or provision has already been amended, it is not necessary to repeal the prior amending ordinance. It is only necessary to amend the provision as it currently exists.
- In adding new material, such as a new subsection, the entire section being amended generally should be set forth in full, including the new material, to

show how the amended section will read in full. If this is not done, confusion may arise as to where the new material fits in the section being amended and whether old material is superseded. If a long section is being amended, it is appropriate, and may be more convenient, to set forth only the amended subsection.

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

Choosing Between Ordinances and Resolutions

For each proposed action of a local governing body, it must be determined whether the action requires an ordinance or a resolution. In most cases, the proper approach will be obvious. However, the choice of approach is critically important because the use of the wrong device may result in invalidation of the action taken. If the substance of a local governing body's action requires adoption of an ordinance, a resolution cannot operate as a de facto ordinance, and the attempt to legislate by resolution will be invalid. A state statute or local charter may specify whether an action must be by ordinance or resolution.

Typically, any act imposing a sanction for the violation of the act must be by ordinance. If a statute or local charter does not specify whether an action must be taken by ordinance or resolution, the nature of the proposed action must be examined to determine whether an ordinance or resolution is required.

Chapter by League staff based on materials provided by **George B. Davis,** a partner at Davis & Davis PLC.

Section 2: Roles and Responsibilities
Chapter 6: Ethics

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

Who said serving on the village council would be easy?

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

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

What Is a Conflict of Interest, and Why Should We Care?
To understand the Michigan laws on the subject, let's begin with what they are trying to address: What is a "conflict of interest," and why should we care about it?

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

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

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

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

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

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

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

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

In addition, if the governmental decision is the award of a contract, the officer's direct benefit from the contract cannot exceed the lesser of $250 or five percent of the contract cost; and the officer must file a sworn affidavit as to the amount of direct benefit, which is made part of the public record.

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

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

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

thresholds) or of which he or she is a director, officer, or employee; or
d. any trust of which he or she is a beneficiary or trustee.

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

Even if the exception is available, however, care must be taken about contract approval. Act 317 imposes strict disclosure and approval requirements, including:

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

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

Further, recognizing that smaller communities might be unduly limited by these requirements, Act 317 allows for certain exceptions in local units with a population of less than 25,000.

Other Considerations

In addition to the two principal ethics statutes, local elected officials should be aware of other potential sources of ethical rules. One example is local charter requirements or local ethics ordinances or policies. Act 317 permits local ethics regulation in subjects other than public contracts and therefore, local regulation—regarding disclosure, conflicts of interest in other situations and nepotism, for example—is permitted. Local officials should consult with their city or village attorney to become familiar with such local regulations.

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

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

The Legislature has created a number of exceptions to the general rule, including exceptions for certain situations in a local unit having a population of less than 40,000, and other exceptions based upon the nature of the public office. Local officials are

advised to consult with the city or village attorney for guidance in specific cases.

The Michigan Supreme Court has said that a breach of duty occurs if the two governmental entities in which the official holds offices are parties to a contract or enter into contractual arrangements. Local public officials seeking to hold two public offices should first ask whether Act 566 will preclude the dual service as a way to avoid potential embarrassment.

For more information, the League has sample ethics ordinances and policies, an ethics handbook, and the following Fact Sheets available at mml.org:

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

Conclusion

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

Materials for this chapter provided by **Michael McGee**, principal in the law office of Miller Canfield.

Ethics questions: What would you do in these situations?

Situation #1
You work for a large manufacturing company which also happens to be your village's largest taxpayer and employer. The company applies for a tax abatement for the plant in your village. You work at another facility and the tax abatement does not impact your job. Should you vote on the abatement?

Situation #2
Before you were elected to the village council, you served on the zoning board of appeals (ZBA), so you know the ZBA procedures very well. A few months after your election, your neighbor files a petition with the ZBA seeking a variance. Since you know how the ZBA works, he asks you to accompany him to the ZBA and to speak on his behalf. Can you do it?

Situation #3
You are a member of the board of directors of your local chamber of commerce and have been for many years. You then run for and are elected to your village council. The chamber later proposes that the chamber and the village enter into a contract in which the village pays the chamber for economic development services. Should you vote on the contract?

Ethics answers

Situation #1:
No. Act 196 states that a local public official shall not participate in the granting of subsidies, issuance of permits or certificates, or any other regulation relating to a business entity in which the official has an interest. An exception may be available, but only if the official's participation is necessary to achieve a quorum. The Attorney General has said that if the council person does participate, the council action may be void or voidable where the person's vote was determinative. See OAG No. 5864 (1981); OAG No. 6005 (1981).

Situation #2:
Yes, provided you do not have a pecuniary interest in the petition's outcome. Since you, as the person making the argument to the ZBA are also one of the people charged with appointing the ZBA, this may create duress on the ZBA, raising doubt about the impartiality of the ZBA's decision. *MDOT v Kochville Township,* 261 Mich App 399 (2003) allowed such an appearance when the local official was representing the township's public position but was not otherwise interested in the matter. In contrast, if you have a pecuniary interest in the outcome, any decision made by the ZBA under these circumstances is void. See *Barkey v Nick,* 11 Mich App 361 (1968).

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

Section 2: Roles and Responsibilities
Chapter 7: Influencing State and Federal Legislation

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

Since the late 1960s, the League has maintained a full-time advocacy and lobbying presence at the State Capitol in Lansing through the League's State and Federal Affairs Team (SFAD). The SFAD staff monitors, analyzes, and articulates the municipal viewpoint on many of the 4,000 or more bills that are introduced in the Michigan Senate and Michigan House of Representatives during each two-year legislative session. SFAD staff interacts directly with legislative leadership, legislative committee and sub-committee chairs, individual legislators, and key staff from both legislative chambers.
They communicate the municipal point of view on a host of policy issues ranging from taxation and appropriations priorities to public safety, public works, and environmental concerns.

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

How League's Policies and Positions on Legislation Are Set
The genesis of the League's legislative policies and positions on specific bills rests with the League's five standing committees:

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

These committees, each consisting of approximately 30 mayors, councilmembers, managers, and senior staff from cities and villages throughout the state, meet several times per year (generally quarterly) to review and recommend League positions on specific bills before the Legislature.
The committees also conduct an annual review of, and recommend amendments to, the League's Core Legislative Principles, which guide League staff in discussions and negotiations on legislative issues.

Recommendations on legislation and League policies are then forwarded to the League's 20-member Board of Trustees for further review and concurrence. In turn, recommended amendments to the League's policy statements are then forwarded to the League's member cities and villages for review, debate, and a final vote at the League's annual business meeting.

Municipal Officials' Role in Lobbying
The strength of the League's advocacy program comes from its base of elected officials from the state's 533 cities and

villages. Our success as a lobbying unit is directly and unmistakably related to their level of active participation in an issue.

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

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

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

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

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

On occasion—depending on the issue— the League encourages municipal officials to travel to Lansing and meet directly with their senator and representative. Once again, this is a situation in which League staff monitors developments, interacts with legislators and staff, and then makes a determination that a direct, face-to-face contact between local officials and their legislators will be of great benefit to championing the municipal viewpoint on a bill.

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

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

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

The League's State and Federal Affairs Team staff in Lansing closely monitors the development and introduction of bills that are introduced each two-year legislative

session in the Michigan House and Senate. This work requires daily, one-on-one interaction with legislative leaders, the chairpersons of Senate and House committees, and individual legislators who are working on issues of interest to cities and villages.

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

Success in the legislative arena often means building and maintaining coalitions comprised of a wide range of individuals and interest groups who share a desire to see a particular bill passed and signed into law or delayed for further consideration.

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

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

League staff are frequently at the table when bills are discussed, and amendments are drafted. During each legislative session, the League participates in dozens of workgroups, task forces, subcommittees, and other activities where legislation is analyzed, and final agreements are made. League staff members also consult regularly with municipal constituent groups such as the Michigan Association of Mayors (MAM), the Michigan Municipal Executives (MME), the Michigan Association of Municipal Attorneys (MAMA), and the Michigan Chapter of the American Public Works Association (APWA), among others. These organizations help SFAD staff to gauge the impact of legislation (and regulatory decisions) on cities and villages.

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

A typical legislative day will find League lobbyists at the Capitol building by early morning to testify before Senate and House committees and talk with individual legislators. Depending on the legislative schedule, League lobbyists may be scattered at several House committee meetings or stationed outside the senate chamber to talk one-on-one with senators prior to, and during, the senate session. By

early afternoon, the venue changes slightly as League lobbyists attend one of several senate committee meetings while simultaneously monitoring floor action in the house chamber. Breakfasts with coalition partners, lunches with legislative staffers, and an occasional dinner meeting are all part of a routine day for League lobbyists at the Capitol.

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

Inside 208 – Produced by the League staff in Lansing, Inside 208 is the League's legislative blog and go to place for members to receive the latest "happenings" in Lansing and Washington. It also provides valuable information about funding opportunities and educational webinars. Members can subscribe to this blog and receive email alerts when new content is posted.

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

Targeted email alerts and advisories – Occasionally, League staff prepares and distributes via email, special advisories, alerts, and calls to action tailored to individual municipal officials. Most often, these communications are sent to municipal officials whose legislators can provide critical votes on key legislation.

Chapter by League staff.

Section 2: Roles and Responsibilities
Chapter 8: Training of Municipal Officials

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

As a leader in your municipality, you should place importance on continual training and updating your knowledge base, as well as emphasizing the development of the knowledge and skills of employees.

As an elected official, mindful of the liability exposures to your municipality, you should be aware of established case law and its relevance to your municipality.

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

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

The U.S. Court of Appeals, Sixth Circuit subsequently held that inadequacy of police training may serve as a basis for municipal liability. The court concluded that the lack of training for the police force in this case was reckless and negligent and Harris' civil rights were violated.

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

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

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

Municipalities must be continually aware of the need for training. In terms of practical application, each person in municipal employment should keep a log documenting all aspects of individual training. The person

in charge of training for the municipality should have an identical log and periodic inspection should be made to ensure that individual logs are up to date.

New employees should receive written policy and procedure manuals and sign a log that they have received this manual, which affirms the municipality's desire to provide correct training and orientation. Employees should be routinely scheduled for training to comply with municipal policies and to keep current with changes in the law as it affects job duties and responsibilities. A positive aspect of the *Canton v Harris* decision is that it stimulated the demand for current training and updates on changes in the law and provides the added benefit of having better trained employees. Of top priority today is sharpening techniques and skills to implement higher productivity among public employees while maintaining high quality services and controlling costs.

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

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

Chapter by League staff.

Section 3: Operations
Chapter 9: Written Policies and Procedures

Why You Should Put Policies and Procedures in Writing

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

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

Just imagine the kind of resentment and frustration a situation like this might create. What if two employees from the department share rides to work and begin to compare notes on how their supervisors reacted to the manager's tirade? The individual whose supervisor disciplined him will have every reason to feel angry and put upon. On an organization-wide basis, this can mean lower morale and productivity, more grievances, and understandably poor relations between supervisors and employees. In addition, neither supervisor has done anything that will consistently improve employee compliance with the requirement to wear PPE.

Managers and supervisors who have worked for the same municipality for a number of years may *think* they understand its policies. Usually all they really have is a sense of how their peers and predecessors have handled similar situations in the past.

Other managers go on instinct, dealing with each situation as it arises and relying on their own "good" judgment to make the right decisions. Either approach will almost certainly result in inconsistencies.

These inconsistencies can, in turn, result in misunderstandings, grievances, and even lawsuits. There have been many instances where managers and supervisors have taken a single manager's decision—with no written policy to back it—as "policy setting." The decision has then influenced many similar decisions by other managers and supervisors throughout the organization.

If the original decision was sound, this may not result in any immediate disastrous consequences. What happens, however, if that manager acted illogically, irrationally, or even illegally? Managers and supervisors who think they are in accordance with municipal policy may repeat the original error in judgment many times.

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

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

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

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

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

How are Policies Made?

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

Most policies develop from past practices—good or bad, fair, or unfair. Even in organizations where a policy manual exists, these past practices can continue to

influence managerial decisions. In other words, managers cannot ignore them.

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

More specifically, policy development occurs when a group of people—a policy committee—meets and reaches consensus on specific policy statements. Committee members review past practices and the traditional approaches to certain situations as well as the latest legal requirements and management techniques. They try to pool their ideas and experiences, iron out differences of opinion, and come up with policies that are both fair and workable. Ideally, representatives come from the employee, supervisory, and management ranks. This helps to assure that the committee considers the interests of all three groups during policy formulation. Policy development should also include a procedure for enforcing, reviewing, and updating the policies.

What Purposes Does a Policy Manual Serve?

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

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

The important thing to remember about policy manuals, however, is that communication should not stop once the committee completes the manual. On the contrary, this should be where the real communication—between supervisors and employees as well as between supervisors and their superiors —begins. Every single time a question concerning a policy arises, the supervisor or manager in charge has an opportunity to improve communication and understanding with the employee(s) involved.

A policy manual is an excellent training resource. You can use the manual both in training newly hired or promoted supervisors and in conducting refresher courses for experienced supervisors. Some organizations have actually structured their supervisory training programs to correspond with the manual's table of contents. You can develop and use case studies to illustrate problems. Case studies can be particularly

useful when discussing employment-related safety issues. The manual can serve as a guide in deciding the right way to handle these hypothetical situations.

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

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

These and other reasons make it *desirable* to have a safety policy and procedures manual. In addition, there are other reasons that make such a manual all but *mandatory* if you are to fulfill your obligations to serve the public and to preserve all its resources—human, material, and monetary.

The regulatory requirements that MIOSHA imposes frequently change. Without current, documented policies and procedures, managers and supervisors are likely to make some mistakes in the area of safety and health that can lead to costly losses.

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

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

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

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Section 3: Operations
Chapter 10: Village Service Options

Introduction
A principal responsibility of municipal government is to make sure that when residents turn on their faucets, clean and safe water comes out; when they call 911, the police, fire fighters, or EMTs show up quickly with all the necessary equipment to help; when they flush their toilets or take showers, everything disappears down the drain never to be seen again; when they put their trash and recyclables at the end of the driveway, a truck will come by and take it away; when they have to go to work, get groceries, or drive the kids to school, the streets will be clear of snow, rain, and potholes (or at least the big ones); and when they've had a hard week at work and want to relax with their families, they have parks, libraries, and other places to enjoy their time off. These examples are just a handful of the many types of public services residents and businesses expect their municipal officials to provide for them daily.

A municipality's ability to effectively provide and perform public services can be the difference-maker when it comes to people and businesses making decisions about where to locate and remain. In many ways, it is what separates strong, resilient, and successful communities, from weaker and failing ones.

As the elected leaders, it is up to the members of municipal council to make decisions about the types and extent of public services to provide in the community, and there are a number of driving forces behind such decisions. Once those decisions are made, there must be an effective and ongoing effort to properly provide, manage, and maintain the services, which involves joint and cooperative undertakings by the council, the municipal administration, consultants, contractors, and sometimes even nearby communities. In many instances, the public services will also be subject to federal, state, and county regulations. Most residents and users of the services have no comprehension of what goes into providing the service to them. They usually don't even think about it (and they don't want to), at least until something goes wrong, or the fees or taxes for the services become unaffordable.

Therefore, as municipal officials, it is advisable to have this subject on your list as a primary area to focus on and build your knowledge base. To help you get started, this chapter will discuss the various types of public services that a municipal can provide to its residents, businesses, and visitors, and the various options (and challenges) for funding and providing those services. Kindly keep in mind that, by necessity, this is a very general and abbreviated discussion of this topic, and you are encouraged to seek out and gain a thorough understanding of the public services provided or worth considering in your community from your fellow officials and administrators.

Types of Public Services
There are many statutes that provide municipalities the authority to provide a long list of services to the public.

They range from types of public services that are familiar to most people, to some that are provided in only a limited number of communities with particular characteristics, conditions, and needs. Here is a partial list to demonstrate the wide variety of services provided in many Michigan communities, but keep in mind that it is up to the public officials in each municipal to carefully examine and decide which public services are needed, appropriate, and affordable for their individual community:

- Police
- Fire
- Emergency Medical/Ambulance
- Water
- Sanitary Sewers (Wastewater Management)
- Storm Sewers (Stormwater Management)
- Solid Waste Management
- Recycling
- Streets & Roads
- Parks & Recreation
- Library
- Senior Services
- Transportation
- Lighting
- Sidewalks, Trailways and Safety Paths
- Electricity
- Cable/Broadband
- Zoos
- Museums
- Health Care/Hospitals
- Animal Control
- Zoning Administration
- Construction Code Administration
- Property Maintenance Code Administration
- Weed Control and Lake Dredging
- Economic Development

Funding Options for Public Services

As part of the annual budgeting process described in Chapter 19, public officials are responsible for determining how much funding is necessary to meet the needs of each public service that the municipality provides to the community. In addition to determining how much is needed, public officials must decide on the source of funding to meet the needs of each public service. Below are a number of funding sources that are typically considered, but it should be noted that there are Michigan statutes and case law, which establish special requirements and levels of authority that apply to different types of public services and the funding methods that can be employed to pay for them. As such, consulting with your municipal attorney and financial advisors will be a critically important part of your decision-making process.

Taxes

A municipality's general fund property tax will usually fund a number of the public services provided by municipalities, but it is common for municipalities to establish a special designated tax, or millage, that the voters separately approve for purposes of funding fund certain services. Some of the more familiar examples of special millages include police millages, fire protection millages, street millages, library millages, and parks and recreation millages, but municipalities may use this type of millage for most of the public service examples listed above. A special millage can only be used for the specifically designated purpose described in a millage ballot proposal that is voter approved.

A special millage might fund the full cost of providing the public service, or it might supplement funding from the municipality's general fund for the service. A community may choose to use a special millage for a

number of reasons. For example, over time, the general fund may become an insufficient source of funding due to reductions in property values, inflation, or other demands on the general fund. Additionally, aging infrastructure may result in required replacement costs beyond what the general fund can bear, or the community may decide that it wants a higher level of service resulting in a substantial increase in the cost of providing the service.

User Fees

Charging fees to users of public services is also a common funding mechanism. The most recognizable examples of this are library book fees, public water fees, sewer fees, solid waste disposal fees, and building permit fees. However, there are many other types of fees that municipalities often charge in the course of providing public services. These include things like bus fares, storm sewers, entry fees for museums and zoos, and fees charged to use recreational facilities or participate in programs put on by senior centers and parks and recreation departments. An increasing number of communities are establishing other fee-based utility services, such as electricity, cable, and broadband. Although less common and often limited to certain circumstances, there are instances in which municipalities charge fees for ambulance or other emergency services.

As discussed in Chapters 18 and 22, fees are not appropriate for every type of public service. As a general matter, whether a fee can be charged for a service and how much can be charged are subject to certain restrictions or guideposts established by Michigan case law and statutes. Similarly, while it is not unusual for municipalities to charge a lower fee for residents than non-residents, this measure is also subject to certain legal limitations. Therefore, when deciding whether to charge a fee for a public service and determining how much to charge, it is advisable for municipalities to consult with their legal counsel.

Special assessments

Municipalities often use special assessments to fund certain types of public services or improvements associated with the provision of public services, such as streets, sidewalks, safety paths, lighting, sewers, water mains, weed control, and lake dredging. Increasingly, municipalities also use special assessments to provide funding for fire, police, ambulance, and recreation services. Special assessments are established when the service or public improvement benefits property owners within a definable district that can be established as a special assessment district (SAD). Only the properties within that district are required to pay the special assessment. Special assessments are not property taxes, but the effect of the public service or improvement on property value is a factor that municipalities (and reviewing courts) must take into account when deciding on the amount of a special assessment charged to each property. Chapters 18 and 22 discuss the topic of SADs in much more detail.

Bonds

Municipalities can issue bonds to pay for many things associated with the provision of public services. For example, bonds are sometimes used to pay for large, high-cost infrastructure projects like building a fire station, a library, parks and recreation facilities, major water or sewer system improvements, road projects, etc. The list is long, but bonded projects are usually necessary for the provision of some type of public service in the community. Although issuing bonds results in the municipality incurring a debt that has to be repaid with interest and administrative costs over time, it enables the municipality to take on needed projects that involve a substantial lump sum up-front cost to complete without causing large spikes in taxes, fees, or

assessments in order to pay for them. While it is true that taxes, fees, and assessments are ultimately used to make the bond payments, bonds have long-term payback periods, which enables the municipality to keep the amounts charged to the service users for the project relatively level. It also helps maintain fiscal stability for the municipal government (or public utility or authority), as a whole. Bond financing is discussed further in Chapter 21.

State & Federal Funding, Grants, and Donations

Costs associated with many of the public services discussed above are eligible for state and federal funding and grants. Similarly, there are many private organizations that provide funding for various types of public services, such as libraries, parks, recreation, education, economic development, and more. It sometimes can be a challenge to find these types of third-party funding opportunities, and the application process can often be daunting, but it is usually worth the effort.

Also, in some instances, grants, donations, and other third-party funding will come with strings attached, such as matching funds provided by the municipality from its other funding sources. While the conditions associated with any such third-party funding source are usually not a deterrent, the municipal administration and legal counsel should fully evaluate the municipality's ability to comply with them before a decision is made to accept the funding.

The Level and Cost of Service

Assume you have decided to go out for dinner tonight. Naturally, you will need to decide what type of restaurant to go to for your meal. That decision will probably be based on a combination of things, such as the kind of food you want, how hungry you are, how good the food and service is at various restaurants, whether you want sit-down or fast food service, and how much it will cost. Typically, the cost of that meal will depend on your decision concerning the several other service-related factors (i.e., the cost of the meal usually increases with the higher level of service provided). Unless you have limitless money, you will pick a restaurant that gives you the best of everything you want at a price that you are willing and able to pay.

Similarly, a person or business deciding whether to move into or remain in a particular community may make that decision based on the public services provided in that community. As public officials, you, of course, want to provide each public service in a way that will motivate them to choose your municipality. To do so, for each public service, you have to find the balance between the *level of service* that your community desires with the *costs of service* that the users are willing and able to pay.

Take, for instance, roads. Everyone would love to have roads that have no potholes, no cracks, no traffic jams, and no accidents, but they know the cost of providing such roads is not economically feasible. So, they generally accept roads that are maintained at some lesser level of perfection, provided it doesn't cost them more than they want or are able to pay. The objective is to ascertain what the residents and businesses consider to be an *acceptable level* of service on balance with an *acceptable cost* to provide that service. Figuring this out is not easy to do. To help with this challenge, public officials usually work with experienced professionals (employed on staff or retained as consultants) to evaluate and report on *existing* levels of service, conditions of service, and affordability, as well as the improvements and adjustments to the service that are needed *going forward* to provide the service at a cost that is both acceptable to, and satisfies the level of service desired by, the community.

Although level and cost of service considerations are usually part of the council's annual budgeting, tax rate, and user fee amount decisions for each public service, many municipalities will conduct a much more formal and in-depth level of service/cost of service study and report on a periodic basis for certain targeted public services. Such studies come with various titles or labels, but they are usually undertaken to assist the municipality's officials with planning and decision-making about the targeted public service for many years into the future.

Methods of Providing Public Services

There are many options for providing particular public services in your community. Many communities utilize more than one of these options for the various types of public services provided, depending on what fits and works best for their community and its available funding. The following are four common methods of providing public services:

Municipal Personnel and Facilities

With this method, the municipality uses its own buildings, equipment, materials, and employees to provide the service to the community. This is the most traditional and common method of providing public services, and it provides the highest and most direct level of control over the services provided to the community. When an issue or complaint arises, it is handled directly by the municipality's public officials, usually starting with administrative officials, but sometimes with the involvement of the elected officials on council. Conversely, when public services successfully meet the needs and expectations of the community, the municipality and its public officials can take full credit.

Independent Contractors

The use of private contractors to provide public services is also common. It is sometimes referred to as privatization, which some view positively and others negatively. Regardless, it is a legal and viable option for communities to consider. The decision to hire a contractor to perform a public service on behalf of a municipality can be driven by one or more factors, including qualifications, ability, training, resources, cost, liability, and efficiency. For example, a municipality may wish to provide figure skating lessons as one of its parks and recreation programs. Most municipalities will not have an adult figure skater on staff to provide the lessons and hiring a person as a part-time employee to perform this service may not make sense from a managerial and financial perspective. Moreover, there may not be a figure skater in or near the community who is willing to be hired as a part-time employee for this purpose. Therefore, it may make sense on multiple levels to hire an independent contractor to perform the public service, and indeed the municipality may have no other alternative, except to discontinue the public service.

While there are many instances of municipalities hiring independent contractors to provide or perform public services (or various aspects of public services), there are certain public services that municipalities typically will not use this method. These generally involve areas of essential services, such as police, fire protection, public water and sanitary sewer services, stormwater management services, and others. Even still, municipalities will hire private contractors to perform specific *aspects* of these essential services. Examples of this include water and sewer infrastructure installation projects, emergency transportation (ambulance) services, and EMT services, which are often performed by private companies under contract with a municipality. Furthermore, garbage collection and recycling are usually considered essential services, but, in Michigan, private companies hired by a

municipality, or a public authority, often perform these services.

Intergovernmental Contracts
In some instances, it makes sense for two communities to enter into a contract in which one community will provide public services in the other community for compensation. Usually this will occur when the receiving community is not in a position, financially or otherwise, to operate its own public service or sufficiently meet the service demand in its community, yet its residents and businesses need or desire to receive the service. The community providing the service must be sure that it has the capability and capacity to accommodate the level of service required, and the community receiving the service must be certain that it is able to administer the terms of the intergovernmental arrangement. Negotiating and entering into a detailed intergovernmental agreement that is fair and satisfies the needs of both communities is a key component to developing a viable and sustainable intergovernmental arrangement for public services.

Public Authorities
Various Michigan laws allow one or more communities to create an "authority," though which they can provide services such as fire, police, ambulance, sewer, water, emergency dispatch, solid waste, land use planning, building inspection, and recreation, to name a few. When two or more communities join forces to create such an authority, communities are able to share both financial and associated risks, and in some instances reduce costs. However, this optional method of providing public services is not always a good fit. First, it requires the establishment of a new public entity—the authority—which provides the services through its own separate governing body and administration (i.e., the municipality gives up quite a bit of control and is no longer the service provider in the community). Second, in the case of a joint authority, it requires long-term agreement and cooperation between multiple communities that are accustomed to having their own independent service provider. Third, sharing services is often a difficult adjustment for residents, and there is often concern that there will be a reduction in the level and quality of service.

When it comes to essential services, like police, fire, water, and sewer, these challenges and concerns are intensified among public officials and residents alike—for good reason. As such, it is important for public officials to thoroughly evaluate all aspects associated with the establishment of public authorities before making any decisions.

Federal, State, and County Regulations
Almost everything having to do with local government is connected, in some way, to laws or regulations enacted by the state or federal government, and sometimes even county regulations come into play. Likewise, with reference to the discussion topics in this chapter, state, federal, and possibly county laws will likely impact how the various public services are provided in your community, the extent to which they are provided, and the costs of providing them. Therefore, it is important for public officials, consultants, and legal counsel to review and maintain compliance with whatever third-party regulations may apply to the services provided in your municipality.

Chapter provided by **Steven P. Joppich**, vice president of the municipal law firm Rosati, Schultz, Joppich & Amtsbuechler, P.C.

Section 3: Operations
Chapter 11: Employment and Personnel

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

1. Pre-Employment Inquiries
2. Personnel Records
3. Disability Accommodations and Discrimination
4. Workplace Violence
5. Harassment
6. Fair Labor Standards Act (FLSA)
7. Independent Contractors
8. Family Medical Leave Act (FMLA)
9. Employment Posters
10. Employee Documentation
11. Whistleblowers' Protection Act (WPA)
12. Retaliation
13. Paid Medical Leave Act (PMLA)

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

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

Personnel Records
Under the Bullard-Plawecki Employee Right to Know Act, employers are required to allow former and active employees to review and obtain a copy of his or her personnel records upon written request and at reasonable intervals. Generally, an employee's review is limited to no more than two times in a calendar year, unless otherwise provided by law or a collective bargaining agreement. An employer may charge a fee for copying the personnel records, which is limited to the actual incremental cost of duplicating the information.

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

Any medical-related information pertaining to an employee must be kept confidential and apart from the location of an employee's personnel records.

Under MCL § 423.501(2)(c), personnel records <u>do not</u> include:

- Employee references supplied to an employer if the identity of the person making the reference would be disclosed;

- Materials related to the employer's staff planning with respect to more than one employee, including salary increases, management bonus plan, promotions, and job assignments;
- Medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility involved;
- Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy;
- Information that is kept separately from other records and relates to a criminal investigation pursuant to section 9 of the Act;
- Records limited to grievance investigations which are kept separately and are not used for the purposes provided in the Act;
- Records maintained by an educational institute which are directly related to a student; and
- Records kept by an executive, administrative, or professional employee that are kept in the sole possession of the maker of the record and are not accessible or shared with other persons. However, a record concerning an occurrence or fact about an employee kept by one of the aforementioned individuals may be entered into a personnel record if entered not more than six months after the date of the occurrence or the date the fact first becomes known.

Disability Discrimination and Accommodation

Both the federal Americans with Disabilities Act (ADA) and the Michigan Persons With Disabilities Civil Rights Act, 1976 PA 220 (PWDCRA), prohibit an employer from discriminating against a qualified individual with a disability in regard to application procedures, hiring, promotion, termination, compensation, job training and other terms, conditions, and privileges of employment if the applicant or employee can perform the essential functions of the position, with or without an accommodation.

The ADA applies to all employers with 15 or more employees, including local governments. However, employers with 15 or fewer employees should be familiar with the PWDCRA, which has different requirements for accommodating employees than the ADA, Nevertheless, reasonable accommodation is a key requirement of both the ADA and the PWDCRA since many individuals may be excluded from jobs that they are qualified to perform because of unnecessary barriers in the workplace.

Workplace Violence

Workplace violence continues to be a significant issue for employers. Violence in the workplace obviously affects employee safety, well-being, and productivity. Importantly, the Michigan Supreme Court has held that an employer may face liability for an employee's criminal acts under the doctrine of *respondeat superior*, if the employer "had (1) actual or constructive knowledge or prior similar conduct and (2) actual or constructive knowledge of the employee's propensity to act in accordance with that conduct." *Hamed v. Wayne County*, 490 Mich. 1, 12 (2011). At focus in this evaluation is whether the employee's conduct was foreseeable to the employer. In addition, courts have recognized claims against employers based upon negligent hiring, supervision, and retention of employees. Also, the General Duty Clause under Section 5(a)(1) of the federal

Occupational Safety and Health Act of 1970 (OSHA) has been interpreted to cover incidents of workplace violence. Specifically, under the General Duty Clause, employers must provide their employees with a place of employment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

Harassment
Employees have a right to work in an environment free from unlawful harassment in the workplace including sexual harassment and harassment or discrimination based on race, religion, color, sex, (including pregnancy and conditions related to pregnancy), national origin, ancestry, citizenship status, military status, marital status, age, disability, genetic information, sexual orientation, transgender status, height, weight, or other protected classes established through state or federal law or by local ordinance.

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

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

Notably, Michigan law also states that employers may not require employees to refrain from disclosing or discussing their wages.

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

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

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

upon an employee's freedom during the breaks.

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

Law enforcement, emergency responders, firefighters, and seasonal employees may accrue a maximum of 480 hours of comp time. All other public employees may accrue a maximum of 240 hours. Once the maximums are reached, the employee must be paid overtime.

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

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

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

Overtime Rules for Police and Fire
In addition to the difference in maximum comp time accrual caps, the FLSA provides another very significant difference for public employees engaged in law enforcement and fire protection activities. As a general rule, employees must be paid overtime at 1.5 times their regular rate of pay for all hours worked in excess of 40 hours per week. Under Section 207(k) of the act, however, police and fire employees who have an established and regularly recurring work period that is not less than seven consecutive days, nor more than 28 consecutive days are only entitled by the statute to receive overtime pay if they work more than the maximum number of hours established by law for their work period.

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

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

an independent contractor relationship depends, to a large extent, on the amount of control the municipality exerts over the worker.

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

1. Behavioral: Does the employer control or have the right to control what the worker does and how the worker does the job?
2. Financial: Are the business aspect of the worker's job controlled by the payer? These include things like how the worker is paid, whether expenses are reimbursed, who provides the tools, equipment, and supplies, etc.
3. Relationship Type: Are there any written contracts or employee-type benefits? Will the relationship continue and is the work performed a key aspect of the business?

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

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

Employers Subject to the FMLA
Currently, a private sector employer must employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year. Public employers, however, are covered without regard to the number of employees employed. This is somewhat misleading because even if a small public employer is technically covered by the FMLA, the employee will not be eligible under the Act unless he or she works within 75 miles of 50 employees of the employer.

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

- Works for a covered employer (all public employers are "covered employers");
- Has worked for the employer for at least 12 months;

Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and

- Works at a location where the employer has at least 50 employees within 75 miles.

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

Employee Documentation
Too often employers cannot establish the appropriateness of an adverse employment action due to a lack of documentation. Having fair, accurate, and non-biased documentation of employee behavior and performance can establish that the adverse action wasn't related to discrimination based on race, color, sex, age, religion, national origin, marital or veteran status, height, weight, disability, or other protected classes established through state or federal law or by local ordinance. Without documentation, it may become difficult for the employer to defend its actions against an employee.

Whistleblowers' Protection Act (WPA)
Michigan's Whistleblowers' Protection Act prohibits employers from discharging, threatening, or otherwise discriminating against an employee as to their compensation, terms, conditions, location, or privileges because the employee reports or is about to report to a public body—verbally or in writing—a violation or a suspected violation of a law, regulation, or rule. See MCL § 15.262. To demonstrate a violation of the WPA, a plaintiff must show that (1) he or she was engaged in a protected activity as defined by the WPA, (2) that he or she was discharged, and (3) that there is a causal connection between the protected activity and his or her discharge. If a plaintiff is able to establish those elements, courts will then turn to a burden-shifting analysis. Under that analysis, the burden will shift to the employer to articulate a legitimate business reason for the plaintiff's discharge. Thereafter, the plaintiff will have the opportunity to rebut with any evidence that the employer's proffered legitimate business reason was mere pretext for retaliating against the plaintiff's protected activity.

Retaliation
Retaliation against employees who pursue their legal rights and/or engage in protected activities is prohibited by most employment laws, including, but not limited to the FMLA, FLSA, WPA, the Michigan's Workers' Compensation Act (WCA), and the Michigan Occupational Safety and Health Act (MIOSHA). At the crux of each of these assessments is whether the plaintiff can provide sufficient evidence to substantiate his or her claims of unlawful retaliation.

Paid Medical Leave Act (PMLA)
Michigan's Paid Medical Leave Act requires employers of 50 or more employees to provide eligible employees with paid sick and safe leave. Employees may accrue one hour of paid sick leave for every 35 hours worked, up to 40 hours in a year. Paid sick leave may be used for the employee's or family member's mental or physical illness, injury, or health condition; if the employee or a covered family member is a victim of domestic violence or sexual assault; or a public health emergency, including exposure to a communicable disease.

Chapter provided by **Michael Hanchett** and **Aleanna Siacon,** associate attorneys with the law firm of Plunkett Cooney, P.C.

Section 3: Operations
Chapter 12: Labor Relations

Employee relations and labor relations in villages are, in many respects, the same as they are in cities. The federal and state laws that impact employee and labor relations are for the most part applicable to all public employers including counties, cities, townships, and villages. There are some special labor relations laws that affect only school boards.

Bring in the Experts
There are over 100 Michigan statutes, 35 federal statutes, and provisions in the Michigan Constitution that bear upon employee relations or labor relations in Michigan's public sector.

Since labor relations and collective bargaining are law-driven institutions, it is wise for a village to keep its attorney nearby when it is dealing with a union. Because a village probably does not have anyone working for it or on its council who is a labor relations expert, it is also wise for a village to bring in an outside expert when it is time to negotiate or renegotiate a labor agreement.

Many villages do not have village managers but instead utilize several department heads who report to committees of the village council. This makes negotiations and day-to-day administration of a labor agreement a little more difficult because it is necessary to have consistent and uniform personnel practices and contract interpretation decisions. The various department heads and committee members need to make a special effort to communicate with each other.

Because many villages are small organizations, the cost of conducting labor relations is quite large, per employee, compared to larger cities. When money is limited, and it always is, it hurts to pay a management consultant or attorney more money than you are paying in all of the employees' raises, combined!

Elected officials should not get directly involved in union and labor relations matters. However, certain village officials may have knowledge and expertise that can hold down consultants' fees by doing some of the negotiating themselves.

The Council's Role
Another bothersome issue in many villages regarding union contracts is, what role, if any, should the village council play in the negotiated grievance procedure. The answer is that the council should not be a step in the grievance procedure and should not be mentioned in it. The council, through its committee system, should guide the village manager or the department heads, in how they should respond to grievances, but should not be directly involved in a formal way.

Another dimension to employee and labor relations in a village is how its employment practices and employee benefits compare to those in its township. Cities don't need to worry about this as much because they do not co-exist with townships geographically. But, the taxpayers of a village, being also taxpayers of the township, sometimes expect the two organizations to be consistent, or, at least, not completely different.

Chapter provided by League staff

Section 3: Operations
Chapter 13: Municipal Liability

Knowledge Can Beat the Fear of Liability

Municipal operations always seem to be at the cutting edge of trends in litigation. Whether it's large, highly-publicized verdicts—such as the multimillion-dollar zoning lawsuit verdict against an MML Liability and Property Pool member a few years ago—or new areas of exposure, such as prisoner exoneration lawsuits or cyber ransomware claims—local government always seems to get hit early, and often.

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

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

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

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

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

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

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

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

further study, it is preferable to table a motion than to act with incomplete information.

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

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

- educational workshops are held annually throughout our state dealing with various liability issues;
- an email (info@mml.org) or phone call to the League's inquiry service can direct you to sources of information or individuals that can provide assistance;
- the League's Risk Management Services Department has a staff of professionals who can assist you with most liability issues;
- a wealth of insurance information is available online at mml.org—this is the website of the Michigan Municipal Liability and Property Pool, the League-sponsored and administered insurance program; and
- the League's Annual Convention has a variety of concurrent sessions and networking opportunities at which information can be obtained

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

Chapter by League staff.

Section 3. Operations
Chapter 14: Planning and Zoning

Introduction
Nothing can bring people out of their warm home to attend a public meeting like a proposal to develop property. From one perspective, the landowner will argue that it is their right to develop their land as they desire. On the other hand, neighbors in the vicinity will often cry "not-in-my-backyard." Stuck between these two extreme positions is the city or village that will make the decision on the development project. And the planning and zoning bodies involved in the decision have to do so based not on how many hands are raised on both sides, but instead on the law. Those bodies will be called upon to balance the property rights of the landowners against the public health, safety, and welfare. Fortunately, there are statutes and ordinances that guide cities and villages in making the decisions.

Statutory Framework
Planning and zoning in Michigan are based on two specific statutes: the Michigan Planning Enabling Act (MPEA) (PA 33 of 2008) and the Michigan Zoning Enabling Act (MZEA) (PA 110 of 2006). The previous enabling acts, which in varying sections provided different authority based on whether the entity was a city, village, township, or county, were consolidated to provide consistency as nearly as possible in the new statutes.

The Michigan Planning Enabling Act
The MPEA outlines the process for creating a planning commission, creating comprehensive plans, and adopting a capital improvements plan. Like the MZEA, it does not tell the community how to plan.

Zoning and planning are intended to be complementary, with planning providing the policy basis and fundamental guidance for the zoning map and zoning ordinance. Planning provides the vision for the exercise of the police power, and the zoning ordinance gives effect to the plan.

The zoning ordinance must be based on a plan. Absence of a legally adopted plan puts a zoning ordinance at a risk of invalidation if challenged in court. The existence of a master plan provides support for a zoning classification consistent with the plan. There should be a correlation between the master plan and the zoning ordinance. The master plan establishes an important basis for ensuring that the zoning is rational and reasonable.

The MPEA sets forth the procedure for adoption of the master plan which must be followed. At least every five years, the planning commission shall review the master plan to determine whether to commence a procedure to amend the master plan or adopt a new master plan.

The Master Plan
A master plan is a policy guide for future land use decision-making. It is a plan for a community's long-range growth, development, and redevelopment. The authority to prepare a master plan lies with the planning commission, not with elected officials. It must be adopted by the planning commission, but it can also be adopted by the governing body.

The general purpose of a master plan is to guide and accomplish within the community development that satisfies all the following criteria. The master plan must be coordinated, adjusted, harmonious, efficient, and economical. It considers the character

of the community and its suitability for particular uses based on factors such as trends in land and population development. It also must be designed to promote the public health, safety, and welfare based on present and future needs. The master plan needs to also provide for: transportation systems, safety from fire and other dangers; light and air; healthful and convenient distribution of the population; good civic design and arrangement; public utilities, and recreation.

A master plan must also include the following subjects that reasonably can be considered as needed to guide future development: 1) maps, plats, charts, and descriptive and explanatory matter; and 2) subjects that are pertinent to the future development of the community, including land use, zoning plan, transportation systems, waterways, public utilities and structures, and redevelopment or rehabilitation of blighted areas.

The Michigan Zoning Enabling Act

The MZEA sets forth in detail the procedures for adoption and amendment of the zoning ordinance which must be followed. There is no inherent power for a city or village to zone, and the authority is conferred through the statute.

The Zoning Ordinance

While the master plan is the guide for future development, the zoning ordinance is the actual law that applies to the development of land, and it is the zoning ordinance which must be defended if litigation is filed. The zoning ordinance is adopted by the legislative body, after a recommendation from the planning commission.

Zoning regulations place constraints on how a property owner may use their property. Yet, zoning also protects each property owner from the uncontrolled actions of others. The zoning ordinance defines each use that is permitted under each zoning classification. Only those uses specifically stated are permitted in a district, be it as of right or as a special land use.

Under Section 203(1) of the MZEA a zoning ordinance must be based upon a plan and coordinated with the plan to establish an orderly land use pattern. A zoning ordinance must be designed to promote goals including: the public health, safety, and general welfare, ensuring that uses of land are situated in appropriate locations and relationships; meeting the needs of residents for food, places of residence, recreation, trade, services, and natural resources; avoiding population overcrowding; providing adequate light and air; lessening congestion on public roads and streets; and, providing adequate transportation and utility infrastructure. Property should be zoned based on the natural suitability of the land for the intended purposes and compatibility with adjacent land uses.

A community must be careful when drafting a zoning ordinance not to exclude a particular use of property from the entire municipal entity. Totally prohibiting the establishment of a land use where it is possible to locate that use in the community and there is a demonstrated need for that land use in the community or surrounding area can result in an exclusionary zoning claim against the community.

The general rule in litigation is that the zoning ordinance is presumed to be reasonable and constitutional. If the zoning ordinance or decision made by the city or village is based upon a duly adopted and up-to-date master plan, this provides further evidence of the reasonableness of the zoning or zoning decision. But remember that the concepts contained in the master plan must be reasonable in and of themselves. In other words, just because land carries a certain master plan designation, if that designation is in reality not reasonable given the surrounding land uses, current uses of the property,

conditions of the property that impact development such as wetlands, woodlands, other environmental features, or topography, then reliance on the master plan will not carry much weight.

The Planning and Zoning Bodies

The Planning Commission

The planning commission is a multi-member body whose leading responsibility is to develop, review, and update the master plan in accordance with the law. The MPEA provides that the membership of the planning commission shall be representative of the entire territory of the local unity of government, and of important segments of the community such as economic, governmental, education, and social development, in accordance with major interests in the community, including agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce.

Unless exempted by charter, the planning commission shall annually prepare a capital improvements program of public structures and improvements. The planning commission may also be given the power to review and approve or make recommendations regarding the approval of special land uses and planned unit developments under the zoning ordinance. Planning Commissions also commonly are tasked with holding public hearings and making recommendations on the adoption of a zoning ordinance and zoning ordinance amendments.

The Zoning Board of Appeals

The zoning board of appeals (ZBA) is sometimes referred to as a "quasi-judicial" body and is created under the MZEA. The ZBA has powers under the act including: (1) the power to interpret the zoning ordinance; the power to decide appeals of decisions of the zoning administrator, building official or other administrative decision under the zoning ordinance that can be appealed by to the ZBA by an aggrieved party; and (3) the power to grant variances from the strict language or interpretation of the zoning ordinance.

A variance is a modification of the literal provisions of the zoning ordinance, which allows an applicant to do something that would normally be in violation of the zoning ordinance. There are two types of variances:

1) Use Variance. The ZBA is authorized to grant use variances in cities and villages. A use variance would permit a use of property not otherwise permitted on the property or in the zoning district. For example, a use variance would be allowing a business use in a residential zoning district.

2) Non-use or Dimensional Variance. The second type of variance basically covers every other request by an applicant that does not involve a change in use. Examples of dimensional variances include requests to vary setbacks, heights, and number of parking spaces.

Since a variance allows action contrary to the zoning ordinance, variances should only be granted if an applicant has demonstrated to the ZBA that they meet the requirements of the appropriate legal standards. There are two distinct standards that apply.

For a use variance, an applicant must demonstrate "unnecessary hardship," which requires the applicant to prove:

a) That the property cannot be reasonably used for the purposes permitted in the zoning district (i.e., property will not yield a reasonable return).
b) That the plight of the property owner is due to unique circumstances peculiar to his or her property and not to general neighborhood conditions.

c) That the use variance will not alter the essential character of the area.
d) That the applicant's problem is not self-created.

On the other hand, for a non-use or dimensional variance, the standard is "practical difficulty." This is a less stringent standard than unnecessary hardship. The elements of practical difficulty are:

a) Whether strict compliance with the restrictions governing area, setbacks, frontage, height, bulk, density, and other similar items would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with said restrictions unnecessary burdensome.
b) Whether a variance would do substantial justice to the applicant as well as to other property owners in the zoning district or whether a lesser relaxation of the restrictions would give substantial relief to the applicant and be more consistent with justice to others (i.e., are there other more reasonable alternatives).
c) Whether the plight of the property owner is due to unique circumstances of the property (in other words, the hardship is not shared by others).
d) Whether the applicant's problem is self-created.

Per the MZEA, Section 604(7), the ZBA may in considering the applicable elements grant a use or non-use variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done.

A common mistake is that too much emphasis is put on an overly broad idea of what is a "self-created" problem. Courts have rejected the idea that a problem is "self-created" simply because a person bought a property with knowledge of the zoning ordinance's limitations or wants to do something with the property that they know requires a variance. Instead, a problem is "self-created" if a landowner or predecessor in title partitions, subdivides, or somehow physically alters the land after the enactment of the applicable zoning ordinance, so as to render it unfit for the uses for which it is zoned. So, for example, if a person simply wants to build an addition on a house that would require a setback variance, that would likely not be considered "self-created," but if the lot used to be larger and the property owner only needs the variance because they split the property, then that would likely be considered "self-created."

In addition, the ZBA may impose reasonable conditions, including conditions necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner pursuant to the MZEA, Section 604(7). But any conditions imposed must: 1) be designed to protect natural sources, and the health, safety, welfare, and social and economic wellbeing of land users, adjacent property owners, and the community as a whole; 2) be related to a valid exercise of the police power and purposes affected by the activity being conditioned; and 3) be necessary to meet the intent and purpose of zoning requirements.

It must be remembered that a variance runs with the land and is not personal to the owner. Therefore, if ownership of the property changes, the variance by law remains with the land. The conditions imposed with respect to the variance would also remain with the land and apply to a new owner.

The Legislative Body

The final adoption of the zoning ordinance falls on the elected officials, as does the final decision on many of the applications filed under the zoning ordinance. Since the legislative body is elected, the public tends to put more pressure on them to cater to the personal desires of the public on how land should be used. It is not uncommon to have the public claim that the officials were elected to "do what we say." Yet, it is the duty of the legislative body to act on behalf of the entire community—and not just the often-small group of residents who oppose something—and to do so in compliance with the standards of the zoning ordinance and the law.

Meeting Requirements and Procedures

In addition to complying with the Open Meetings Act and all applicable adopted bylaws and rules of order for public meetings of the council, planning commission, and ZBA, the MZEA and MPEA should be consulted to ensure that the notices required for adopting and amending the master plan, and scheduling public hearings on applications filed under the zoning ordinance such as rezonings, special land uses, planned unit developments, and requests before the ZBA are provided, including meeting specified timeframes for the notice. Failure to provide the required notice will result in potential litigation and invalidation of the decision that was made at the meeting.

When the meeting begins, consider moving through preliminary matters such as attendance and approval of the prior minutes and agenda promptly. Avoid things such as lengthy explanations of procedures and introduction of staff unless they serve some material purpose. This is important for a number of reasons. The public has taken time to come to the meeting and are waiting. The applicant is waiting and possibly expending monetary resources to have professionals attend with them. Most importantly, it is important to establish a professional appearance and atmosphere to establish respect for the public body and its decision-making abilities. The deliberation of the public body and those who spoke will be reflected in the minutes of the meeting, which are public records subject to later review by a court if litigation is filed.

The public has a right to appear at public meetings and to comment. In many cases, individuals may appear at a meeting and voice their opposition to the applicant's request without giving relevant facts or other evidence. While objections of neighboring property owners should be heard and considered, the simple fact that there is opposition to a request is not a legitimate or defensible ground for denying the request. Instead, the sole grounds for approving or denying the request should be the fact that the applicant has failed to demonstrate the legal standards necessary to obtain the relief requested. And most importantly, make sure to conduct any hearing fairly as procedural due process requires the hearing to be conducted before a "fair and impartial tribunal."

Making a Good Decision

The key to making a good decision is straightforward. First, know what you are being asked to decide. Second, review the application and all other documents submitted so that you are familiar with the request. Third, view the property to get a feel for the surrounding area. Fourth, know whether the decision you are making allows you to exercise discretion. Fifth, and most importantly, know the standards that you will be applying to your decision. The standards should be clearly outlined in the zoning ordinance for each type of development proposal.

Generally, land use decisions are concentrated in the following areas:

a) administration and enforcement;
b) site plan review;
c) special land uses;
d) planned (unit) developments;
e) conditional rezonings; and
f) ordinance amendments.

It is important to know whether the decision will allow the community to exercise discretion.

Zoning administration and site plan review are nondiscretionary approvals, meaning that if the application meets the ordinance requirements, the application must be approved. Hopefully, staff will have worked with the applicant prior to the application coming before the deciding body to work out any issues or non-compliance with ordinance requirements.

On the other hand, special land uses, planned developments, conditional rezonings, ordinance amendments, and matters before the ZBA allow the exercise of discretion in making the decision. By nature, these uses may or may not be appropriate on any particular piece of property and more discretion is involved in making the decision. This does not mean that the discretion is unfettered. The zoning ordinance will contain the standards to be applied—both nondiscretionary and discretionary—and those are the standards that must be applied in making the decision. Nothing more, nothing less.

The zoning ordinance standards should be designed to promote the intent and purpose of the zoning ordinance, ensure compatibility with surrounding land uses, and to promote the public health, safety, and welfare. When making a discretionary decision, the motion should contain a review of each of the specific standards in the zoning ordinance and findings on whether those standards have been met. Don't "fly by the seat of your pants" when making the decision.

Reasonable conditions may be imposed with approval of a discretionary decision. Importantly, there must be a correlation between any condition imposed and a burden that is being created by the proposed land use or development. Those conditions must:

- Ensure adequate public services and facilities.
- Protect the natural environment and conserve natural energy.
- Promote use of the land in a socially and economically desirable manner.

Avoiding Litigation

Unfortunately, even when you follow all the rules, lawsuits in land use decisions are inevitable. Knowing the potential claims that may be asserted assists in helping the community evaluate any land use application to avoid the pitfalls of litigation.

Land use litigation is in many ways a battle of expert witnesses. That is why it is recommended that the city or village utilize its own "experts"—the planner, engineer, arborist, environmentalist, and so on—to provide information and opinions throughout the process. Even though there is a presumption of constitutionality that applies, that really only gives the community an upper hand in the event that the proofs on both sides are close. The community must be prepared to go to court and defend its zoning ordinance and decision.
And consistency with the master plan can help in the defense—but only if the master plan has been reviewed and updated as required by law—and only if the actual master plan designation can pass the reasonableness test. In other words, litigation will involve the defense of both the master plan and ordinance or decision.

What you can expect in Litigation

There are several types of typical challenges raised in most land use cases,

which will be highlighted in this section. Within each of these types, a landowner may challenge the zoning ordinance on its face in an effort to invalidate the whole ordinance, and/or will make an "as-applied" challenge claiming that an otherwise valid ordinance was improperly applied in their situation.

1. The Takings Claim

A property owner may claim that the ordinance or its application amounts to a taking without compensation, either permanently or temporarily (i.e., during the time that the property owner was prevented from using their property while an ordinance was being improperly applied.)

There are basically two types of takings. The first is called a categorical taking. In that situation, the community has basically physically appropriated land without first paying for it. For example, if a city or village were to construct a widened road along property without first obtaining an easement, this would be a physical appropriation without compensation. A categorical taking can also arise simply through regulation. For example, if a community were to adopt an ordinance that prohibited removal of trees in an area, it might result in land having to sit vacant. In this type of situation, the community has not physically appropriated the land, but has regulated it in such a way that there is no use for the property.

The most common claim is what is known as a regulatory taking. In this situation, the question is whether the regulations have "gone too far." Although zoning need not provide for the most profitable use of land, it must still provide an economic and marketable use. There is no set formula for what goes too far, but courts will look at the character of the government's actions, the economic impact on the property owner, and whether the regulation has interfered with the landowner's distinct investment-backed expectations.

In many cities and villages, there is limited area left for development. Some of the remaining parcels have unique features or locational issues that make development difficult. For example, let's say a subdivision was developed decades ago, but the corner parcel on two main roads did not get built because of lack of demand. Over time, development has occurred in the area, the roads have been expanded, and the property is burdened by substantial traffic. Even though the master plan may still designate the land for residential use, you might not be able to support a residential zoning based on the changed circumstances.

In addition, sometimes a community will plan a condition on the approval. Conditions may be appropriate but may be considered to be an exaction by a court. To be legitimate, there must first be some statutory authority for the exaction. Second, the exaction must be reasonably related, i.e., have an essential or reasonable nexus to the need created by the development (which should be documented by appropriate studies or reports). Third, the exaction cannot deprive the property owner of all reasonable use of its land. Fourth, the primary purpose of the exaction must be related to the service being provided and not be for general revenue sharing (i.e., a disguised tax). Lastly, the degree of the exaction demanded must bear the required "rough proportionality" to the projected impact of the proposed development.

To help avoid takings concerns, when considering a development proposal or request for rezoning, you should ask questions, including: 1) has the master plan been revised as required by law; 2) is the master plan designation of the property reasonable in light of existing circumstances; 3) does the zoning ordinance coordinate with the master plan; 4) does current zoning provide the property owner a reasonable and marketable use of

the property; 5) can what you have done be supported by your own consultants and experts?

2. The Substantive Due Process Claim

The law requires that an ordinance or decision must not be unreasonable or arbitrary or capricious. Generally governmental action will pass a substantive due process challenge if a rational relationship exists between the ordinance or decision and any legitimate governmental interest. A landowner challenging the ordinance or decision must negate each and every conceivable governmental interest to win. This is often a difficult standard for a landowner to meet.
In addition to having an updated master plan as required by law, ask yourself whether the decision you are making can be supported by legitimate governmental interests, identify those interests, and identify the support for those interests in the factual record or through your own expert's report. For example, if a proposal is denied on the basis of fear about traffic, but the applicant has provided a traffic study showing a negligible impact on traffic, then the community may have difficulty showing that the interest in traffic is legitimate without its own contrary expert traffic study.

3. The Equal Protection Claim

If the decision is made based on membership in a suspect class, you might have an equal protection issue. Generally, the law provides that all persons similarly situated should be treated the same. Landowners will often try to argue that they were denied a rezoning or approval and point to someone else that was not. But in the absence of the properties being identical in all material respects, the approval of one application does not mandate the approval of another.

Like the substantive due process claim, as long as there is not clear discrimination based on a suspect class (i.e., race, gender, religion), and there is no clear discriminatory in, the court will look at whether the zoning or decision, and any perception of different treatment between properties, is supported by legitimate governmental interests.

4. The Procedural Due Process Claim

Procedural due process requires notice and an opportunity to be heard before an impartial tribunal. The best way to avoid this claim is to make sure that proper notice is being provided for an application as required by your ordinance and the MZEA, and that the applicant is given a fair and sufficient opportunity to speak at the public meeting.

Procedural due process claims often arise when there are large groups of the public opposing a land use proposal and they vocally express their concerns that may or may not have any real support or basis in fact. The public has the right to appear at a public meeting and voice their objections to a project. And it is generally the rule that residents would prefer that property remain undeveloped. Local officials must remember to not react to the public or jump on the bandwagon. When that occurs, the argument is always made that the decision maker was not being impartial.

Dos and Don'ts

Here are some tips to promote reaching defendable decisions:

- Periodically review and update all ordinances and the master plan to ensure that they comply with current law and current conditions in your community.
- Retain appropriate experts to review what might be a difficult or controversial application to make sure that your decision can be supported.
- Make sure you support your decision by fully articulating the reasons for the decision on the record in the motion voted upon by the entire council, board, or commission, by connecting the facts

that weight toward approval or disapproval of the request to each element of the relevant standards of the ordinance. Keep detailed minutes of information presented during the public meetings, as the basis of the decision rendered must be found in the official record, and the motion guides a reviewing court in finding the facts that were most important in adopting the motion.

- Move things along. It is not necessary for each member to voice on the record his or her particular opinion in each case, particularly in cases where there appears to be some degree of unanimity among the members as to a decision. Even if an individual member states very strong reasons that align with the body's final vote, those individual comments are not considered to be part of the official decision if they are not spelled out in the motion that is ultimately voted upon.
- Your decision should not be made based on your personal opinion or public political pressure. Whether individual members or citizens "like" the proposal or wish they could hold out for a "better" use of a property is not relevant, and decisions based on public sentiment are difficult to support.
- Participate in and promote training for the people that sit on public bodies that make land use decisions. Focus on the key issues that involve their duties.
- Avoid random, off-the-cuff comments at meetings, because they end up in the minutes and can be damaging in court proceedings.
- Avoid giving applicants or members of the public advice or suggestions on what they should or could do to improve their request. The desire to be helpful is understandable but doing so could be problematic for you and/or the community when applicants claim that they relied on the advice but still end up having their application denied.
- Stay focused. Deliberations can often go off on tangents that are not relevant to your task of finding the relevant facts and applying them to the variance standards. Questions to the applicant and comments of the members should be direct and focused on that task. The chair of the meeting is at the helm of the meeting and is the primary person to respectfully point out to fellow members when the group is heading down an unnecessary path, but staff or other members may chime in to help in this regard as well.
- Use sample motion forms if made available.
- Train municipal staff. Make them aware of what is happening in the area of land use litigation.
- Develop policies for the handling, review and recommendation on land use requests.
- Watch for conflicts of interest.
- Be prepared. Read your materials ahead of the meeting. Staff will have provided materials that are intended to help address as many issues as they can foresee.
- If there is something relevant that you identify in your preparation that is confusing or seems incomplete, contact the staff liaison to communicate it in advance of the meeting. It might be possible to get the missing information or clarification in a supplement before the meeting and help the deliberations proceed efficiently (thus avoiding a postponement or looking unprepared for the meeting).
- Applications for some types of land uses are governed by complex federal and state statutes and case law specific to those uses and are common subjects for litigation, such that they should be approached with heightened caution. It is recommended that you consult with your community's legal counsel regarding applications filed for a place of worship, homes for the disabled (such as sober living homes), marihuana uses,

telecommunications facilities, windmills, and billboards.

Chapter provided by **Carol A. Rosati** and **Matthew J. Zalewski** of the municipal law firm Rosati Schultz Joppich & Amtsbuechler, P.C.

Section 3: Operations
Chapter 15: Selecting and Working with Consultants

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

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

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

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

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

- street construction;
- water, wastewater, and storm sewer projects;
- information technology support;
- labor relations;
- master land use planning;
- grant application preparation and oversight;
- subdivision plan reviews;
- short- and long-term strategic planning; and
- recreation master planning.

Common Types of Consultants and Professional Services
The most common types of consultants are:

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

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

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

- whether to designate an individual or committee to be responsible for retaining the consultant;
- who will be planning, monitoring, and scheduling the project or service;
- what the scope of the project or service will be; and
- what base qualifications will be required for firms or individuals to be considered.
- These should include:
    - professional and ethical reputation,
    - professional standing of the firm's employees (registered, licensed, certified),
    - ability to assign qualified personnel to the project and to complete it within the allotted time, and
    - experience in providing the services or project development.

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

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

Request for Proposals (RFP)
Under an RFP the municipality provides firms with a specific detailed description of the project and requests that the firms submit a proposal addressing the manner in which the project would be completed and the cost of the project. From the responses, the local government selects the consultant based on two criteria: cost and responsiveness to the RFP.

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

Request for Qualifications (RFQ)
Unlike a RFP, the RFQ provides the opportunity to select a consultant based on the needs of the community and qualifications of the consultant, not low bid.

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

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

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

There are three options for establishing the cost of services:
1. negotiating the cost with the consultant selected,
2. listing the anticipated range of fees, and
3. having the consultant place the estimated fees in a separate envelope. This envelope would only be opened if the consultant were selected and would be used in contract negotiations. When the contract is signed with the successful firm the remaining fee envelopes should be returned unopened to the unsuccessful consultant firms.

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

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

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

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

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

Project management

Once you select a consultant, you need to design a process to manage the contract. These elements will help ensure the successful completion of the project:
- appoint a project manager,
- establish a work schedule (including milestones) for the project,
- cross-check the consultant's work, and
- determine and evaluate the final work product.

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

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

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

the problem, or it could serve as a reason to terminate the consultant's contract.

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

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

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

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

Chapter provided by
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-and-

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Section 4: Finance
Chapter 16: Authority and Internal Controls

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

Local elected officials are given the responsibility and authority to establish financial policies for their municipality. For example, only the elected governing body of a municipality can levy property taxes, establish fees and charges for utility services, levy special assessments, incur debt, establish spending levels, and determine independent audit requirements. Appointed officials may recommend policies in these matters, but the final authority to enact financial policy is reserved for the governing body of elected officials. They fulfill these responsibilities through budgets, ordinances, and resolutions. Most of these must be enacted by majority vote of the elected body. Two exceptions are tax increases and special assessments—these require a 2/3 vote (MCL 65.5).

This chapter provides a brief overview of the very complex and pervasive subject of municipal finance in Michigan, with emphasis on general law villages.

Limitations on Local Authority

Authority and responsibility for municipal financial policies for villages are established by the Michigan Constitution, state statutes, federal statutes, state and federal administrative codes, and specifically, the General Law Village Act. These instruments, along with case law, grant certain authority on one hand and limit it on the other.

State Limitations

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

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

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

If one class of property has declining or stagnant market values and another class has spiraling increases, the total roll for the taxing unit may not increase more than the rate of inflation. And the taxing authorities are not required to reduce the millage rate. In many local

units, residential property values have spiraled upward while other classes stagnated. As a result, residential taxpayers found little or no relief from the Headlee roll back requirements.

Again in 1994, the Michigan electorate amended the Constitution with Proposal A. This amendment defined a special class of property, *Homestead*, that is treated differently than the other classes of property (e.g., commercial, industrial, non-homestead residential, agricultural, etc.). Homesteads are exempt from the local school tax of 18 mills. No other class has this exemption. Schools were provided with state funds, generated by the state sales tax, to offset this loss of revenue.

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

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

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

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

State Statutes

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

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

Officials should not overlook resources at their disposal (which may include a village manager, finance officer, treasurer, accountant, village attorney, and independent auditor) in fulfilling their duties and responsibilities.

Case Law

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

a. The benefit derived from the improvement was a general benefit to the community and not a special benefit to homes in the subdivision, and
b. Special assessments may only be levied for direct benefit (i.e., the street upon which the homes fronted) and such may not be levied for indirect benefits (for the major thoroughfare to which their frontage street connected).

A second example has had perhaps an even greater impact on municipal finance. In 1998, the Michigan Supreme Court ruled that the City of Lansing's stormwater service "fee" was unconstitutional, declaring that the fee was actually a "tax" under the Headlee Amendment to the Michigan Constitution that required a vote of the city's electorate.

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

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

Local Limitations

Village ordinances and resolutions of policy are instructive to both new and

Type of Taxation	Authority	Limitations
Millage:		
General Operating	GLV Act, 1895 PA 3, MCL 69.1(2)	12.5 mills upon taxable real property
Highway and Street	GLV Act, 1895 PA 3, MCL 69.2	5.0 mills for general street and highway purposes
Cemetery Maintenance	GLV Act, 1895 PA 3, MCL 69.4	1.0 mill for general maintenance of cemeteries
Garbage Collection, Disposal	1917 PA 298, as amended, MCL 123.261	3.0 mills for operating garbage system
Special Assessment	GLV Act, 1895 PA 3, MCL 68.31-68.35; MCL 69.5-.6	varies with project
Principal, etc. on bonds or indebtedness	1951 PA 33, MCL 41.801 - 41.810	10.0 mills for purchase of fire extinguishing apparatus, equipment and housing.

experienced officials. These local instruments often reflect provisions of the State Constitution, state statutes, and other regulatory requirements of the higher levels of government. Indeed, they must be in compliance with them. Careful review and drafting by legal counsel and financial administrators should assure compliance.

The General Law Village Act (GLVA)
The GLVA establishes millage limits, debt limits, and the fiscal year. The Act also contains budget requirements, audit requirements, and reporting of financial conditions of the village on a regular basis. The Act assigns duties and responsibilities for financial management of the village.

General law villages are limited in the amount of general obligation debt they may incur to ten percent of their state equalized value (SEV) under the GLV Act. Specified types of debt are not counted in calculating the 12.5 general operational mill limitation. Not included in the total are special assessment bonds, motor vehicle highway fund bonds, combined sewer overflow bonds, pollution-control bonds, and revenue bonds.

The chart below lists general law village millage limits. These millage limitations most likely have been rolled back to establish new, lower maximum rates for your village due to the Headlee amendment to the Michigan constitution and its implementing legislation. The rolled back limitation becomes your new statutory limitation. Consult your county equalization department for information on your current millage limitations.

Village Ordinances
Ordinances are often necessary to implement state statutory requirements and those of the GLVA to limit and regulate financial management in more detail than is permitted or desirable by the Act. Ordinances are more easily amended than the Act and greater detail can be accomplished. Finance related ordinances deal with such things as administering blanket purchase orders, countersignatures on checks, depositories for funds, and credit card control.

Summary
By now you have probably concluded that those financial aspects of the tasks of local officials are not getting any easier and they are growing in importance. Good financial planning and management is a way of life. Good, sound systems and practices are the product of a series of decisions over a period of years. They are not the products of a short-term budget crunch or a financial crisis with quick-fix solutions. The task is to make thoughtful policy decisions with a view toward continual improvements over a period of time.

Local officials should always seek advice and counsel from their assessor, manager (if they have one), and municipal attorney when embarking upon changes of policy and practices in the conduct of the financial affairs of their local government.

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

Section 4: Finance
Chapter 17: Budgeting

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

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

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

Budgets Requirements
Budgets must:

- present revenues and expenditures for the previous fiscal year, those estimated for the current fiscal year and those estimated for the next fiscal year, which is the subject of the proposed budget;
- display the amount of surplus or deficit existing at the end of the previous fiscal year and that estimated for the current year;
- present proposed capital outlays and sources of financing for them;
- be balanced (expenditures cannot exceed revenues); and
- follow other requirements of the Uniform Budgeting and Accounting Act (1968 PA 2) and the GLV Act.

The Operating Budget – A Plan for Day-to-Day Operations
In general, a budget is a plan of financial operation for a given period of time, including an estimate of all proposed expenditures from the funds of a local unit and the proposed means of financing the expenditures (definition from 1968 PA 2, as amended).

The Act, however, does not specify the format of the budget for either the general fund (operating budget) or any special revenue funds your community may use. Local governments are also required to set the millage rate required to cover the anticipated expenditures for the year, as well as to establish the necessary fees and charges for various services.

Types of Operating Budgets:
The line-item budget divides expenditures into administrative categories such as salaries, fringe benefits, contractual services, office supplies, postage, etc. This type of budget is easy to prepare, but it is not goal- or program-oriented.

The program budget presents expenditures by program along with a narrative description of the services to be provided. Each program budget is composed of line-item amounts.

This type is more complex to prepare than the line-item type, but it is more goal-oriented for policy making purposes.

The performance budget shows the relationship between the dollars spent and units of service performed to determine a cost per unit (e.g., cost per mile of street swept). This is the most complex of all types of budgets to prepare and unit costs for some services are difficult to measure (e.g., cost per crime prevented by a crime prevention bureau). This type of budget is most useful in assessing the relative success of each program. Once again, line-item allocations of the costs must be made.

The zero based budget require each department to examine its programs by requiring justification for every dollar requested. This type usually follows the program or performance format. Because of its somewhat complicated nature, it is very time consuming and costly to prepare.

The priority-based budget allocates resources according to how effectively a program or service achieves goals and objectives that are the greatest value to the organization. In a priority-driven approach, a community identifies its most important strategic priorities, and then, through a collaborative, evidence-based process, ranks programs or services according to how well they align with the priorities. This type of budget is most helpful when aligning to strategic priorities.

Of the foregoing types of budgets, the program budget is the most useful and practical for local officials. It permits understanding of the purposes for which funds are being proposed and it encourages a policy-making approach to budgeting. Many local governments will use parts of all the budgeting types, adapting each to the needs of the community. Regardless of the overall budget format used, it is necessary to prepare line-item detail for each section.

Revenue Sources

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

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

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

Expenditures
Expenditures provide for the day-to-day services to support the residents and businesses of the city or village. Under state law, all public expenditures are to be only for public purposes. Generally, allowable expenditures fall into the following categories:

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

Questions village officials should ask for compliance with appropriate budget requirements:

- Does the person responsible for your accounting function use the state mandated uniform chart of accounts?
- Who is your chief administrative officer for budget purposes? 1968 PA 2 mandates a chief administrative officer to prepare and present the budget to the legislative body.
- Who is your fiscal officer for budget purposes? Per 1968 PA 2, this person is the official who prepares and administers the budget.
- Do you have an annual audit performed by a certified public accountant and file a copy with the state treasurer? NOTE: You have the option of a biannual audit if your population is less than 4,000 (MCL 141.425). However, the biannual audit will cover two years. If you plan to issue bonds, you will need an audit for the most recently completed fiscal year on file with the Michigan Department of Treasury. Most villages find it more efficient to have audits conducted annually.
- Does your chief administrative officer prepare and present a budget to the council according to an appropriate time schedule, with adequate time for review, discussion and public input before the beginning of the new fiscal year?
- Do department heads provide necessary information to the chief administrative officer?
- Does the council get the information necessary for proper consideration of the recommended budget?
- Are three years of figures included: the most recent complete fiscal year, the current fiscal year estimates and the upcoming fiscal year?
- Is the budget balanced? (Total estimated expenditures shall not exceed total estimated revenues. (MCL 141.435))
- Do you hold a public hearing before budget adoption as required by 1963 PA 43, as amended (MCL 141.411 to 141.415)? Do you include millage information, so you don't need to hold a separate truth in taxation hearing?
- Do you adopt the budget by indicating general appropriations by program, rather than by line item? Does the appropriations resolution or ordinance provide sufficient guidelines for the chief administrative officer and/or fiscal officer in administration of the budget?
- Do you adopt the budget prior to the start of the new fiscal year? If

not, you have no authority for spending in the new fiscal year.
- Have you determined the millage you need to meet the liabilities for the coming fiscal year?

For samples of budgets, budget ordinances, investment policies, fund balance policies, purchasing ordinances and/or policies and other specific and general information on budgeting, contact the League's Inquiry Service at info@mml.org. Much of this information is also available on the League's website at mml.org. A sample budget ordinance is included in Appendix 9 of this handbook.

The Capital Budget—A Longer View
The capital budget provides funding for non-recurring expenditures such as construction and acquisition of buildings, infrastructure, facilities, and equipment. These expenditures are "lumpy," non-repetitive, and may span several years for project completion or acquisition.

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

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

- special assessments;
- fees charged for construction;
- major road funds, Act 51—gas and weight taxes,
- local road funds, Act 51—gas and weight taxes;
- enterprise fund allocations from water, sewer, and other utilities;
- bond proceeds from issues by the local governing body and any of the authorities created by it (e.g., building authorities, downtown development authorities, housing authorities); and
- installment sales contracts for periods not exceeding 15 years for acquisitions of land, equipment, or property (PA 99 of 1933).

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

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

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

for the eventual repairs and maintenance of the facilities.

The Capital Improvement Program (CIP)

The capital improvement plan is among the most important policy planning tools available to local budget makers.

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

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

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

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

- concrete streets—joint grouting and resealing plus selective slab replacement—seven-year cycle;

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

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

- concrete sidewalks—leveling and flag replacement—five-year cycle;
- water distribution system—system replacement—20-to-30-year cycle; or
- public buildings—plumbing, heating, electrical system updates—20-to-30-year cycle.

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

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

For More Information
To request sample budgets, budget policies, and ordinances, email info@mml.org.

Chapter provided by **Mike Birchmeier**, **CPA**, principal with Rehmann.

A *suggested* schedule for the budgeting process

(assuming that your fiscal year begins March 1. If yours is different, adjust the schedule accordingly)

On or about	Step in the budget process
November 1	Chief administrative officer or fiscal officer asks department heads to compile budget requests for the coming fiscal year
December 1	Department heads submit budget requests for the coming fiscal year
January 1	Chief administrative officer presents the proposed budget to the legislative body
February 1	Council review completed; revisions made; union negotiations completed, etc.
February 7	If necessary, council adopts a resolution on the proposed additional millage rate for the coming fiscal year
February 16 (Optional)	Public hearing on the millage rate if you take advantage of increased SEV or want to increase the millage rate (Note: If you hold this separate hearing for the millage rate, the notice must include requirements set forth in MCL 211.24(e).)
February 28	Public hearing on budget (at least 6 days' notice), which may also include the millage rate information. Budget adopted
May	Millage set after final SEV figures are received. Cannot be more than proposed in public hearing.

Section 4: Finance
Chapter 18: Financing Capital Improvements

Few municipalities have cash resources to finance facilities with large price tags and long life, such as a new municipal office, a new water treatment facility, a new civic center, or other long term capital improvements. Most must incur debt in the form of a bond issue to finance such improvements and facilities, similar to the home buyer who must incur debt in the form of a mortgage.

The incurring of debt by a municipality should be considered among the most serious of all courses of action available to a village council. Indeed, state statutes and administrative regulations require local authorities to follow certain procedures and processes prior to issuance of most debt.

Bond Issuance and Notes—Incurring Debt

Notes

Notes are instruments of debt having shorter duration than the term of bonds. Notes may be issued for bridging short lapses of time between the date of need for an expenditure and the date when budgeted revenues are available.

The most common of these are tax anticipation notes (TANs) which may be issued for operating or capital improvement purposes. These notes are essentially a promise to pay the lender, usually a local bank, from tax revenues anticipated during the current or next succeeding fiscal year.

Amendments to the Municipal Finance Act (2001 PA 34) have provided cities and villages with additional tools and allow the issuance of short-term debt for the planning and engineering costs for capital improvements. As a result of these amendments, cities, villages, counties, and townships are able to issue bond anticipation notes (BANs), grant anticipation notes (GRANs) and revenue anticipation notes (RANs) in anticipation of funds from these bonds, grants, and revenue sharing, respectively. However, there are limitations on the amount of short-term debt that can be issued in relationship to the amount of the grant, revenue sharing, or bond issue. Prior to the issuance of these notes, the municipality is encouraged to contact its financial advisor and/or bond counsel to insure compliance with state law.

Energy conservation notes may be approved for issuance for periods not to exceed ten years. Use of proceeds from such notes is limited to financing improvements resulting in energy conservation.

Installment sales contracts are permitted by 1933 PA 99 (Purchase of Lands and Property for Public Purpose) for installment periods not exceeding 15 years or the useful life of the property being acquired, whichever is shorter. Installment contracts may be used for acquisition of land, equipment, or property. Approval by the Michigan Department of Treasury and vote of the electorate are not required.

Bond Issuance

Long term municipal debt is most often incurred in the form of bond issues. Most are issued as tax exempt bonds,

but municipalities may be, under certain circumstances, required to issue taxable bonds. Interest income received by the buyer or holder of the tax-exempt bond is not subject to federal, state, or local income taxes. This creates a higher demand for tax-exempt bonds and issuing municipalities realize great savings in interest costs. This also reduces income tax revenues returned to the various units of government.

Financial experts and statutes have given titles to various types of bond issues which reflect the quality of the issue.

General obligation (GO) bonds are the highest quality because they pledge the taxing capacity of the municipality to retire the bonds and pay the interest on them. There are two types of GO bonds, discussed below. Revenue bonds on the other hand, have a lower quality because only the revenues from service fees and charges for use of the system (e.g., water, sewer, electric, parking, etc.) are available to pay principal and interest on the issued bonds.

Unlimited tax general obligation (UTGO) bonds, or voted GO bonds are bonds for which the electorate has pledged to tax themselves an amount which is sufficient to retire the bonds and pay interest on all that are outstanding. That is, the local taxing authority is not limited in the amount of taxes that can be levied to retire the bonds and pay interest in any year.

The electorate must vote to approve the issue prior to the issuance of the debt.

Limited tax general obligation (LTGO) bonds or non-voted GO bonds are bonds for which the authority to raise taxes to pay principal and interest with bonds is limited to the maximum amount of taxes that the municipality is permitted to levy by state law and the local charter. The electorate has not approved the issue nor given specific authority to be taxed above the level authorized by law or charter to pay principal and interest on the issue.

With special assessment district (SAD) bonds, payment of principal and interest is assured by pledging revenues from collection of special assessments and interest thereon.

Revenue bonds are used to finance municipal operations which are characterized as being self-supporting and having their own revenue source such as service fees (e.g., sewer and water systems, golf courses and recreation facilities, parking garages, and auditoriums). Revenue bonds are retired with revenue produced from the facility or other service fees.

Villages may issue **Michigan Transportation Fund bonds** and pledge a portion of their statutory share of transportation funds to pay principal and interest on the bonds.

A city or village may issue **intergovernmental contracts and authority bonds** if they enter contracts with counties and authorities to have a facility (water system, sewer system) built and leased to the operating city or village, which pays rent on the facility in sufficient amount to pay debt service costs on the bonds issued by the county or authority. Local building authorities, which will be discussed later in this chapter, provide an example of such an authority.

The county drain commission may issue **county drain bonds—**bonds for drain and sanitary sewer system improvements and apportion the cost for

debt service among the cities, villages, and townships which benefit.

Tax increment bonds—Tax increment financing (TIF) through the creation of TIFAs, LDFAs, and DDAs which may issue TIF bonds, are discussed in depth later in the chapter.

Amendments to the Municipal Finance Act also created **capital improvement bonds,** which may be issued for any "depreciable asset" as Limited Tax General Obligations (LTGOs) of the issuing municipality. This type of bond issue is subject to the right of referendum, as are several of the other types of bond issues discussed above, and is payable from the general taxing powers, subject to statutory and charter limitations, of the issuing municipality and/or other revenue sources.

There are pitfalls in incurring bonded indebtedness. Scarce resources are consumed by interest and principal costs and the cost of issuance. For example, debt service costs over a 15-year bond issue could be more than double the cost of the facility. Costs over a 30-year issue could be more than triple the initial cost of the facility or project. And, as infrastructure and facilities age, costs of repair and maintenance accelerate. Continuing debt service costs mitigate against the allocation of sufficient funds for current maintenance requirements.

Special Financing Tools for Development/Redevelopment

Cities and villages are the crucible for fostering development and redevelopment. Realizing this, the state legislature has enacted permissive legislation to assist cities and villages with this purpose.

- **Housing authorities** and building authorities are possibly the oldest of these special development entities, having been created by legislation in 1933 and 1948, respectively. Housing authorities were permitted for the purpose of eliminating detrimental housing conditions through acquisition, construction, and ownership of housing. Municipalities may create housing authorities and incur debt for housing purposes.

- **Building authorities** may, among other things, acquire, own, construct, operate, and maintain buildings, recreational facilities, parking garages, and so on for any legitimate public purpose of the municipality. They can incur debt through bond issues and lease the resultant facility back to the municipality with rental income to pay the principal and interest on the bonds. Upon final retirement of the bonds, the authority would convey the property to the municipality. Michigan cities and villages have made widespread use of this financing technique. However, it should be noted that the capital improvement bonds discussed above could eliminate the issuance of building authority bonds.

Special Financing for Economic Development

Cities and villages often need special financing tools to complete projects designed to preserve their economic health. Several Michigan statutes allow municipalities to create specialized organizations for use as economic development tools. The chart the end of

this chapter compares these organizations.

Four of these organizations are able to use tax increment financing revenues (TIF). In the simplest terms, TIF is the capture of the increase in property tax revenue in a defined district to fund capital improvements in that area.

- **A downtown development authority (DDA)** may be created to halt property value deterioration, to increase property tax valuation in the business district, to eliminate the causes of deterioration, and to promote economic growth.

- **A tax increment finance authority (TIFA)**, available prior to 1989, has been replaced by the LDFA; no new TIFA may be created, and the boundaries for an existing TIFA cannot be expanded. As of 2011, transit-oriented development and transit-oriented facilities are allowable activities by TIFA's.

- **A local development financing authority (LDFA)** may be created to encourage local development, to prevent conditions of unemployment, and to promote growth. In 2011, transit-oriented development and transit-oriented facilities became allowable activities by LDFA's.

- **A brownfield redevelopment authority (BRA)** may be created to clean up contaminated sites, thus allowing the property to revert to productive economic use. In 2011, transit-oriented development and transit-oriented facilities became eligible to be used by BRA's.

- **A corridor improvement authority** (CIA) may be created to redevelop a commercial corridor and to promote economic growth. In 2011, transit-oriented development and transit-oriented facilities became eligible to be part of CIA's. In addition, municipalities can now set up transit TIF districts that do not require a community to wait for opt-outs of tax capture from other governmental units (counties, libraries, community colleges, etc.).

Three other types of organizations your community may find useful, although they cannot use tax increment financing revenues, are:

- **An economic development corporation (EDC)** may be created to alleviate and prevent conditions of unemployment and to assist industrial and commercial enterprises. In 2011, transit-oriented development and transit-oriented facilities are now part of the list of enterprises for which a project may be undertaken in the Act.

- **A principal shopping district (PSD)** may be created to develop or redevelop a principal shopping area and to collect revenues, levy special assessments, and issue bonds to pay for its activities.

- **A business improvement district (BID)** may be created to develop a more successful and profitable business climate in a defined area, and to collect revenues, levy special assessments and issue bonds to pay for its activities.

Tax Abatement Programs

In 1974, the Legislature decided to encourage economic development by providing for reduced property tax assessments for specifically selected business projects which were yet to be developed. The Legislature adopted 1974 PA 198 (Plant Rehabilitation and Industrial Development Districts Act), which was the first of three acts enabling abatement of part of the tax burden for impending business investments in facilities and equipment.

PA 198 provides for a reduction of the assessed value of qualifying projects for up to 12 years at the discretion of local governing bodies.

The cost of renovations or rehabilitation may be entirely exempt from increases in assessed value for property tax purposes. Thus, taxes on costs of renovation or rehabilitation could receive abatement of 100 percent. Taxes on new building and equipment could be abated no more than 50 percent. Personal property and real property, excluding land, are eligible for abatement if the intended use is for manufacturing, research and development, parts distribution, and warehousing.

Abatements for commercial property, granted by 1978 PA 288, became very controversial, and by act of the Legislature no new commercial abatements were permitted after December 31, 1985.

Stimuli for development of high technology enterprises attracted legislative interests and in 1984 PA 385 (Technology Park Development Act) enabled municipalities to create one "technology park district" having a minimum of 100 acres of vacant land near a public university. Like the preceding Acts, abatement could not exceed 50 percent for a maximum of 12 years.

PA 266 of 2003 allows for creation of Tool and Die Renaissance recovery zones, where eligible businesses can be granted virtually tax-free status for up to 15 years. The state is responsible for designating the zones, but local governments must approve them.

Briefly, the abatement process involves creation of a district, receipt of applications in a form acceptable to the State Tax Commission, local approval of the exemption certificate and state approval of the exemption certificate.

Some of the foregoing development/ redevelopment initiatives provide financing through the issuance of tax-exempt bonds discussed earlier.

Chapter provided by **Robert J. Bendzinski**, president of Bendzinski & Co., Municipal Finance Advisors, established to provide financial advisory services to municipalities since 1977.

Summary of Economic Development Tools

	DDAs	TIFAs	LDFAs	BRAs	EDCs	CIAs	PSDs	BIDs
Authorized municipalities	Cities, villages and townships	Cities	Cities, villages and urban townships	Cities, villages and townships	Cities, villages and townships	One or more cities, villages, and townships	Cities with designated principal shopping district(s)	One or more cities with an urban design plan
Limitations	One per municipality	No new areas established after 1989	One per municipality	Industrial or commercial property	Industrial area	Established commercial district adjacent to arterial or collector road with size and use restrictions	Commercial area with at least 10 retail businesses	Commercial or industrial area with boundaries established by city resolution
Requirements	Deterioratin g property values	Deterioratin g property values	Industrial area	Environmental contamination	Industrial or 501(c)(3) nonprofit	10 contiguous parcels or 5 acres; mixed-use; water and sewer available	Designated as a principal shopping area in master plan	Designated as a BID by one or more cities by resolution
Eligible projects	Located in DDA district with approved DDA/TIF plans	Within defined TIFA area	Public facility to benefit industrial park	Environmental cleanup	Issue bonds for private industrial development	Improvement of land and to construct, rehabilitate, preserve, equip or maintain buildings or facilitate transit in the area	Improve highways and walkways; promotion; parking, maintenance, security or operation	Improvement of highways and walkways; promotion; parking, maintenance, security or operation
Funding sources	TIF from District; millage	TIF from plan area	TIF on eligible property	TIF; Revenue Bonds	Tax exempt bonds	TIF, special assessments, bonds, fees, donations	Bonds, special assessments	Bonds, special assessment, gifts, grants, city funds, other

Section 4: Finance
Chapter 19: Special Assessments and User Charges

Municipalities often raise funds for special purposes by imposing special assessments or user charges as an alternative to imposing a tax. All three financing mechanisms have elements in common, and distinguishing one from the other is not always a simple matter. However, if not properly imposed, any assessment or user charge could be construed as a tax, which must satisfy different requirements for validity.

While a *special assessment* bears some of the characteristics of a tax, it differs in that a special assessment may be levied only on land and may be imposed only to pay the cost of an improvement or service by which the assessed land is specially (as opposed to generally) benefited.[1]

In contrast, a broadly imposed *tax* yields a general benefit to the community with no particular benefit to any person or parcel.

Generally, a *user charge* is the price paid for a service provided based directly on the value of the individual use of the service or benefit. Although a municipality may impose a *tax* whether or not the taxpayer particularly benefits from the purposes served by the tax and may *specially assess* parcels which do particularly benefit from an improvement, it may impose a *user charge* only on individuals who benefit from the services. While the improvements made with a special assessment generally must increase or maintain the value of the lands specially benefited, the services which are the subjects of rates and charges do not necessarily have that effect. The value to one user may be greater than another depending on individual needs and consumption.

In *Bolt v. City of Lansing*, the Michigan Supreme Court developed a three-prong test for user charges. To avoid classification as a tax, a user charge must "serve a regulatory purpose rather than a revenue-raising purpose."

Rates and charges must also relate to the direct and indirect costs of providing a service to the ratepayer. A fee that raises revenue for general public services and does not simply cover the cost of providing the service which is the subject of the fee may be seen as a tax. A fee that charges those who do not benefit or use a system for the costs of that system (including improvements) may also be considered a tax.

Revenues derived from user charges (or assessments) must be segregated from other municipal funds and applied solely to the expenses of providing the service or the improvement. The expenses of providing the service may include some indirect costs of providing the service.

[1] Except for assessments levied under the Police and Fire Protection Act, 33 PA 1951, which allows for a jurisdiction-wide special assessment district.

Special Assessments

Authority

To impose a special assessment, a municipality must first have the statutory authority to make the improvement or provide the service for which the assessment will be imposed. Second, the municipality must have the statutory or charter authority to assess for that type of improvement or service.

Special assessments may be imposed for many types of improvements and even services for which specific statutory and other local implementing authority is found. Typical subjects of special assessments are street improvements, including paving, curb, gutter and sidewalk improvements, street lighting, and water and sewer improvements. In addition to statutory authorities, city and village charters and special assessment ordinances, if any, should be reviewed as sources of authority.

Where statutory authority exists, municipalities will often finance an improvement through the issuance of bonds in anticipation of the collection of special assessments, secured primarily by the assessments and secondarily by the general fund of the municipality.

Basic Requirements

The lands proposed to be specifically assessed comprise a localized special assessment district. The assessments are apportioned among the landowners in the district. Assessments may be required to be paid in a single payment or in multiple installments. Interest may be charged on unpaid installments.

An improvement which reduces property value may not be specially assessed. Further, the benefit conferred by the improvement may not be disproportionate to the cost of the improvement, i.e., the cost of the improvements may not exceed the anticipated increase in the value of the property resulting from the improvement. Although this proportionality may "not require a rigid dollar-for-dollar balance," the cost of the improvement must reasonably relate to the increase in value in order to avoid an unconstitutional taking of property.

No specific method of apportioning the cost of an improvement is required, provided that the method selected is fair, just, equal and proportionate to the benefits conferred.

Key Procedures

Procedural requirements vary widely depending on the particular statute, charter or ordinance involved.

The following are key elements to any assessment process:

1. petitions, or board/council initiation
2. hearings on necessity and the apportionment of the assessment, and
3. notice
   a) content
      - nature, location, cost of improvements
      - apportionment of cost
      - opportunity to object and appeal
   b) dissemination
      - publication and mailing
      - timing.

Enforcement

Once confirmed, assessments may become a lien on the assessed property.

User Charges

Subjects and statutory authority

The Revenue Bond Act of 1933,

provides the principal statutory authority for the imposition of rates and charges for the "service, facilities and commodities furnished by… public improvements." It authorizes any public corporation to purchase and acquire one or more public improvements; to own, operate and maintain the same; to furnish the services of such public improvement to users within or without its corporate limits; to establish by ordinance such rates for services furnished by the public improvement as are necessary to provide for the payment of administration, operation and maintenance of the public improvement so as to preserve it in good repair and working order; to provide for the debt service, if any, on bonds issued to finance the improvement providing the service, and to establish reasonable bond and/or equipment replacement reserves.

Other statutes and local charters provide additional authority governing rates. Municipalities regularly impose rates and charges for a variety of services.

Rate Ordinances

Municipalities impose user charges by adopting a rate ordinance governing a particular service or range of services. The ordinance should set forth the purpose of the ordinance, the service provided, the rates to be imposed and the various classifications of users, the timing and method of billing and payment, penalties for nonpayment and other enforcement provisions. To meet the *Bolt* standard described below, the ordinance should explain how the user charges relate to a regulatory purpose. Ordinances may also address a broader and more detailed range of subjects, including regulations governing the use or provision of the service and licensing issues.

Standards in Ratemaking: The Bolt Test

The Michigan Supreme Court's decision in *Bolt* has applied to municipal ratemaking for the past two decades. In *Bolt*, the court articulated a three-part test for determining whether a charge is a valid fee:

1. it must serve a regulatory purpose,
2. it must be proportionate to the necessary costs of the service, and
3. it must be voluntary (i.e., the user must be able to refuse or limit use of the commodity or the service for which the charge is imposed).

These three criteria are not to be considered in isolation "but rather in their totality, such that a weakness in one area would not necessarily mandate a finding that the charge at issue is not a fee." *Graham v. Township of Kochville*.

As indicated in *Graham*, voluntariness may be less significant where the elements of regulation and proportionality are strong. Conversely, where the regulatory aspect of the fee is less obvious, the voluntary use of the system may assume more importance.

A municipal rate is presumed reasonable. *Shaw v Dearborn.* The method selected for calculating rates and charges may not be arbitrary and capricious. Substantial evidence preferably set forth in the rate ordinance itself should justify the charges made and the method used.

The *Bolt* court held that user charges must reflect "the actual costs of use, metered with relative precision in accordance with available technology…."

The rates and charges for municipal services must be applied to similarly

situated users in a similar way. A municipality may distinguish among different classes of users and apply different rate schedules to each class, if warranted.

The requirement that rates be uniformly applied is an extension of the overall requirement that charges be proportional to the value of the services rendered and the cost of providing the service. *Alexander v Detroit*.

Enforcement and Collection
In general, statutes authorizing user charges for services provide that the charges become a lien on premises served. Statutes also commonly allow the municipality to discontinue service for non-payment of the charges and to collect delinquent charges through the tax collection and foreclosure process.

Chapter provided by **Steven Mann** and **Sonal Hope Mithani,** principals with the law firm Miller Canfield.

Selected GLV Act Special Assessment Provisions

Resolution required
The council, by resolution, may determine that the whole or a part of the expense of a local public improvement or repair shall be defrayed by special assessment. (MCL 68.31)

Voting
It takes a 2/3 majority vote of council to impose a special assessment. (MCL 65.5 (2))

Ordinance
The complete special assessment procedure to be used shall be provided by ordinance. (MCL 68.32)

Ordinance requirements
The ordinance shall include the time when special assessments may be levied; the kinds of improvements for which a hearing is required on the resolution levying the assessments; the preparing of plans and specifications; estimated costs; the preparation, hearing, and correction of the special assessment roll; collection; the assessment of single lots or parcels; and any other matters concerning the making of improvements by the special assessment method. (MCL 68.32)

Bonds
The village may borrow money and issue bonds in anticipation of the payment of special assessments in 1 or more special assessment districts. (MCL 68.35)

Proceeds
The council may specially assess lands in sewer districts and special assessment districts, for the expense of grading, paving, and graveling streets, for constructing drains and sewers, and for making other local improvements charged in proportion to frontage or benefits, such sums as they consider necessary to defray the cost of the improvements. (MCL 69.5)

Section 4: Finance
Chapter 20: Limits of Municipal Expenditures

Municipalities are frequently requested to make donations to various worthy private organizations. Such organizations include chambers of commerce; hospitals; museums; veterans' organizations; community funds; Boy Scouts, Red Cross; and other educational, promotional, or benevolent associations. Frequently, it is difficult for the legislative body of a municipality to refuse such requests. However, it appears clear from Michigan law that such donations are questionable expenditures of public funds.

Generally, a municipality's power to spend money is derived from the state through the Michigan Constitution and state laws. In addition to specific grants of power, cities and villages with home rule authority are also able to rely on the applicable provisions in the Constitution and statutes for the power to spend on municipal concerns. Regardless of the authority, it is generally held, however, that municipalities have the power to expend funds only for a public purpose.

One test for determining a public purpose is whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public. It should be noted that the public purpose test has also been limited to the provision of services for which municipalities exist and the powers they have authority to exercise. With respect to the question raised, neither the Michigan Constitution nor state law grants to municipalities the power to spend public money on employee parties, gifts, etc. Nor can a good argument be made that the expenditures are for a public purpose. Absent a grant of spending authority, and no clear public purpose defined, the expenditure is most likely illegal. Simply put, a municipality cannot give public funds away.

What Is a Public Purpose?
The Michigan Supreme Court has defined the objective of a public purpose:

> Generally a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose.... The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private. (*Hays v City of Kalamazoo,* 316 Mich 443, 453-454 (1947))

The following questions may be helpful in determining whether an expenditure is appropriate:

1. Is the purpose specifically granted by the Michigan Constitution, by statute, or by court decision?
2. Is the expenditure for a public purpose?
3. Is the municipality contracting for services that the municipality is legally authorized to provide?
4. Is the operation or service under the direct control of the municipality?

If you can answer “yes” to these questions, the expenditure is most likely appropriate.

Michigan Constitution of 1963
The following provisions of the Michigan Constitution are the basis for municipal expenditures:

- Article 7, Sec. 26.
  Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose.
- Article 9, Sec. 18.
  The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution. (Note: This applies to all political subdivisions of the state. *Black Marsh Drainage District v Rowe,* 350 Mich 470 (1958)).

Private Purpose Decisions
Expending public funds for a private purpose under Michigan law is illegal. For over a century, the Michigan Supreme Court has considered the limitations on expending public funds and has been consistent in its rulings. Most involve the relationship of a municipality with private businesses.

1. A contract in which the village of Fenton proposed to expend $1200 to drain a marsh, improve a highway, and construct a dock in order to induce a certain firm to establish a stavemill in the village, was held invalid. *Clee v Sanders,* 74 Mich 692 (1889).
2. Money from a bond issue could not be spent if it appeared that the purpose of the bond issue was actually to provide a fund for paying bonuses to industry for locating in the city. *Bates v Hastings,* 145 Mich 574 (1906).
3. A city-owned building, which was occupied by a manufacturing company, burned down. The city agreed to pay the insurance proceeds to the manufacturer if it would rebuild the building and occupy it for a term of years.
   The rebuilding, however, was not done on the city-owned property. It was held that payment of the $5,000, even though not raised by tax money, was unlawful. *McManus v Petoskey,* 164 Mich 390 (1911).

Public Purpose—but Outside Municipal Control
Most of the above cases involve a purpose which is worthy, but private in nature. There is another line of cases that involves an additional concern. If the purpose for which the funds are expended is public in nature*, but the operation is not under the control of the city or village which is making the contribution,* it may nonetheless still be an illegal expenditure.

In *Detroit Museum of Art v Engel,* 187 Mich 432 (1915) the Supreme Court ruled that Detroit could not pay the salary of the museum director, even though the city had title to the real estate on which the museum was located and had minority representation on its board of directors. One sentence of the opinion which has been much quoted is:

> The object and purpose of relator is a public purpose in the sense that it is being conducted for the public *benefit*, but it is not a public purpose within the meaning of our taxing laws, unless it is managed and controlled by the public.

In more recent cases the *Art Museum* doctrine has been applied on a limited basis. *Hays v City of Kalamazoo,* 316 Mich 443 (1947) involved the validity of the payment of membership fees by Kalamazoo to the Michigan Municipal League.
The court distinguished the *Art Museum* case by saying that, contrary to the payment of dues to the League, the transaction with

the Museum did not "involve the right of a municipality to avail itself of, and to pay for, information and services of benefit to the city in its governmental capacity."

In 1957, the Michigan Supreme Court held that Detroit could properly transfer to Wayne County certain city park land to facilitate the construction of a home for neglected and abandoned children. In sustaining the right of the city to assist the project in the manner indicated, the court noted that two-thirds of the population of the county resided in the city of Detroit, and that the proposed institution would provide care for children from within the city. The court held that the city was aiding in the accomplishment of a purpose that it might itself have accomplished directly under its charter. *Brozowski v City of Detroit,* 351 Mich 10 (1957).

Opinions of the Attorney General
There are numerous opinions by the Attorney General regarding municipal expenditures. The following are offered as examples.

- Money raised under the special tax for advertising can be used to advertise the city's advantage for factory location, but not to buy land to be given for a factory, to build a factory for sale or rent, or to give a bonus for locating a factory in the city (1927-28 AGO p. 672).

- In a park owned by the American Legion which had installed a lighting system and held ball games open to the public, it would be unlawful for a village to assume the cost of the electricity used by the park up to $100 per year, even though the majority of the village taxpayers had signed a petition requesting such payment (1935-36 AGO p. 5).

Expansion of Public Purpose
The Attorney General has said that a county may not use federal revenue sharing funds to make a grant to a private nonprofit hospital (1973 AGO No. 4851).
The Attorney General concluded that since it could not expend its own funds as contemplated, it could not disburse federal funds for that purpose. The Attorney General suggested that the county might obtain social service and medical service needs by contract. In a later opinion the Attorney General concluded a county could not expend federal revenue sharing funds for loans to private businesses unless the federal statute expressly authorized such expenditure (1987 AGO No. 6427).

Considerable use has been made of the authority to contract with private nonprofit agencies to perform services on behalf of a city or village. 1977 AGO No. 5212 specifically recognized the validity of this procedure. The state legislature subsequently amended section 3 (j) of the Home Rule City Act as follows:

> In providing for the public peace, health, and safety, a city may expend funds or enter into contracts with a private organization, the federal or state government, a county, village, township, *or* another city for services considered necessary by the municipal body vested with legislative power. Public peace, health, and safety services may include, but shall not be limited to, the operation of child guidance and community mental health clinics, the prevention, counseling, and treatment of developmental disabilities, the prevention of drug abuse, and the counseling and treatment of drug abusers. 1978 PA 241.

In addition, there have been other expansions of a municipality's spending power with respect to a downtown development authority, MCL 125.1651 et seq. (1975 PA 195); public economic development corporation, MCL 125.1601 et seq. (1974 PA 338); empowerment zone development corporation, MCL 125.2561 et seq. (1995 PA 75); enterprise community development corporation, MCL 125.2601 et seq. (1995 PA 123); and brownfield redevelopment financing, MCL 125.2651 et seq. (1996 PA 381). Each law allows money and resources to be used for economic growth under the control or oversight of the municipality's governing body.

Statutory Authorizations for Expenditure

Listed below are several specific statutory authorizations for public expenditures:

- Cultural activities (Home Rule City Act). MCL 117.4k.
- Water supply authority. MCL 121.2.
- Public utility. MCL 123.391.
- Exhibition area. MCL 123.651.
- Memorial Day/Independence Day/Centennial celebrations. MCL 123.851.
- Band. MCL 123.861.
- Publicity/Advertising. MCL 123.881.
- Principal shopping district. MCL125.981.

As a public decision maker, you have a legal duty to make sound financial decisions. Whenever a question arises that does not easily match statutory law, or meet the public purpose analysis, the expenditure is likely improper. Remember, if the question cannot be resolved, your municipal attorney is the best resource for legal advice. You may also wish to consult the state of Michigan Department of Treasury website (www.michigan.gov/treasury) for guidelines.

Chapter by League staff.

Appendix 1
Glossary

Annexation – The incorporation of a land area into an existing city or village with a resulting change in the boundaries of that unit of local government.

Bond – A certificate or instrument certifying the existence of a debt. Local units of government only have those powers to borrow monies expressly granted by law. Municipal obligations are generally classified as either general obligation or special obligation bonds. A special obligation bond is payable from a specially identified source; a general obligation bond is payable without reference to a specific source.

Charter – The basic laws of a municipal corporation describing the powers, rights, and privileges which may be exercised within a political or geographic area by that municipal corporation and its officers. A charter is similar to a constitution on the state and federal levels of government.

Budget – Under the Michigan Uniform Budgeting and Accounting Act (MCL 141.421 et. seq.), *budget* means a plan of financial operation for a given period of time, including an estimate of all proposed expenditures from the funds of a local unit and the proposed means of financing the expenditures. It does not include a fund for which the local unit acts as a trustee or agent, an intragovernmental service fund, an enterprise fund, a public improvement or building fund or a special assessment fund.

Conditional Transfers of Land –
A potential alternative to annexation. Public Act 425 of 1984 (MCL 124.21 et seq.) allows the conditional transfers of land from one local unit of government to another for a period of not more than 50 years for the purpose of economic development. The conditional transfer must be evidenced by a written contract which must include certain conditions including the manner and extent to which taxes and revenues are shared, the duration of the agreement, methods by which a participating unit may enforce the contract and designation of which local unit has jurisdiction upon the expiration or termination of the contract.

Consolidation – The formation of a new city boundary through consolidation of any of the following:

a. two or more cities or villages;
b. a city and one or more villages; or
c. one or more cities or villages together with additional territory not included in any incorporated city or village.

A new village boundary may be created by the consolidation of two or more villages.

Council – A legislative, executive, advisory, or administrative governmental body whose elected or appointed members are assigned certain duties and responsibilities by law such as a city/village council or a citizen's advisory council.

Enterprise Fund – A fund established to finance and account for the acquisition, operation and maintenance of governmental facilities and services which are entirely or predominantly self-supporting by user charges. Examples of enterprise funds are those for water, gas and electric utilities, sports facilities, airports, parking garages and transit systems.

Franchise Agreement – As used in local government, it is a negotiated contractual agreement between a utility provider and a government agency authorizing the provider to build and operate a utility system or conduct business within a given geographical area.

Franchise Ordinance – Unilateral action taken by the legislative body of a local unit of government to establish the non-negotiable terms of obtaining the permission to transmit and distribute a public utility system or to conduct business of a public utility within a given geographical area.

General Fund – A fund used to account for all transactions of a governmental unit which are not accounted for in another fund. The general fund is used to account for the ordinary operations of a governmental unit which are financed from taxes and other general revenues.

General Law Village – Villages incorporated under the General Law Village Act, MCL 61.1 et seq. General law villages are subject to legislative amendments to the General Law Village Act, including the major re-write of the Act in 1998. Under provisions of the Home Rule Village Act (MCL 78.1 et seq.), all villages incorporated after 1909 must be incorporated as home rule villages.

Governmental Immunity – Doctrine, the basis of which may be statute or court decision, that protects or insulates a governmental agency from tort liability when engaged in a governmental function, subject to certain exceptions. Governmental agency employees also enjoy broad immunity protection when the agency is engaged in a governmental function.

Home Rule – The authority of local governments to frame, adopt or change their own charter and to manage their own affairs with minimal state interference.

Incorporation – The formation of a new village or city governed by the State Boundary Commission Act, the Home Rule Village Act and the Home Rule City Act, from:

1. unincorporated territory; or
2. one village or city and contiguous unincorporated territory; or
3. an incorporated village without change of boundaries.

Mayor – An elected official who serves as chief executive, chair or nominal head of a city council or commission. Under the “weak mayor” form of government, the mayor’s administrative powers are limited, and the mayor is chief executive in name only. Under the “strong mayor” form of government, the mayor does not hold membership on council, but exercises veto power. The “strong mayor” holds executive power while council holds legislative power.

Municipal Bond – A security issued by, or on behalf of, a political subdivision, the interest on which is generally exempt from federal income tax.

Municipal Corporation – A voluntary public corporation which is established by state law as a result of the incorporation of an aggregate of citizens residing within a certain area, place or district. Historically, a municipal corporation in Michigan has been limited, in definition, to cities and villages. The 1963 Michigan Constitution eliminated the phrase *municipal corporation* as it appeared in article X of the 1908 Constitution and replaced it in article IX with *city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by general law.* Generally, a municipal corporation operates for the express purpose of promoting public health, safety, and welfare.

Ordinance – A law or an order enacted by the legislative body of a local unit of government, usually pertaining to a specific subject. An **ordinance code** is a systematic integration of all municipal ordinances into a single book, organized by subject matter, tied together by a common numbering system, and indexed.

President – The chief executive officer of a village. The president is elected and is a voting member of the council.

Property Tax – A tax based on the assessed value of a property, either real or personal. Tax liability falls on the owner of record as of tax day. Real property includes all lands, buildings, and fixtures on the land. Personal property is generally movable and not affixed to land. It includes equipment, furniture, electric and gas transmission, and distribution equipment, etc.

Public Act (PA) – Legislation passed by both the state House and Senate and signed by the Governor. When legislation is signed into law, it becomes a public act, assigned a number, and is denoted by PA and the year it became law.

Resolution – Official action of a legislative body, primarily administrative or ministerial in nature.

Request for Proposal (RFP) – Document issued outlining the format of bids, deadlines, minimum requirements, and general guidelines for potential purchase of products or services.

Revenue – For revenues recorded on the accrual basis, the term designates additions to assets which:

a. do not increase any liability;
b. do not represent the recovery of an expenditure;
c. do not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets; and
d. do not represent contributions of fund capital in enterprise and intragovernmental service funds.

The same definition applies to those cases where revenues are recorded on the modified accrual or cash basis, except that additions would be limited partially or entirely to cash.

Revenue Bond – A bond payable from revenues secured from a project which is financed by charging use or service charges. The primary authority for revenue bonds is the Revenue Bond Act of 1933 (MCL 141.101 et seq.) The bonds may be used for a variety of public improvements including airports, bridges, electric and gas utilities, garbage facilities, hospitals, housing, parking facilities, pollution control, recreation facilities, sewer, and water facilities, etc.

Revenue Sharing – A state program to share tax revenues with all eligible units of government, but particularly local government in accordance with a method of distribution, as by formula or per capita. The term refers to revenues collected by the state and shared with municipalities. These include revenues from the sales tax.

Site Plan – A plan, prepared to scale, showing accurately and with complete dimensions, the boundaries of a site and the location of all buildings, structures, uses and principal site development features proposed for a specific parcel of land.

Special Assessment – A method of raising funds for special purposes available to municipalities as an alternative to imposing a tax. A special assessment may only be levied on land and may only be imposed to pay the cost of an improvement or service by which the assessed land is specially (as opposed to generally) benefited. To impose

a special assessment, a municipality must first have the statutory authority to make the improvement or provide the service for which the assessment will be imposed and, second, the statutory authority to assess for that type of improvement or service.

Special Permit or Use – Authorization allowing a use of property if specific conditions are met as permitted by a zoning ordinance or regulation.

Tax Exemption – The exclusion from the tax base of certain types of transactions or objects. Property which is exempt or free from taxation is usually the property of a charitable, public service, educational or other governmental institution.

Tax Rate – The amount of tax applied to the tax base. The rate may be a percentage of the tax base, as in the case of the sales and income taxes. In the case of the property tax, rates are expressed in cents (such as $.45 per $100 of taxable value) or as a millage rate (such as 30 mills) where one mill equals one-tenth of a cent.

Tax Roll – The end product of the assessment phase that lists the owners of each property, each property's legal description as well as its taxable value and the liability of each owner.

Taxing Powers – The basis for levying taxes. Local governments rely on taxing powers granted by state law to levy property and other taxes.

Variance – Authorization for the construction of a structure or for the establishment of a use which is prohibited by a zoning ordinance. Generally, a variance may not be granted unless the literal enforcement of the zoning ordinance would cause a property owner "practical difficulties or unnecessary hardship."

Zoning – Division of a municipality into districts, the regulation of structures according to their construction, nature, and extent of use, and the regulation of land according to use.

Appendix 2:
Overview of the
Michigan Open Meetings Act
(1976 PA 267)

Basic Intent
The basic intent of the Michigan Open Meetings Act is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

Key Definitions
"Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, which is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

"Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

"Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

"Decision" means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Coverage
The coverage of the law is very broad, including the State Legislature as well as the legislative or governing bodies of all cities, villages, townships, charter townships, and all county units of government.

The law also applies to:
- local and intermediate school districts;
- governing boards of community colleges, state colleges and universities; and
- special boards and commissions created by law (i.e., public hospital authorities, road commissions, health boards, district library boards, and zoning boards, etc.).

The Act does not apply to a meeting of a public body which is a social or chance gathering not designed to avoid the law.

Notification of Meetings
The law states that within 10 days of the first meeting of a public body in each calendar or fiscal year, the body must publicly post a list stating the dates, times, and places of all its regular meetings at its principal office.

If a public body does not have a principal office, the notice would be posted in the office of the county clerk for a local public body such as a village council or the office of the Secretary of State for a state public body.

If there is a change in schedule, within three days of the meeting in which the change is made, the public body must post a notice stating the new dates, times, and places of regular meetings.

Special and Irregular Meetings
For special and irregular meetings, public bodies must post a notice indicating the date, time, and place at least 18 hours before the meeting in a prominent and conspicuous place at both the public body's principal office and, if the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of the public meeting agendas or minutes, on a portion of the website that is fully accessible to the public.

Note: A regular meeting of a public body, which is recessed for more than 36 hours, can only be reconvened if a notice is posted 18 hours in advance.

Emergency Meetings
Public bodies may hold emergency sessions without a written notice or time constraints if the public health, safety, or welfare is imminently and severely threatened and if two-thirds of the body's members vote to hold the emergency meeting.

Closed Meetings
The basic intent of the OMA is to ensure that public business is conducted in public. The act states "all meetings of a public body shall be open to the public and shall be held in a place available to the general public" (MCL 15.263). However, the act does provides for closed meetings in a few specified circumstances.

For instance, a closed meeting **may** be called by a **2/3 roll call vote** of members elected or appointed and serving for the following purposes:

- to consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained;
- to consult with its attorney about trial or settlement strategy in pending litigation, but only when an open meeting would have detrimental financial effect on the public body's position;
- to review the contents of an application for employment or appointment to a public office if the candidate requests the application to remain confidential. However, all interviews by a public body for employment or appointment to a public office have to be conducted in an open meeting pursuant to this act; and
- to consider material exempt from discussion or disclosure by state or federal statute.

In addition, a closed meeting **may** be called by a **majority vote** of members elected or appointed and serving for these purposes:

- to consider the dismissal, suspension or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual if the person requests a closed hearing;
- for strategy and negotiation sessions necessary in reaching a collective bargaining agreement if either party requests a closed hearing. The purpose for which a closed meeting is being called must be entered into the minutes at the meeting at which the vote was taken.

Minutes of a Meeting
Minutes must be kept for all meetings and are required to contain:

- a statement of the time, date, and place of the meeting;
- the members present as well as absent;
- a record of any decisions made at the meeting and a record of all roll call votes; and
- an explanation of the purpose(s) if the meeting is a closed session.

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

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

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

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

Enforcement of the Act
Under the law, the attorney general, prosecutor, or any citizen can challenge in circuit court the validity of a decision of a public body to meet in closed session made in violation of its provisions. If the body is determined to be in violation of the law and makes a decision, that decision can be invalidated by the court.

In any case where an action has been initiated to invalidate a decision of a public body, the public body may reenact the disputed decision in conformity with the Act. A decision reenacted in this manner shall be effective from the date of reenactment and will not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Penalties under the Act
The first time a public official intentionally breaks this law, he or she can be punished by a maximum fine of $1,000. For a second offense within the same term of office, the official can be fined up to $2,000, jailed for a maximum of one year or both. A public official who intentionally violates the Act is also personally liable for actual and exemplary damages up to $500, plus court costs and attorney fees.

Appendix 3:
Overview of the
Michigan Freedom of Information Act
(1976 PA 442)

Basic Intent
The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all "public bodies" in the state.

Key Definitions
"Freedom of Information Act Coordinator" means an individual who is a public body or an individual designated to accept and process requests for public records.

"Public body" means:

- a state officer, employee, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor or employees thereof;
- an agency, board, commission, or council in the legislative branch of the state government;
- a county, city, township, village, intercounty, intercity or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof; or
- any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

"Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.

Coverage
The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all "public bodies" in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered. Any program primarily funded by the state or local authority is also covered.

Public Records Open to Disclosure
In general, all records except those specifically cited as exemptions are covered by the Freedom of Information Act.
The records covered include working papers and research material, minutes of meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules and other written statements which implement or interpret laws, rules, or policy, including but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions.

It does not matter what form the record is in. The Act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording. It includes letters, words, pictures, sounds or symbols, or

combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

Public Records Exempt from Disclosure
A public body may (but is not required to) withhold from public disclosure certain categories of public records under the Freedom of Information Act. The following categories of information may be withheld:

- specific information about an individual's private affairs, if the release of the information would constitute a clearly unwarranted invasion of the person's privacy;
- investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
    - interfere with law enforcement proceedings,
    - deprive a person of the right to a fair trial or impartial administrative adjudication,
    - constitute an unwarranted invasion of personal privacy,
    - disclose law enforcement investigative techniques or procedures,
    - disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the court of a criminal investigation, disclose confidential information furnished only by a confidential source or
    - endanger the life or physical safety of law enforcement personnel;
- public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this Act outweighs the public interest in non-disclosure;
- a public record or information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable;
- trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy;
- information or records subject to attorney-client privilege;
- information or records subject to other enunciated privileges such as physician-patient and those recognized by statute or court rule;
- A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired;
- appraisals of real property to be acquired by a public body until either of the following occurs:
    - An agreement is entered into.
    - Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- test questions and answers, scoring keys and other examination instruments or data used to administer a license,

public employment, or academic examination;

- medical counseling or psychological facts which would reveal an individual's identity;
- internal communications and notes between the public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. (Factual materials in such memoranda are open records and must be separated out and made available upon request even if the other material is not.);
- law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in non-disclosure;
- public records of a law enforcement agency, the release of which would do any of the following (unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance):
    - identify an informer,
    - identify a law enforcement undercover officer or agent or a plain clothes officer,
    - disclose the name, address, or telephone numbers of family members of law enforcement officers or agents,
    - disclose operational instructions for law enforcement officers or agents,
    - reveal the contents of law enforcement officers or agents' staff manuals,
    - endanger the life or safety of law enforcement officers or agents and their families or those who furnish information to law enforcement agencies or departments,
    - identify a person as a law enforcement officer, agent or informer,
    - disclose personnel records,
    - identify residences that law enforcement agencies are requested to check in the absence of their owners or tenants;
- information pertaining to an investigation or a compliance conference conducted by the department of consumer and industry services under article 15 of the public health code, Act No. 368 of the Public Acts of 1978. Except records pertaining to the fact that an allegation has been received and is being investigated or the fact that an allegation was received and a complaint was not issued and the allegation was dismissed,
- records of a public body's security measures;
- records or information relating to a civil action to which the requesting party and the public body are both parties; and
- information that would disclose the social security number of any individual.

Appendix 4

Sample Council Rules of Procedure

Every general law village is required by the General Law Village Act to adopt "rules of its own proceedings." (MCL 65.5). These rules of procedure help the council to run an efficient meeting and to deal with the public and the media in a positive manner.

The village council should review its rules of procedure at its first meeting after trustees elected at the village's regular election have taken office and when a quorum is present. Following discussion and any amendments, the council should adopt the rules of procedure. This sample provides suggestions on what can be included in the rules of procedure. It may be modified locally as appropriate.

Table of contents

Sample rules of procedure for a general law village council

A. Regular and special meetings

All meetings of the village council will be held in compliance with state statutes, including the Open Meetings Act, and with these rules.

1. Regular meetings

Regular meetings of the village council will be held on _____ of each month beginning at _____ p.m. at the village hall unless otherwise rescheduled by resolution of the council. Council meetings shall conclude no later

than _____ p.m., subject to extension by the council.

2. Special meetings

A special meeting shall be called by the clerk upon the written request of the village president or any three members of the council on at least 24 hours' written notice to each member of the council served personally or left at the trustee's usual place of residence. Special meeting notices shall state the purpose of the meeting. No official action shall be transacted at any special meeting of the council unless the item has been stated in the notice of such meeting.

3. Posting requirements for regular and special meetings

a. Within 10 days after the first meeting of the council following the November elections, a public notice stating the dates, times, and places of the regular monthly council meetings will be posted at the village office. [Villages without a principal office must post in the county clerk's office.]
b. For a rescheduled regular or a special meeting of the council, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting in a prominent and conspicuous place at both the council's principal office and, if the council directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, on a portion of the website that is fully accessible to the public. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices. [Villages without a principal office must post in the county clerk's office.]
c. The notice described above is not required for a meeting of the council in emergency session in the event of a severe and imminent threat to the health, safety or welfare of the public when two-thirds of the members of the council determine that delay would be detrimental to the village's efforts in responding to the threat.

4. Minutes of regular and special meetings

The clerk shall attend the council meetings and record all the proceedings and resolutions of the council in accordance with the Open Meetings Act and Section 64.5 of the General Law Village Act. In the absence of the clerk, the council may appoint one of its own members or another person to temporarily perform the clerk's duties.

Within 15 days of a council meeting, a synopsis showing the substance of each decision of the council, or the entirety of the council proceedings shall be prepared by the clerk and shall indicate the vote of the trustees. After the president approves this document, it shall be published in a newspaper of general circulation in the village or posted in three public places in the village.

A copy of the minutes of each regular or special council meeting shall be available for public inspection at the village offices during regular business hours.

5. Study sessions

Upon the call of the village president or the council and with appropriate notice

to the trustees and to the public, the council may convene a work session devoted exclusively to the exchange of information relating to municipal affairs. No votes shall be taken on any matters under discussion, nor shall any trustee enter into a formal commitment with another member regarding a vote to be taken subsequently.

B. Conduct of meetings

1. Meetings to be public

All regular and special meetings of the village council shall be open to the public, and citizens shall have a reasonable opportunity to be heard in accordance with such rules and regulations as the council may determine, except that the meetings may be closed to the public and the media in accordance with the Open Meetings Act.

All official meetings of the council and its committees shall be open to the media, freely subject to recording by radio, television, and photographic services at any time provided that such arrangements do not interfere with the orderly conduct of the meetings.

2. Agenda preparation

An agenda for each regular council meeting shall be prepared by the village president with the following order of business:

a. Call to order and roll call of council
b. Public hearings on ordinances under consideration
c. Brief public comment on agenda items
d. Approval of consent agenda
e. Approval of regular agenda
f. Approval of council minutes
g. Submission of bills
h. Communications to the council
i. Reports from council committees
j. Reports from village officers as scheduled, e.g., village manager, village attorney, etc.
k. Unfinished business
l. New business
m. Announcements
n. Adjournment

Any trustee shall have the right to add items to the regular agenda before it is approved.

3. Consent agenda

The village president may use a consent agenda to allow the council to act on numerous administrative or noncontroversial items at one time. Included on this agenda can be noncontroversial matters such as approval of minutes, payment of bills, approval of recognition resolutions, etc. Upon request by any member of the council, an item shall be removed from the consent agenda and placed on the regular agenda for discussion.

4. Agenda distribution

[This section should explain when and how trustees will receive their agendas.]

5. Quorum

A majority of the entire elected or appointed and sworn members of the council shall constitute a quorum for the transaction of business at all council meetings. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date with appropriate public notice.

6. Attendance at council meetings

Election to the village council is a privilege freely sought by the nominee. It carries with it the responsibility to participate in council activities and represent the residents of the village. Attendance at council meetings is critical to fulfilling this responsibility. The village council is empowered by the

General Law Village Act to adjourn a meeting if a quorum is not present and compel attendance in a manner prescribed by its ordinance. (MCL 65.5).

The council may excuse absences for cause. If a trustee has more than three unexcused successive absences for regular or special council meetings, the council may enact a resolution of reprimand. In the event that the member's absences continue for more than three additional successive regular or special meetings of the council, the council may enact a resolution of censure or request the trustee's resignation or both.

7. Presiding officer

The presiding officer shall be responsible for enforcing these rules of procedure and for enforcing orderly conduct at meetings. The village president is ordinarily the presiding officer. The village council shall appoint one of its members as president pro tempore, who shall preside in the absence of the president. In the absence of both the president and the president pro tempore, the member present who has the longest consecutive service on the council shall preside.

8. Disorderly conduct

The president may call to order any person who is being disorderly by speaking out of order or otherwise disrupting the proceedings, failing to be germane, speaking longer than the allotted time, or speaking vulgarities. Such person shall be seated until the chair determines whether the person is in order.

If the person so engaged in presentation is called out of order, he or she shall not be permitted to continue to speak at the same meeting except by special leave of the council. If the person shall continue to be disorderly and disrupt the meeting, the chair may order the sergeant at arms to remove the person from the meeting. No person shall be removed from a public meeting except for an actual breach of the peace committed at the meeting.

[It is suggested that there be an ordinance governing disruption of public meetings, prepared with advice of the village attorney on the risks, limits, and force allowed to eject members. This ordinance should stipulate the procedure to be followed and the resource to be used for the sergeant-at-arms function, e.g., local police, county sheriff, etc. By planning in advance how to handle attempted disruptions, you can keep the meeting in order.]

C. Closed meetings

1. Purpose

Closed meetings may be held only for the reasons authorized in the Open Meetings Act, which include the following:

a. To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual agent if the named person requests a closed meeting (majority vote).
b. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing (majority vote).
c. To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained (2/3 roll call vote).
d. To consult with the village attorney or another attorney

regarding trial or settlement strategy in connection with specific pending litigation, but only when an open meeting would have a detrimental financial effect on the litigating or settlement position of the council (2/3 roll call vote).

e. To review the specific contents of an application for employment or appointment to a public office if a candidate requests that the application remain confidential (2/3 roll call vote). However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting.

f. To consider material exempt from discussion or disclosure by state or federal statute (2/3 roll call vote).

2. Calling closed meetings

At a regular or special meeting, the council may call a closed session under the conditions outlined in Section 1 above. The vote and purpose(s) for calling the closed meeting shall be entered into the minutes of the public part of the meeting at which the vote is taken.

3. Minutes of closed meetings

A separate set of minutes shall be taken by the clerk or the designated secretary of the council at the closed session. These minutes will be retained by the clerk, shall not be available to the public, and shall only be disclosed if required by a civil action, as authorized by the Open Meetings Act. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

D. Discussion and voting

1. Rules of parliamentary procedure

The rules of parliamentary practice as contained in the latest edition of *Roberts Rules of Order* shall govern the council in all cases to which they are applicable, provided that they are not in conflict with these rules, the ordinances of the Village of _____ or state statutes applicable to the Village of _____. The village president may appoint a parliamentarian.

The chair shall preserve order and decorum and may speak to points of order in preference to other trustees. The chair shall decide all questions arising under this parliamentary authority, subject to appeal and reversal by a majority of the trustees present.

Any member may appeal to the council a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state the reason for the appeal and the presiding officer may briefly state the ruling. There shall be no debate on the appeal and no other member shall participate in the discussion. The question shall be, “Shall the decision of the chair be sustained?” If the majority of the members present vote “aye,” the ruling of the chair is sustained; otherwise, it is overruled.

2. Conduct of discussion

During the council discussion and debate, no member shall speak until recognized for that purpose by the chair. After such recognition, the member shall confine discussion to the question at hand and to its merits and shall not be interrupted except by a point of order or privilege raised by another member. Speakers should address their remarks to the chair, maintain a courteous tone and avoid interjecting a personal note into debate.

No member shall speak more than once on the same question unless every member desiring to speak to that question shall have had the opportunity to do so.

The chair, at his or her discretion and subject to the appeal process mentioned in Section D.1., may permit any person to address the council during its deliberations.

3. Ordinances and resolutions

No ordinance, except an appropriation ordinance, an ordinance adopting or embodying an administrative or governmental code or an ordinance adopting a code of ordinances, shall relate to more than one subject, and that subject shall be clearly stated in its title.

A vote on all ordinances and resolutions shall be taken by a roll call vote and entered in the minutes unless it is a unanimous vote. If the vote is unanimous, it shall be necessary only to so state in the minutes, unless a roll call vote is required by law.

4. Roll call

In all roll call votes, the names of the members of the council shall be called in alphabetical order. [Names may be called with all names in alphabetical order or alphabetical order with the president voting last or the council may select another system.]

5. Duty to vote

Election to a deliberative body carries with it the obligation to vote. Trustees present at a council meeting shall vote on every matter before the body, unless otherwise excused or prohibited from voting by law. A trustee who is present and abstains or does not respond to a roll call vote shall be counted as voting with the prevailing side and shall be so recorded, unless otherwise excused or prohibited by law from voting.

Conflict of interest, as defined by law, shall be the sole reason for a member to abstain from voting. The opinion of the village attorney shall be binding on the council with respect to the existence of a conflict of interest. A vote may be tabled, if necessary, to obtain the opinion of the village attorney.

The right to vote is limited to the members of council present at the time the vote is taken. Voting by proxy or by telephone is not permitted.

6. Results of voting

In all cases where a vote is taken, the chair shall declare the result.

It shall be in order for any trustee voting in the majority to move for a reconsideration of the vote on any question at that meeting or at the next succeeding meeting of the council. When a motion to reconsider fails, it cannot be renewed.

E. Citizen participation

1. General

Each regular council meeting agenda shall provide for reserved time for audience participation.

If requested by a member of the council, the presiding officer shall have discretion to allow a member of the audience to speak at times other than reserved time for audience participation.

2. Length of presentation

Any person who addresses the village council during a council meeting or public hearing shall be limited to _____ minutes in length per individual presentation. The clerk will maintain the official time and notify the speakers when their time is up. [Three

minutes is a typical length of time for a speaker to address the council during a council meeting]

3. Addressing the council

When a person addresses the village council, he or she shall state his or her name. Remarks should be confined to the question at hand and addressed to the chair in a courteous tone. No person shall have the right to speak more than once on any particular subject until all other persons wishing to be heard on that subject have had the opportunity to speak.

F. Miscellaneous

1. Adoption and amendment of rules of procedure

These rules of procedure of the village council will be placed on the agenda of the first meeting of the council following the seating of the newly elected trustees for review and adoption. A copy of the rules adopted shall be distributed to each trustee.

The council may alter or amend its rules at any time by a vote of a majority of its members after notice has been given of the proposed alteration or amendment.

2. Suspension of rules

The rules of the village council may be suspended for a specified portion of a meeting by an affirmative vote of two-thirds of the members present except that council actions shall conform to state statutes and to the Michigan and the U.S. Constitution.

3. Bid awards

Bids will be awarded by the village council during regular or special meetings. A bid award may be made at a special meeting of council if that action is announced in the notice of the special meeting.

4. Committees

a. Standing and special committees of council

The village shall have the following standing committees:
[Committees should be listed by name and with a definition of their purposes and scopes.]

Committee members will be appointed by the village president. They shall be members of the council. The president shall fill any committee vacancies. The committee member shall serve for a term of one year and may be re-appointed.

Special committees may be established for a specific period of time by the village president or by a resolution of the council which specifies the task of the special committee and the date of its dissolution.

b. Citizen task forces

Citizen task forces may be established by a resolution of the council which specifies the task to be accomplished and the date of its dissolution. Members of such committees will be appointed by the village president, subject to approval by a majority vote of the village council and must be residents of the village. Vacancies will be filled by majority vote of the village council in the same way appointments are made.

5. Authorization for contacting the village attorney

The following village officials (by title) are authorized to contact the village attorney regarding village matters:

_____

_____

Appendix 5
Sample Ordinance to Appoint a Village Manager

We strongly recommend that you consult with your village attorney to appropriately modify this sample ordinance to meet your village's needs.

AN ORDINANCE establishing the office of village manager; providing for the appointment, compensation, and discharge of such official; specifying the branches of the village government and activities under the manager's control and defining the rights, powers, and liabilities of the village manager.

The Village of (Name of Village) ordains:

Section 1. Establishment of office
In accordance with the authority for the appointment of a village manager granted to the village in section 2 of chapter II and section 8 of chapter V of the General Law Village Act (1895 PA 3 as amended), the office of village manager is established.

Section 2. Appointment of village manager
The president shall, with the concurrence of a majority of the trustees, appoint a village manager. The council may enter into an employment contract with a village manager for a period extending beyond the terms of the members of council, but not exceeding six years. An employment contract with a manager shall be in writing and shall specify the compensation to be paid to the manager, any procedure for changing compensation, any fringe benefits, and any other conditions of employment. The contract shall state that the manager serves at the pleasure of the council. The contract may provide for severance pay or other benefits in the event the employment of the manager is terminated by the council.

The manager shall serve at the pleasure of the council and may be removed by a majority of the council.

The manager shall be selected solely on the basis of administrative and executive abilities, with special reference to training and experience.

Section 3. Acting village manager
The president, with the concurrence of a majority of the trustees, shall appoint or designate an acting manager during a vacancy in the office of village manager and shall make a permanent appointment within 180 days from the effective date of the vacancy.

Section 4. Compensation
The village manager shall receive such compensation as the council shall determine by resolution or ordinance.

Section 5. Duties
The village manager shall be chief administrative officer of the village and shall be responsible to the village council for the efficient administration of

all affairs of the village and shall exercise management supervision over all departments and over all public property belonging to the village.

The manager shall have the following functions and duties:

Attend and participate in all meetings of the village council and committees but shall not have a vote on such council or committees;

Be responsible for personnel management and shall issue, subject to council approval, personnel rules applicable to all village employees. The manager shall have the following responsibilities:

1. To appoint, suspend, or remove all appointed administrative officers and department heads, subject to council approval. The manager shall recommend to the council the salary or wage for each such official.
2. To appoint, suspend, or remove all other employees of the village. The manager shall determine the salary for each such employee.
3. Exercise supervisory control over all departments including the police department, the department of public works, and the fire department.
4. Exercise supervisory responsibility over the accounting, budgeting, personnel, purchasing, and related management functions of the village clerk and village treasurer.
5. Shall be authorized to attend all meetings of village boards and commissions, including the village planning commission, with the right to take part but shall not have a vote.
6. Prepare and administer the budget as provided for in the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, and any village ordinance that may be adopted.
7. Be the purchasing agent of the village.
8. Prepare and maintain written policies and procedures defining the duties and functions of the several officers and departments of the village, subject to the approval by the council.
9. Investigate all complaints concerning the administration of the village and shall have authority at all times to inspect the books, records, and papers of any agent, employee, or officer of the village.
10. Make recommendations to the council for the adoption of such measures as may be deemed necessary or expedient for the improvement or betterment of the village; and
11. Perform other duties required from time to time by the village council.

Section 6. Purchasing responsibilities

The village manager shall act as purchasing agent for all village offices and departments. The manager may delegate some or all of the duties as purchasing agent to another officer or employee, provided that such delegation shall not relieve the manager of the responsibility for the proper conduct of those duties.

The village manager shall have the authority to purchase any product or service the cost of which does not exceed $_____, provided that funds have been appropriated. The cost of the product or service shall not exceed the unencumbered balance of the appropriation for that account. Any product or service the cost of which exceeds the above dollar amount shall be purchased only if prior approval of the village council has been obtained. The village manager may promulgate

rules governing the purchase of products or services.

The village manager shall have the authority to purchase any product or service regardless of its cost when such purchase is necessitated by an emergency condition. *Emergency condition* is defined to mean any event which presents an imminent threat to the public health or safety, or any event which would result in the disruption of a village service which is essential to the public health or safety.

Section 7. Dealing with employees
Neither the council nor the village president shall attempt to influence the employment of any person by the village manager or in any way interfere in the management of departments under the jurisdiction of the manager. Except for the purpose of inquiry, the president and trustees shall deal with departments under the jurisdiction of the village manager through the manager.

Section 8. Severability
If any portion or section of this ordinance or its application to any person or circumstance shall be found to be invalid by a court, such invalidity shall not affect the validity of the remaining portions or applications.

Section 9. Effective date
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the acting village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general or special village election held on the question of whether the ordinance shall be approved. Notice of the delayed effect of this ordinance, and the right of petition under this section, shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

Section 10. Adoption
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

Section 11. Publication
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.

Yeas:
Nays:

Ordinance declared adopted

_____
Village Clerk

[If the ordinance is passed, notice of the delayed effect of the ordinance and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]

Sample of published notice of adoption of the ordinance

Notice to the electors of the Village of (Name of Village): Take notice that Village Ordinance No. _____, which provides for the establishment and appointment, compensation, and discharge of a village manager, was adopted pursuant to 1895 PA 3 as amended, on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period, in which case the ordinance will take effect upon the approval of an election held on the question.

Appendix 6

Sample Ordinance to Appoint the Village Clerk

We strongly recommend that you consult with your village attorney to appropriately modify this sample ordinance to meet your village's needs.

AN ORDINANCE to provide for the appointment of the (Name of Village) village clerk.

The Village of (Name of Village) ordains:

Section 1. Establishment of office
As authorized by section 1(3) chapter II of the General Law Village Act (1895 PA 3, as amended), the village clerk shall be chosen by nomination by the village president and appointment by a majority vote of the village council.

Section 2. Term of office
The term of office of the village clerk shall be two years, beginning [date], after the clerk's appointment.

Section 3. Effective date
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the acting village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general village or special village election held on the question of whether the ordinance shall be approved. Notice of the delayed effect of this ordinance and the right of petition under this section shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

Section 4. Adoption
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

Section 5. Publication
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.

Yeas:
Nays:

Ordinance declared adopted

_____
Village Clerk

[If the ordinance is passed, notice of the delayed effect of the ordinances and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]

Sample of published notice of adoption of the ordinance

Notice to the electors of the Village of (Name of Village): Take notice that Village Ordinance No. _____ which provides for the appointment of the village clerk was adopted pursuant to 1895 PA 3 as amended on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period in which case the ordinance will take effect upon the approval of an election held on the question.

Appendix 7

Sample Ordinance to Appoint the Village Treasurer

We strongly recommend that you consult with your village attorney to appropriately modify this sample ordinance to meet your village's needs.

AN ORDINANCE to provide for the appointment of the (Name of Village) village treasurer.

The Village of (Name of Village) ordains:

Section 1. Establishment of office
As authorized by section 1(3), chapter II of the General Law Village Act (1895 PA 3, as amended), the village treasurer shall be chosen by nomination by the village president and appointment by a majority vote of the village council.

Section 2. Term of office
The term of office of the village treasurer shall be two years, beginning [date], after the treasurer's appointment.

Section 3. Effective date
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general village or special village election held on the question of whether the ordinance shall be approved. Notice of the delayed effect of this ordinance and the right of petition under this section shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

Section 4. Adoption
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

Section 5. Publication
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.

Yeas:
Nays:

Ordinance declared adopted

_____
Village Clerk

[If the ordinance is passed, notice of the delayed effect of the ordinance and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]

Sample of published notice of adoption of the ordinance

Notice to the electors of the Village of (Name of Village): Take notice that Village Ordinance No. _____ which provides for the appointment of the village treasurer was adopted pursuant to 1895 PA 3 as amended on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period in which case the ordinance will take effect upon the approval of an election held on the question.

Appendix 8

Sample Ordinance to Reduce the Number of Trustees

We strongly recommend that you consult with your village attorney to appropriately modify this sample ordinance to meet your village's needs.

AN ORDINANCE to provide for reduction in the number of trustees on village council.

The Village of (Name of Village) ordains:

Section 1. Reduction of number of trustees on council
As authorized by Section (2), Chapter II of the General Law Village Act (1895 PA 3, as amended), the number of trustees on the Village Council shall be reduced from six trustees to four trustees who, with the president, shall constitute the council.

Section 2. Term of office
Use one of the following:
[If prior to the adoption of the ordinance reducing the size of council, three village trustees have been elected at each biennial village election for a term of four years each.]

After the effective date of adoption of this ordinance, two village trustees shall be elected at each succeeding biennial village election. This ordinance shall not shorten the term of any incumbent trustee. Nor shall this ordinance shorten or eliminate a prospective term unless the nomination deadline for that term is not less than 30 days after the effective date of this ordinance.

OR

[If prior to the adoption of the ordinance reducing the size of council, all six village trustees have been elected at each biennial village election for a term of two years each.]

After the effective date of adoption of this ordinance, four village trustees shall be elected each succeeding biennial village election. This ordinance shall not shorten the term of any incumbent trustee. Nor shall this ordinance shorten or eliminate a prospective term unless the nomination deadline for that term is not less than 30 days after the effective date of this ordinance.

Section 3. Effective date
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general village or special village election held on the question of whether the ordinance shall be approved. Notice of any delayed effect of this ordinance and the right of petition under this section shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

Section 4. Adoption
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

Section 5. Publication
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.

Yeas:
Nays:

Ordinance Declared Adopted

_____
Village Clerk

[NOTE: The following are offered as examples. It is suggested that all current trustees be listed regardless of whether or not that there is to be a change in the length of his/her term.]

Jane E. Smith—term due to expire November 20, ____, shall be extended and shall expire on November 20, _____.

Ralph M. Morris—term due to expire November 20, ____, shall not be extended.

[NOTE: The term of a trustee may be extended but not shortened.]

[If the ordinance is passed, notice of the delayed effect of the ordinance and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]

Sample of published notice of adoption of the ordinance

Notice to the electors of the Village of (Name of Village): Take notice that Village Ordinance No. _____ which provides for the reduction of the number of village trustees (from six to four) was adopted pursuant to 1895 PA 3 as amended on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period in which case the ordinance will take effect upon the approval of an election held on the question.

Appendix 9

Sample Budget Ordinance

We strongly recommend that you consult with your village attorney to appropriately modify this sample ordinance to meet your village's needs.

AN ORDINANCE to establish a budget system for the Village of (Name of Village) to define the powers and duties of the village officers in relation to that system; to provide that the chief administrative officer shall be furnished with information by the departments, boards, commissions, and offices relating to their financial needs, receipts and expenditures, and general affairs; to provide for an annual budget resolution; to prescribe a disbursement procedure; and to provide penalties for refusal or neglect to comply with the requirements of this ordinance.

The Council of the Village of (Name of Village) ordains:

Section 1. Title
This ordinance shall be known as the Village of (Name of Village) Budget Ordinance.

Section 2. Fiscal year
The fiscal year of the Village of (Name of Village) shall begin on (date) in each year and close on the following (date).

Section 3. Chief administrative officer and fiscal officer
[If the village has a manager, the following language can be used.]
The manager shall be the chief administrative officer referred to in this ordinance and shall be responsible for the performance of the duties of that officer enumerated in this ordinance. The manager may appoint a fiscal officer and delegate to that officer any or all of the budgeting duties specified in Sections 5 through 8. The fiscal officer shall be responsible to the chief administrative officer for the performance of budgetary duties.

[If the village does not have a manager, the following language can be used.]

The village president shall be the chief administrative officer referred to in this ordinance and shall be responsible for the performance of the duties of that officer enumerated in this ordinance. The president may appoint a fiscal officer and delegate to that officer any or all of the budgeting duties specified in sections 5 through 8. The fiscal officer shall be responsible to the chief administrative officer for the performance of budgetary duties.

Section 4. Budget policy statement
No later than (date) of each year, the chief administrative officer shall send to each officer, department, commission and board of the village a budget policy statement for the use of those agencies in preparing their estimates of budgetary requirements for the ensuing fiscal year.

Section 5. Budget estimates required
Any officers elected or appointed, departments, commissions, and boards of the village financed in whole or in part by the village shall, on or before (date) of each year, transmit to the chief administrative officer their estimates of the amounts of money required for each activity in their agencies for the ensuring fiscal year. They shall also submit any other information

deemed relevant by the chief administrative officer.

Section 6. Budget forms
The chief administrative officer shall prescribe forms to be used in submitting budget estimates and shall prescribe the procedures deemed necessary for the guidance of officials in preparing such budget estimates. The chief administrative officer may also require a statement of the purposes of any proposed expenditure and a justification of the services financed by any expenditure.

Section 7. Department budget review
The chief administrative officer shall review the department estimates with a representative from each department. The purpose of the review shall be to clarify the estimates, ensure their accuracy, and determine their adherence to the policies enumerated by the chief administrative officer pursuant to Section 4.

Section 8. The budget document
The chief administrative officer shall prepare a budget, which shall present a complete financial plan for the ensuing year, utilizing those estimates received from the various agencies. The budget will be prepared in such a manner that shall assure that the total of estimated expenditures including an accrued deficit in any fund does not exceed the total of expected revenues including an unappropriated surplus.

The budget shall consist of the following parts:

a. Detailed estimates of all proposed expenditures for the ensuing fiscal year for each department and office of the village showing the expenditures for corresponding items for the current and last preceding fiscal year.
b. Statements of the bonded and other indebtedness of the village, showing the debt redemption and interest requirements, the debt authorized and unissued, and the condition of sinking funds, if any.
c. An estimate of the amount of surplus expected in the current fiscal year.
d. An estimate of all anticipated revenues of the village which will be necessary to meet the proposed expenditures and commitments during the ensuing fiscal year. This should include:
    1. sources other than taxes,
    2. income from borrowing,
    3. current and delinquent taxes, and
    4. bond issues.

    Included in this estimate shall be corresponding figures for the current and preceding fiscal year.
e. Such other supporting schedules as the council may deem necessary.
f. An informative summary of projected revenues and expenditures of any special assessment funds, public improvement or building and site funds, intragovernmental service funds or enterprise funds, including the estimated total cost and proposed method of financing each capital construction project, and the projected additional annual operating cost and the method of financing the operating costs of each capital construction project for three years beyond the fiscal year covered by the budget.

Section 9. Transmittal of budget to village council
No later than (date) of each year, the chief administrative officer shall transmit the budget to the council. The budget shall be accompanied by:

a. A draft resolution for adoption by the council, consistent with the budget, which shall set forth the anticipated revenue and requested expenditure authority for the ensuing fiscal year in such form and in such detail deemed appropriate by the chief administrative officer, provided that it is consistent with the uniform chart of accounts prescribed by the State of Michigan. No budget resolution shall be submitted to the

council in which estimated total expenditures, including an accrued deficit, exceed estimated total revenues, including an available surplus.

b. A budget message which shall explain the reason for increases or decreases in budgeted items compared with the current fiscal year, the policy of the chief administrative officer as it relates to important budgetary items, and any other information that the chief administrative officer determines to be useful to the council in its consideration of the proposed budget.

Section 10. Consideration of budget by council

The council shall fix the time and place of a public hearing to be held on the budget and proposed budget resolution. The clerk shall then have published in a newspaper of general circulation with the village, notice of the hearing and an indication of the place at which the budget and proposed budget resolution may be inspected by the public. This notice must be published at least seven days before the date of the hearing.

The council may direct the chief administrative officer to submit any additional information it deems relevant in its consideration of the budget and proposed budget resolution. The council may conduct budgetary reviews with the chief administrative officer for the purpose of clarification or justification of proposed budgetary items.

The council may revise, alter, or substitute for the proposed general budget resolution in any way, except that it may not change it in a way that would cause total appropriations, including an accrued deficit, to exceed total estimated revenues, including an unappropriated surplus. An accrued deficit shall be the first item of expenditure in the general appropriations measure.

Section 11. Passage of the budget resolution

No later than (date) the council shall pass a resolution providing the authority to make expenditures and incur obligations on behalf of the village.

The council may authorize transfers between appropriation items by the chief administrative officer within limits stated in the resolution. In no case, however, may such limits stated in the resolution or motion exceed those provided for in section 16 of this ordinance.

The village budget may include information concerning the amount of tax levy expected to be required to raise those sums of money included in the budget resolution. In conformance with state law, and at such times as the council shall determine to be appropriate, the council shall order to be raised by taxation those sums of money necessary to defray the expenditures and meet the liabilities of the village for the fiscal year. The council may take such action after the value of the property in the village as finally equalized has been determined.

Section 12. Procedure for disbursements

No money shall be drawn from the village treasury unless the council has approved the annual budget.

Each warrant, draft, or contract of the village shall specify the fund and appropriation, designated by number assigned in the accounting system classification established pursuant to law, from which it is payable and shall be paid from no other fund or appropriation.

Expenditures shall not be charged directly to any contingent or general account. Instead, the necessary amount of the appropriation from such account shall be transferred pursuant to the provisions of this ordinance to the appropriate general

appropriation account and the expenditure then charged to the account.

Section 13. Limit on obligations and payments
No obligation shall be incurred against, and no payment shall be made from, any appropriation account adopted by the budget resolution unless there is a sufficient unencumbered balance in the account and sufficient funds are or will be available to meet the obligation.

Section 14. Periodic finance reports
The chief administrative officer may require the appropriate agencies to prepare and transmit to him or her monthly a report of village financial obligations, including, but not limited to:

a. a summary statement of the actual financial condition of the general fund at the end of the previous month.
b. a summary statement showing the receipts and expenditures and encumbrances for the previous month and for the then current fiscal year to the end of the previous month.
c. a detailed listing of the expected revenues by major sources as estimated in the budget, actual receipts to date for the current fiscal year, the balance of estimated revenues to be collected in the current fiscal year and any revisions in revenue estimates occasioned by collection experience to date.
d. a detailed listing for each organizational unit and activity of the amount appropriated, the amount charged to each appropriation in the previous month and for the current fiscal year to date, and the unencumbered balance of appropriations, and any revisions in the estimate of expenditures.

The chief administrative officer shall transmit the above information to the council on a monthly basis.

Section 15. Transfers
Transfers of any unencumbered balance, or any portion, in any appropriation amount to any other appropriation account may not be made without amendment of the budget resolution as provided in this ordinance, except that transfers within a fund and department may be made by the chief administrative officer within limits set by the budget resolution.

Section 16. Supplemental appropriations
The council may make supplemental appropriations by amending the original budget resolution as provided in this ordinance, provided that revenues in excess of those anticipated in the original resolution become available due to:

a. an unobligated surplus from prior years becoming available.
b. current fiscal year revenue exceeding original estimates in amounts great enough to finance the increased appropriations.

The council may make a supplemental appropriation by increasing the dollar amount of an appropriation item in the original budget resolution or by adding additional items. At the same time, the estimated amount from the source of revenue to which the increase in revenue may be attributed shall be increased or a new source and amount added in a sum sufficient to equal the supplemented expenditure amount. In no case may such appropriations cause total estimated expenditures, including an accrued deficit, to exceed total estimated revenues, including an unappropriated surplus.

Section 17. Appropriation adjustment required
Whenever it appears to the chief administrative officer or the council that actual and probable revenues in any fund will be less than the estimated revenues upon which appropriations from such fund were based, the chief administrative officer

shall present to the council recommendations which, if adopted, will prevent expenditures from exceeding available revenues for the current fiscal year. Such recommendations shall include proposals for reducing appropriations, increasing revenues, or both.

Within 15 days of receiving this information the council shall amend the budget resolution by reducing appropriations or approving such measures as are necessary to provide revenues sufficient to equal appropriations or both. The amendment shall recognize the requirements of state law and collective bargaining agreements. If the council does not make effective such measures within this time, the chief administrative officer shall, within the next five days, make adjustments in appropriations in order to equalize appropriations and estimated revenues and report such action to the council.

Yeas:
Nays:

Ordinance Declared Adopted

_____

Village Clerk

Effective Date_____

Appendix 10
Frequently Asked Questions

Boundaries

Q1 How does a general law village annex property from a township?
Section 74.6 of the General Law Village Act outlines the boundary changing procedures. General law village annexations are decided by the county board of commissioners.

Q2 There is a group in our community advocating village disincorporation. What should we do?
A number of Michigan villages have dealt with this issue, including Roscommon and Caledonia. More recently, in 2005, the villages of New Haven and Fruitport had ballot proposals on disincorporation. These attempts at disincorporation were all unsuccessful.
Sections 74.18(a)-74.22 of the General Law Village Act outline the disincorporation process.

Compensation

Q3 Currently the council gets paid per meeting. How do we change to a monthly pay period?
You will need to amend your ordinance to specify a monthly pay period. Section 64.21 of the GLV Act states that the president and each trustee shall receive compensation only as provided for by ordinance. The ordinance shall specify how the compensation is determined and how it is paid.

Q4 The council voted to increase its compensation in April. However, our compensation ordinance states that councilmembers cannot get pay increases during their terms. Can we retroactively pay these councilmembers their raise to coincide with the beginning of their term?
Section 64.21 of the GLV charter states that compensation shall be determined by ordinance.

If your ordinance states that trustees cannot get pay increases during their terms, then the pay increase will have to take effect after the next election.

Consultants

Q5 How do we find a consultant?
The Municipal Yellow Pages, in which consultants can advertise, are currently online at mml.org.
In addition, consultants also advertise in the League's magazine, *The Review*.
Through its Municipal Consulting Services, the league offers a wide range of management consulting projects with a primary focus on human resources. Specifically, we offer classification and compensation systems, benefits analysis, personnel policies review and development, HR systems audits, performance evaluation systems, and executive search services.

You can also ask other municipalities of a similar size in your region if they are using a consultant in the field in which you are looking. Or post a question to the village listserv. Find out what others' experience has been with consultants.

Q6 I've never written a Request for Proposal (RFP). How do I begin?
Check with the League's Inquiry service. The League library has many sample RFPs. And ask your neighboring local governments if they have RFPs they have used or post a question to the village listserv.

Elections—Filling Vacant Seats

Q7 How are vacancies on council filled?

According to section 62.13, the council appoints a person to fill a vacancy occurring in the office of president, trustee, or any other elective office. The appointee serves until the next regularly scheduled election. If the appointee is serving in the first year or two of a four-year term, the next regularly scheduled election should include a council position for two years, to fill the remainder of the four-year term.

All vacancies in any other office shall be filled by the president, with the consent of the council.

Q8 Does council need to declare the office vacant before it appoints a new trustee?
It would be prudent to pass a resolution stating findings of fact such as the reason why a trustee's office was vacated (due to moving out of the village, death, recall, default, etc.). The resolution can end with the statement, "Council declares the office vacant."

Q9 A trustee is moving to another state. When does the trustee have to resign?
Section 62.11 of the GLV Act states that "If any officer shall cease to be a resident of the village during his or her term of office, the office shall be thereby vacated." Consequently, the trustee vacates the office on the day he/she moves out of the village even if the trustee hasn't changed his/her voter registration yet. Consult your attorney if there is a question about whether the trustee has made a permanent change of residence. Of course, if the trustee resigns prior to moving, the resignation date becomes the effective date.

Q10 Are officials appointed to fill a vacancy in an elected office subject to recall?
The state election law applies to both elected officials and those appointed to fill a vacancy in an elected office. MCL 168.951 states that a person cannot be recalled in the first six months of taking office (from the time he/she is sworn in), nor the last six months of office, but can be recalled at any time between.

Elections—Officially Taking Office

Q11 How do village officers take office after being elected?
Village officers elected by the voters must have their election certified by the county clerk and their term begins on November 20 (MCL 62.4). The oath is usually administered by the village clerk, but it may be given by the county or township clerk, a judge, or by a notary public. A copy of their oath should be filed with the village clerk. If they are required to be bonded, they must arrange for that prior to taking office.

Q12 Our clerk resigned. Who can give the oath of office to our newly elected officials?
Any notary public can swear in an official, as can a neighboring clerk. Most banks and legal offices have notary publics. In fact, if an official is out of town and won't be back within 30 days of receiving notice of his election, he can get sworn in by a notary public in his area and deliver the paperwork to the village clerk.

Elections—Recalls

Q13 What is the process for recall?
The GLV Act does not provide for the impeachment of village officials. Recalls are handled by the county clerk, under provisions of the state election law.

Q14 Can our village attorney represent trustees in a recall election? If not, can the village pay for the defense of trustees in a recall election?
No. There is an Attorney General Opinion, #6704, on the use of public funds to pay the expenses of city councilmembers who are the subject of a recall petition. It includes the following language:

> "the expenditure of [city] funds for the purpose of paying [city commissioner] expenses incurred in opposing a recall petition 'might be contrary to the desire

and even subject to the disapproval of a large portion of the…taxpayers….' The municipality clearly lacks authority to expend money for this purpose."

Elections—Initiatives and Referendums

Q15 What's the difference between an initiative and a referendum?

Initiatives are electoral processes to petition or initiate legislation. Referendums are held when petitions are filed requesting a vote by the electorate on legislation passed by the council. The GLV Act does not provide for citizen-initiated legislation. It does provide for referendums on specific ordinances. (see Q16)

Q16 A citizen's group has filed a valid referendum petition on an ordinance council wanted to adopt. Do we have to hold a special election or can we have the referendum on the next regular election ballot?

The GLV Act allows for referendums on these four 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; and assigning duties of other officials to a manager. The language for all such ordinance referendums states "that if a petition signed by not less than 10% of the registered electors of the village is filed with the village clerk within the 45-day period, the ordinance shall not become effective until after the ordinance is approved at an election held on the question." It does not state that a special election must be called. However, if one is held for another purpose, it must be on that ballot.

Elections—Running for Office While in Office or Employed by Village

Q17 Does a trustee have to resign from council in order to run for president?

No. If the trustee wins the president's seat, then the trustee position must be filled by appointment until the next election.

Q18 A village employee wants to run for president. Does he have to resign first?

An employee does not have to resign to run for president. However, if the employee wins the election, consult with your attorney to find out if a conflict of interest exists and how to remedy the situation.

Finance—Budgets

Q19 What budget procedures should we have in place?

The budget process is a complicated and involved procedure. A chapter of this handbook is devoted exclusively to financial management and budgeting details. The Uniform Budgeting and Accounting Act, 1968 PA 2, as amended spells out the procedures and requirements of the budgeting process and the accounting function for municipalities. (MCL 141.421 et seq.)

A public hearing is required prior to adopting the budget. (1963 PA 43, MCL 141.411 et seq.) Remember that someone must be responsible for budget preparation and execution. In a general law village, much of this responsibility falls to the president, or to the manager, if there is one employed by the village.

The legislative body must annually adopt a budget (spending and revenue plan) for the village and must make amendments when necessary. Proper procedures must be followed in setting the millages.

A sample budget ordinance is included Appendix 9 of this handbook.

Q20 Is there a "rule of thumb" for a fund balance amount?

Operating fund balances should be maintained at levels sufficient to absorb unpredictable revenue shortfalls and to insure desired cash flow levels. Local

officials must balance financial stability against an excessive fund balance. You should adopt a policy regardless of the amount that you decide is necessary. A typical policy is one to three months operating expenditures or five to twenty percent of annual budgeted expenditures.

Q21 What is the state law regarding a budget public hearing?
1963 PA 43 (MCL 141.411) requires a local unit of government to hold a public hearing on its proposed budget. 1978 PA 621 (MCL 141.421a) requires a "Truth in Taxation" hearing before the adoption of the millage. These two can be combined with proper notice (see Q26).

Q22 How long before the hearing does the notice need to be published?
At least six days prior to the hearing.

Q23 Is a public hearing necessary to amend the budget?
No. However, the budget should be amended before you overspend, not after.

Q24 Is a quorum required to allocate funds for the village?
Yes, a quorum is required to allocate funds.

Q25 Does the council need to approve the budget of the Downtown Development Authority (DDA)?
Yes, the council must approve the DDA improvement plan and DDA financing plan in addition to the annual budget.

Q26 Do we have to have a truth in taxation hearing?
Truth in taxation requires municipalities to advertise any increase in the dollar amount of taxes from the prior year. 1995 PA 40 (MCL 141.412) amended the Uniform Budgeting and Accounting Act to allow a truth in taxation hearing and a budget hearing to occur at the same time. In order to avoid a separate truth in taxation hearing, a municipality must include the following statement in its budget hearing notice: "The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing." This statement must also be published in the newspaper advertisement for the budget hearing in 11 point bold typeface.

The combined hearing, however, presents some practical problems. In GLVs the fiscal year begins March 1st unless the council changed it by ordinance. At that time, the final SEV figures are not available (not until sometime in May). Consequently, a truth-in-taxation public hearing can't be held until May or June. And, if you haven't held the budget public hearing and adopted your budget by March 1st, you don't have an authorized spending plan.

Q27 We would like to start a capital project in five years and add a little to our reserves every year until we have enough to fund the project. How do we budget for this?
For five years, you should have excess revenues over expenditures. The excess revenue should end up in your fund balance. The year that you incur expenses on the capital project, you will need to use your fund balance to offset your capital project expenditures in order to balance the budget. You may designate these as "reserve" funds to assure they are indeed reserved for this purpose.

Finance—Donations

Q28 Can the village make donations to local service organizations or for local celebrations?
Under Article 7, Section 26 of the Michigan Constitution, municipalities can't use public funds for anything but public purposes, unless specifically provided for in the Constitution. Michigan courts have ruled that gifts or donations of money or property are a violation of the Constitution. Chapter 21 of this book is dedicated to Municipal Expenditures. In addition, the League's Fact Sheet on Municipal Expenditures may be downloaded at mml.org.

Finance—Expenditures

Q29 May municipalities use credit cards?
1995 PA 266 (MCL 129.241) allows municipalities to use credit cards for procurement and 1995 PA 280 (MCL 129.221) authorizes municipalities to accept credit card payments. Both require formal action by the local legislative body. To use credit cards for procurement, both an ordinance and a policy are required. The Act lists what must be included in the policy. An authorizing resolution is required to accept payment by credit cards. Other requirements and restrictions apply as well. The League has sample credit card policies on its website at mml.org.

Finance—Income tax

Q30 Can a village pass an income tax?
No. The City Income Tax Act, 1964 PA 284, MCL 141.502 applies to cities only.

Finance—Property Taxes

Q31 Can unpaid garbage pick-up bills be added to tax bills as a lien against the property?
1978 PA 345 (MCL 123.261) allows the village to collect unpaid garbage taxes by putting a lien on the property. 1992 PA 305 (MCL 141.03) which amended the Revenue Bond Act, states that charges for services for a public improvement may be a lien on the property. The act defines public improvement and includes, but is not limited to, housing, garbage disposal plants, rubbish disposal plants, incinerators, transportation systems, sewage disposal systems, storm water systems, water supply, utility systems, cable television systems, telephone systems, and automobile parking facilities. In addition, the village may discontinue water, stormwater and sewage disposal services for unpaid bills.

Q32 Which Michigan statutes allow for a property tax lien for unpaid water bills?
MCL 123.161 et seq. and MCL 141.121 et seq.

Q33 What penalties can we charge for late payment of personal property taxes?
Chapter 9, section 18 of the GLV Act (MCL 69.18) states that interest shall be assessed according to 1893 PA 206 (MCL 211.59). PA 206 states that interest shall be charged at one percent per month or fraction of a month from March 1st after the taxes were assessed. If those taxes remain unpaid by October 1st of the same year, an additional $10 fee shall be charged for expenses and the taxes and penalty will become a lien on the land.

Q34 Can we collect taxes from someone who has sent us a bankruptcy notice?
Filing bankruptcy does not necessarily prevent the village from collecting back taxes. Your village attorney will need to help you actively pursue your claim.

Q35 Can we collect our property taxes monthly?
A few home rule cities do collect property taxes on a quarterly basis. However, a general law village is not empowered to do so. It is doubtful that a general law village can amend its charter to allow monthly collection.

Q36 Can we have an agreement with the mobile home park developer that requires him to pay for services such as fire, police, and school bonds?
The developer might be willing to voluntarily work with the village to help pay for infrastructure but there is no statutory authority to force mobile home park owners to pay for such services.

Finance—Revenues

Q37 Can a municipality use Act 51 local street dollars for sidewalk construction?
According to the Michigan Department of Transportation (MDOT), municipalities cannot use local street dollars for sidewalk construction but can use them for sidewalk

repair and replacement if necessitated by street work.

Q38 Are we supposed to match Act 51 local street dollars for local street construction?
Yes. Local road construction must have matching dollars from the general fund to use Act 51 dollars but matching funds are not needed for routine maintenance.

Finance—Selling village property

Q39 How do we sell a piece of property that is not a park?
The GLV Act requires a majority vote of council to sell real property. Selling a public park still requires a vote of the electorate. For more information, read the League's One Pager *Plus* Fact Sheet titled "Sale of General Law Village Real Property," available at mml.org or email info@mml.org to request a copy.

Q40 Can we go into a closed meeting in order to discuss selling a piece of property?
No. This is not permitted under the Michigan Open Meetings Act. (See Appendix 2 for closed meetings regulations)

Meetings

Q41 Can a trustee call a meeting? Would it be a closed session?
According to section 65.4 of the GLV Act, the president or three members of council can call a special meeting. A closed session can only be called for specific criteria, which are enumerated in the Open Meetings Act.

Q42 Do we have to post a special meeting of the village council?
Yes. Section 5(3) of the Open Meetings Act states that all special meetings need to be posted at least 18 hours in advance. A court decision also determined that the posting must be in a place accessible to the public during the 18-hour period.

Q43 Tonight is our first regularly scheduled meeting following the election. New trustees have not yet been sworn in. Do "old" members convene the meeting?
Yes.

Q44 Can we tape our meetings?
Yes. The tapes are then public records and subject to the Freedom of Information Act. However, under an approved record retention schedule, the tapes can be disposed of after the minutes are transcribed and approved.

Q45 When a vote requires a majority of council, is that a majority of those present?
According to the GLV Act, "in all votes for which not less than a majority vote of council is required, the calculation of the number of votes required shall be based on the maximum number that constitutes council." (MCL 62.1) Consequently, a majority is four for a seven-member council and three for a five-member council even if a trustee position is vacant or one or more trustees are absent.

Q46 Does the president count in a quorum? What is a two-thirds majority?
The president and trustees together constitute the village council (MCL 62.1). The president is counted as part of the quorum. For a council of seven, four members constitute a quorum. If a village adopts an ordinance reducing the number of trustees to five, then three trustees would constitute a quorum. A two-thirds majority of a council of seven is five. A two-thirds majority of a council of five is four.

Q47 I am the president, and I can't make it to the next council meeting. How do I cancel a meeting?
The role of the president pro tempore is to take over the functions of the presidency when the president is unavailable. The president pro tem can run the meeting. If

there is no quorum, the meeting can be adjourned, then postponed to a later date.

Q48 Do council meeting minutes have to be published?
Yes. The following quote is taken directly from the GLV Act (MCL 65.5). "Within 15 days after a meeting of the council, a synopsis or the entirety of the proceedings, including the vote of the members, prepared by the clerk and approved by the president showing the substance of each separate decision of the council shall be published in a newspaper of general circulation in the village or posted in 3 public places in the village." However, the Open Meetings Act requires a draft of the minutes be available for public inspection within 8 business days of the meeting and that the approved minutes be available within 5 business days after the meeting at which they are approved. (MCL 15.269)

Q49 What can we discuss in a closed meeting?
Every trustee should be familiar with Michigan's Open Meetings Act, 1976 PA 267, as amended. The intent is to conduct the public's business in the open. There are only a few circumstances where a closed meeting is allowed. These include discussing an employee or officer discipline, etc. when the employee or officer requests a closed meeting, to consider purchase of property, to consult with the village attorney on pending litigation and to review employment applications when the applicant requests it. The statute states how to go into closed session and how to record proceedings. You cannot conduct interviews in closed session. You cannot go into closed session because you don't want to discuss an issue in front of village residents. (MCL 15.261 et seq.)

In all instances, the council must vote to go into closed session. See Appendix 2 of this Handbook, "Overview of the Open Meetings Act."

Q50 Our committees usually consist of three trustees. If a fourth trustee attends, are we in violation of the Open Meetings Act?
First, all meetings of a committee created by the council are subject to the Open Meetings Act. MCL 15.262 includes committees and subcommittees in the definition of a public body.

In some communities, the council meets as a committee of the whole on a regular basis to study issues. It is better to be safe than sorry.

Q51 What can be done about a trustee not attending meetings?
Section 65.5 of the Act authorizes the concil to adopt rules of procedure. The same section authorizes adoption of an ordinance compelling attendance at council meetings. The trick is in enforcing such an ordinance. Sometimes an open discussion is all that is needed. The person's resignation can be suggested/requested. Pressure can be exerted through the media. An extreme measure is citizen recall. Sometimes you just have to wait out the term until a more responsible trustee can be elected. For more guidance, please refer to *Appendix 4: Sample Council Rules of Procedure for General Law Villages, section B-6.*

Q52 Our council gets bogged down with minutia and petty bickering. Everyone seems to have his or her own agenda. How can we get out of this rut and be more productive?
Every elected trustee needs to polish his or her skills in team building, decision making, goal setting and dealing with special interest groups. A local government is not a "club;" it is a public body. The council, not the individual members, is the authority. If your council is not working as a team, perhaps you should consider an objective facilitator for a goal setting session. The GLV Act requires the adoption of council rules of procedure. (See Appendix 4 for a sample.)

Be willing to listen. Express yourself clearly. Establish a council code of ethics and conduct. Keep an open mind. Commit to openness and trust as you govern. Keep your sense of humor and enjoy your term of office.

Office

Q53 What are the qualifications for holding office?

Here are the qualifications from the General Law Village Act:

MCL 62.7 Qualifications for office; void votes; "in default" defined; oath.

(1) A person shall not be elected to an office unless he or she is an elector of the village.

(2) A person in default to the village is not eligible for any office in the village. All votes in an election for or any appointment of a person in default to the village are void. As used in this subsection, "in default" means delinquent in payment of property taxes or a debt owed to the village if 1 of the following applies:

(a) The taxes remain unpaid after the last day of February in the year following the year in which they are levied, unless the taxes are the subject of an appeal.

(b) Another debt owed to the village remains unpaid 90 days after the due date, unless the debt is the subject of an administrative appeal or a contested court case.

(3) Not more than 30 days after receiving notice of his or her election or appointment, an officer of the village shall take and subscribe the oath of office prescribed by the constitution of the state and file the oath with the clerk. An officer who fails to comply with the requirements of this subsection shall be considered to have declined the office.

Q54 If a trustee sells his house but has not moved yet, can he still hold office?

Yes. An individual can hold an elected office as long as they continue to live in the village. Being a property owner is not a requirement.

Q55 What does it mean to be "in default"?

The GLV Act states that a person is in default if the person's taxes remain unpaid after the last day of February in the year following the year in which they were levied, unless the taxes are subject to an appeal; or if the person owes another debt to the village which remains unpaid 90 days after the due date unless subject to an administrative appeal or contested court case. (MCL 62.7)

Q56 Can a husband and wife both serve on council?

Yes—there is no prohibition in the general law village act. This is not uncommon, due to the generally smaller populations in villages and number of residents interested in serving on council.

Roles and Responsibilities

Q57 Should the village president vote on issues before the village council?

Yes. The GLV Act, specifically states that "the president is a voting member of the council." Earlier language that specified the president only voted to break a tie has been deleted from the act. Some villages have adopted a policy that, in a roll call vote, the president always votes last. The rationale is that the president, being the presiding officer, should not unduly influence the vote.

Q58 Are the positions of deputy treasurer and deputy clerk required? Who appoints them? Can one person hold both positions?

No, there is no requirement for a general law village to provide for either position. Section 64.5 of the GLV Act allows the council to appoint a temporary clerk when necessary.

If the council chooses to create either position, then the council appoints the deputy. Section 62.2 allows for appointment

of the council by ordinance or resolution of other officers the council considers necessary. This would include deputy clerk and/or deputy treasurer. The ordinance should stipulate the powers and duties of these officers.

The attorney general has ruled that the positions of village clerk and village treasurer are incompatible because their separate duties provide a check and balance system. As a consequence, if the deputy positions mirror the responsibilities of the clerk and treasurer, they could be perceived as incompatible. Some general law villages have combined the clerk and treasurer positions by local charter amendment changing some of the reporting responsibilities.

Q59 Which village positions can be combined? Which positions cannot be combined?
The incompatible offices statute, 1978 PA 566, prohibits a public officer from holding two or more incompatible offices at the same time. This Act was amended to permit the governing body of a municipality with a population less than 40,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government.

Q60 Can village presidents perform marriage ceremonies?
No, only mayors of cities may perform marriage ceremonies.

Q61 The president has taken on too much authority. What can be done about it?
Sections 64.1-64.4 of the GLV Act address the duties and authority of the president. This is an issue that needs to be resolved internally, by the entire council.

Q62 If the president vacates the office, does the president pro tempore automatically become president?
No, the council appoints someone to fill the vacancy until the next general election.

Q63 Can council vote to fill a vacancy in the office of president by secret ballot?
No, it can't—not for president or any other vote. The Open Meetings Act requires **all votes** of a public body to be made in public.

Q64 Can the president enter into contracts without council approval?
This is a legal question that needs to be addressed by your village attorney. The GLV Act, section 65.5, gives the council authority over disbursements.

Q65 I think the council as a body is operating under questionable legal and ethical practices. Is there an organization or agency that has oversight over the council?
No, there is no oversight agency. The village attorney should be alerted to questionable legal or ethical practices. As a trustee, you might suggest the council attend training seminars on the Open Meetings Act, the Freedom of Information Act or other seminars that the League offers. In addition, materials on ethics can be requested from the League's inquiry service or downloaded from our website.

Q66 As a trustee, I fill in for the clerk when the clerk is out of town. The clerk will not be here for tonight's meeting. Can I take minutes and still vote as a trustee?
Yes, you may still vote. Section 64.5 of the GLV Act addresses absences of the clerk. If the clerk is unable to discharge his/her duties, the council may appoint a trustee, or some other person, to perform the duties of the clerk for the time being.

Q67 Does the street administrator have to be a trustee? (or can the street administrator be a trustee?)
Any qualified person can be the street administrator. A trustee can perform this job if council approves, per 1992 PA 10.

Ordinances

Q68 What is the procedure for adopting a village ordinance?

The council determines that an ordinance is needed or desired. It decides what regulations are needed and the benefits of the regulations. A draft is prepared. It is a good idea to present a rough draft to the village attorney for review. The council then reviews the ordinance draft, and either adopts it, rejects it or sends it back to the attorney for changes.

Most ordinances, including those appropriating money, creating an office, vacating public property, purchasing real estate, or ordering a public improvement, can be adopted by a majority of votes of the council present. However, there are exceptions. A two-thirds vote of all the members (five votes on a seven-person council or four votes on a five person council) is required to reduce the number of trustees from 6 to 4 (MCL 62.1(2)), appoint (rather than elect) the clerk and/or treasurer (MCL 62.1(3)), and increase a tax or impose a special assessment (MCL 65.5 (2)).

Within 15 days of adoption, the entire ordinance, or a synopsis of the ordinance, must be published in a newspaper circulated in the village. (MCL 66.4)

Appendix 11:
For More Information

Inquiry Service. As one of the oldest League benefits, the Inquiry Service provides member officials with answers to questions on a vast array of municipal topics. Member officials may request information and/or material on any municipal issue. The League has many sample documents available:

- Ordinances
- Policies
- Programs
- Articles
- Charters
- Feasibility Studies

Send your municipal inquiries to info@mml.org.

Michigan Municipal League publications:

The Review. The official magazine of the Michigan Municipal League. Published six times a year. It serves as a medium of exchange of ideas and information for the official of Michigan cities and villages.

Organization of City and Village Government in Michigan. (Municipal Report). Michigan Municipal League; 1994, 2005, 2011, 2019, 2021.

Fact Sheets. One-page summaries on a variety of municipal topics, many with a "plus" attached—a sample ordinance, resolution, policy, form, etc. These (and many more) are available at www.mml.org)***:***

- *Email and Retention of Records*

- Ethics
  - *Contracts of Public Servants with Public Entities*
  - *Incompatible Public Offices*
  - *Misconduct in Office*
  - *Standards of Conduct for Public Officers/Employees*

- Freedom of Information Act
  - *General Questions*
  - *Policy and Definitions*
  - *Responding to Requests*
  - *Statutory Exemption*

- Open Meetings Act
  - *Calling Closed Meetings*
  - *Closed Meeting Minutes*
  - *Definitions and Requirements*
  - *Posting Requirements*

- *Public Hearings*

- *Work Sessions: Use By Legislative Bodies*

MML Legal Defense Fund. The League's Legal Defense Fund and its resources are available incases which would have a considerable impact on Michigan municipal law or positively affect the organization, operation, powers, duties, or financing of Michigan's cities and villages. Legal Defense Fund resources and services are available to League members which are also members of the Fund.

The typical form of assistance is the filing of an *amicus* brief to support the legal position of the city or village involved in the case. Most often this is in the Michigan Court of Appeals or Michigan Supreme Court. The Legal Defense Fund is financed by voluntary dues of member cities and villages. Forms to make a request for assistance are available at mml.org.

Legislative Issues
The League's advocacy team research legislative issues of importance to municipalities; through their research, they develop issue papers and legislative briefs that provide the framework for the League's efforts to represent municipalities' best interests at the state and federal level.

- Issue Papers
  - *Revenue Sharing Fact Sheet*
  - *Home Rule in Michigan—Then and Now*
- Legislative Briefs
- Prosperity Agenda
- Inside 208 blog
- League position on current legislative bills
  (available at mml.org)

Risk Management
The League's Risk Management Services Division administers two statewide municipal insurance programs: the Michigan Municipal League Workers' Compensation Fund and the Michigan Municipal League Liability & Property Pool.

The mission of Risk Management Services is to provide a long-term, stable, cost-effective insurance alternative for members and associate members of the Michigan Municipal League.

Risk Management Member Services

- Expert governmental claims handling
- Customized loss control services and Resources
- Law enforcement Specialists
- Reduced rates at related League training events, conventions, and conferences

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