HANDBOOK FOR

Municipal Officials

Published by the Michigan Municipal League

Handbook for Municipal Officials

Published by
the Michigan Municipal League

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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

Table of Contents

Section 1: Local Government 1

Chapter 1: Welcome to Public Service 1
Chapter 2: Structure of Local Government 8
Chapter 3: Charter Revision and Amendment 12
Chapter 4: Boundaries and Annexation 19

Section 2: Roles and Responsibilities 24

Chapter 5: Duties of City and Village Officials 24
Chapter 6: Successful Meetings 30
Chapter 7: Local Ordinances 37
Chapter 8: Ethics 42
Chapter 9: Influencing State and Federal Legislation 49
Chapter 10: Training of Municipal Officials 53

Section 3: Operations 55

Chapter 11: Written Policies and Procedures 55
Chapter 12: Municipal Service Options 60
Chapter 13: Employment and Personnel 68
Chapter 14: Labor Relations 76
Chapter 15: Municipal Liability 80
Chapter 16: Planning and Zoning 82
Chapter 17: Selecting and Working with Consultants 94

Section 4: Finance 98

Chapter 18: Authority and Internal Controls 98
Chapter 19: Budgeting 105
Chapter 20: Purchasing 112
Chapter 21: Financing Capital Improvements 115
Chapter 22: Special Assessments and User Charges 122
Chapter 23: Limits of Municipal Expenditures 126

Appendix 1: Glossary 131

Appendix 2: Overview of the Michigan Open Meetings Act 136

Appendix 3: Overview of the Michigan Freedom of Information Act 140

Appendix 4: Sample Council Rules of Procedure 144

Appendix 5: Sample Budget Ordinance 152

Appendix 6: Frequently Asked Questions 158

Appendix 7: For More Information 166

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Section 1: Local Government

Chapter 1: Welcome to Public Service

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

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

Be 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:

- **Become familiar with your city or village charter**. It is the governing document of your municipality. Think of it as the constitution of your city or village.
- **Know the duties and limitations of your office and of the municipality.** This requires familiarity with the state and federal constitutions, local ordinances and the court cases interpreting them—as well as your city or village charter.
- **Know your city or village.** Know its history, its operations, and its finances. Review all reports from the mayor/ president (and/or manager if your municipality has one), department heads, and citizen boards and commissions.
- **Become familiar with your municipality's plans.** Review the master plan, the parks and recreation plan, the infrastructure and economic development plans. There may also be a number of other documents outlining the goals and objectives for your city or village.
- **Be aware of current state and federal legislation, pending court cases and other factors that affect local issues.** The Michigan Municipal League frequently sends material 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 of opinion. Making decisions is not always easy; it takes hard work and practice. However, each councilmember must eventually "stand up and be counted." It is this process by which your constituency judges you and for which it will hold you accountable.

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

First and foremost, councilmembers 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 councilmembers' responsibility to:

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

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

- **Look attentive, sound knowledgeable** and be straightforward and meticulously honest.
- **Be familiar with a systematic and efficient way to handle business brought before the council.** The mayor or president, manager or clerk will have prepared a concise and easily understood agenda outlining for you—and the public—the order in which items will be considered during the meeting. This agenda may allow the public and the members of the council themselves to bring up additional items of business for discussion. Your copy of the agenda may come with a packet of background material. These should be read before the

meeting, to assist you in decision-making.

- **Bring all appropriate documents, notes, and memoranda to the meeting.** Arrange the material in the same order as the agenda so pertinent information can be found easily.
- **Have a reasonable knowledge of parliamentary procedure and the rules of procedure the council has adopted.** This will keep the meeting moving smoothly and efficiently, with a clear indication of each item's disposition.
- **Eliminate personal remarks.** The general atmosphere of any meeting should be relaxed, friendly, efficient, and dignified. Sarcasm, innuendo, and name calling should be avoided in interactions with the other councilmembers, 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—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 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 councilmembers 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. Councilmembers 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.

Select the best possible people to serve on citizen 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.

- Choose people with open minds, 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 city/village manager. If your municipality 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 city/village is to be run. The manager and staff *execute* this policy—they do not determine the policy. Councilmembers, on the other hand, should not wander through city/village hall, making sure that tasks are performed or that directives are carried out.

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

The council is responsible for policy decision making. This is not always easy or pleasant, but it is necessary. As much as possible—except in routine matters—the councilmembers 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 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 councilmembers are well informed.

Establish and maintain relationships 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 city or 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.

Establish formal citizen engagement policies 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, lying, and distorting statements and actions are guaranteed to establish poor relations with the press.

Never say "No comment." It is always better to say that you don't have all the facts yet and are not prepared to publicly discuss the issue at this time.

If you don't know the answer to a question, say so. Offer to refer the reporter to a staff person with more information or offer to call back later with more details. If you are going to call later, be sure to ask when the reporter's deadline is, and call promptly.

Be consistent. Do your best to maintain the same position on public matters from one meeting to the next. If the facts have changed or you have thought through an issue and come to a rational change in opinion, be sure to carefully explain that to the media.

Be cautious. Even though you may trust a reporter, remember that reporters have a story to get and that what you as a public official say or think or do, is news.

Do not make statements "off the record." They may come back to haunt you later.

Be positive in your attitude toward the press. The media can help the president or mayor, manager, and council communicate the work of the municipality to its citizens. A good working relationship can be established if the council is open in its dealings with the press. Under the Open Meetings Act, the press is entitled to attend **all public meetings**. Provide members of the press with copies of reports, recommendations and other documents related to the business of the city or village and initiate contact with reporters rather than waiting for them to come to you.

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

Chapter 2: Structure of Local Government

Villages

The basic difference between a city and a village is that wherever an area is incorporated as a village, it stays within the township. Village residents 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 village 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.

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

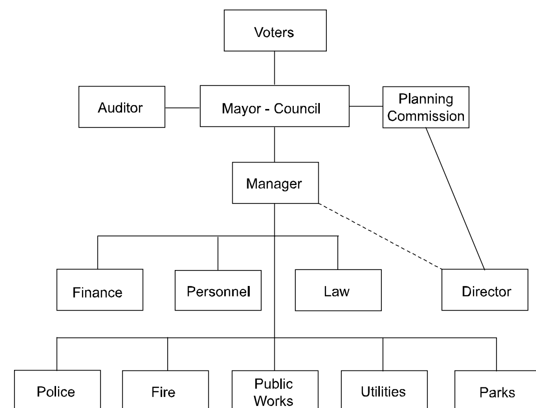
The responsibility for enacting charters lies with locally elected charter commissioners, subject to legal review by the governor under statutory requirements. Since charters must be adopted by local referendum, the voters themselves make the final determination about the design of their government. 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 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

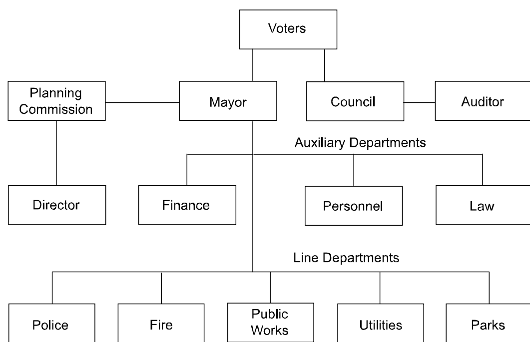


Mayor-Council Plan

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

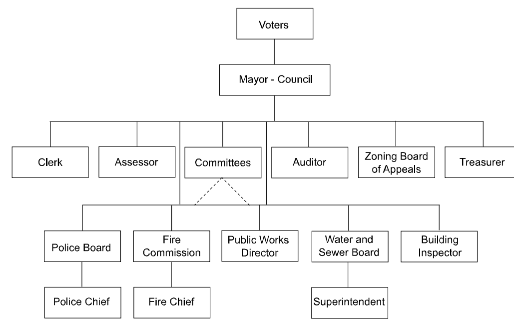
The "strong" mayor form is most often found in larger cities where the directly elected mayor, who is not a member of the governing body, appoints and removes the key administrative officials (those who, by charter, report directly to and assist the mayor); often has variations of veto power over council 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 rather than through any specific authority extending beyond that of the councilmembers. The mayor also serves as chief administrative official, although department heads often operate more or less independently with only general coordination. 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 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 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, all the then existing villages in Michigan were reincorporated and standards were set for future incorporations. The general law village, still the most common by far, has the typical weak mayor-council form of government.

Village presidents are elected at-large, serve two-year terms, and are full voting member of the 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 GLV Act 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.
Of the 46 home rule villages, only 18 have a village manager position.

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

Chapter by League staff.

Chapter 3: Charter Revision and Amendment

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

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

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

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

Changes are needed to correct misleading, unreliable, or unresponsive charters.

Illegal Charter Provisions
Charter provisions may be preempted by other law. No provision of any city or village charter shall conflict with or contravene the provisions of any general law of the state (MCL 117.36; 78.27). Other instances of illegality result when a court declares them so.

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

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

The HRCA and HRVA provide in similar language that each city or village charter may provide “for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal

government, whether such powers are expressly enumerated or not; for any act to advance the interests of the city or village, the good government and prosperity of the municipality and its inhabitants and to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state" (MCL 117.4j(3); 78.24(m)).

The HRVA permits a village to adopt as part of its charter any chapter, act, or section of state statutes not inconsistent with the Act, which relates to the powers or government of villages generally (MCL 78.25).

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

Room for Improvement

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

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

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

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

To Revise or to Amend

The two forms of legally authorized changes are by revision or amendment of the charter. The home rule acts allow communities to make substantial or nominal changes in their charters by different routes. Charter revision implies re-examination of the entire document and that it may be recreated without obligation to maintain the form, scheme, or structure of the former charter. Amendment implies that the general plan and scope of the former will be maintained, with corrections to better accomplish its purpose. Revision suggests fundamental change, while amendment is a correction of detail, according to the Michigan Supreme Court.

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

Charter Revision

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

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

The municipal legislative body determines the place of meeting, the compensation of charter commission members, and provides funds for expenses and ballots.

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

The village charter commission convenes within ten days after its election and frames a charter within 60 days thereafter.

The city and village charter commissions assess the qualifications of their members, choose their officers, determine their rules of proceeding, keep a journal, and fill their vacancies. City charter commission members are compensated for attending a maximum of 90 meetings (one per day). A majority of city charter commission members constitute a quorum. Three or more village charter commission members are a quorum. Commission sessions are public.

It is generally advisable for a city charter commission to engage a legal consultant experienced in these matters, as there are numerous legal issues at stake. The county prosecutor is required by statute to advise village charter commissions.

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

If a proposed revised city charter fails to obtain the governor's approval, it may nevertheless be presented to the electorate for approval. However, if the governor does not approve a proposed revised village charter, it is returned to the charter commission for reconsideration, and the proposed revised charter may only be submitted to the voters if, on reconsideration, 2/3 of the commission's members agree to pass it.

A proposed city or village charter is to be published in full, as prescribed by the charter commission, between two to four weeks prior to the election at which the question of adopting the proposed charter is submitted to the city or village electorate. The attorney general's position is that publication is to be in a newspaper in general circulation within the community, which is the statutorily required method of publication of village charters.

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

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

A proposed revised city charter must be filed with the city clerk at least 60 days prior to the election. A proposed revised village charter must be filed with the village clerk not less than 90 days before the election. A revision may be submitted to the electors only once in two years.

Charter Amendment

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

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

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

An amendment to a village charter is submitted to electors at the next general or special election. An amendment originated by the legislative body is published and remains on the table for 30 days before action on it is taken.

The form of a proposed amendment to appear on the ballot is determined by resolution of the legislative body, unless provided for in the initiatory petition. Publication is made in a newspaper published or circulating in the village at

least once, not less than two weeks, nor more than four weeks before the election.

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

A proposed amendment is confined to one subject. If a subject embraces more than one related proposition, each of them must be separately stated to allow an elector to vote for or against each proposition. A majority vote of electors voting on the question is required to pass an amendment. A failed proposed amendment to a city charter may not be resubmitted for two years.

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

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

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

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

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

Officeholders are to be consulted for views regarding the effect of current

charter provisions upon their duties and performances.

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

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

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

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

Chapter provided by **Alex Henderson**, associate attorney for Mika Meyers PLC.

Mika Meyers PLC

General municipal law, municipal bond counsel, zoning and planning, municipal utilities (construction, financing, operations, and rate issues), downtown development/tax increment financing, regulatory ordinances, labor and employment relations, employee benefits, environmental, condemnation/ eminent domain, real estate, litigation, property taxation, special assessment proceedings, drain proceedings and financing, libraries, colleges, universities, charter schools and school law.

Section 1: Local Government

Chapter 4: Boundaries and Annexation

Introduction

The boundaries of a municipality affect its tax base, the tax rate of its residents, the level of services provided to residents, and the potential for further development. The guiding principle of law governing boundaries of municipalities is that no municipality or person has any legal right in the boundaries of the municipality.

The changing of municipal boundaries is a legislative function and municipal boundaries can be changed when needed. To that end, the Michigan Legislature has enacted several statutes bearing on the altering of municipal boundaries. Political boundaries are created by incorporation. They are changed by disincorporation, consolidation, annexation, or detachment.

Incorporation

Villages and cities have separate statutes addressing incorporation. Both statutes have one thing in common. The process for incorporation begins by petitioning the State Boundary Commission (SBC), which is a quasi-judicial body tasked with adjudicating and making recommendations for municipal boundary adjustments. Additional information on the SBC, including detailed incorporation procedure and criteria, can be found on the SBC's website.

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

The SBC will determine the legal sufficiency of the petition. If it is legally sufficient, the SBC will hold a public hearing to determine the reasonableness of the incorporation and, if so found, will approve the petition. Its reasonableness determination is guided by certain criteria set forth by statute. A period of 45 days is then triggered allowing five percent of the population in the area to be incorporated to petition for a referendum. If no petition is filed, or if a referendum is held and the incorporation passes, the SBC then orders an election to be held to elect a charter commission. Upon election, the charter commission drafts a charter and sends it to the governor's office for approval.

If approved, an election is then held (1) to approve the charter, and (2) to elect the first slate of municipal officials. If the charter does not secure approval of the electorate, the charter commission has three years within which to submit a new proposed charter to the governor's office.

Disincorporation

Disincorporation in a home rule city begins with the filing of a petition to vacate incorporation signed by at least 25 percent of the city's registered electors as shown on registration lists as of the day of filing. After reviewing the petition signatures, the city clerk sends the petition to the county clerk.

An election upon the question petitioned for is held in the city and any townships affected. Approval requires a 2/3 vote of the city electorate and a majority vote of any townships affected. A home rule village has no statutory mechanism for disincorporation unless its charter permits disincorporation.

Consolidation

The SBC has authority over the consolidation of municipalities. When existing municipalities are consolidated, usually a new municipality is created and takes the place of the old, and the latter ceases to exist. A new city may not be created by the consolidation process unless at least one of the municipalities to be consolidated is an incorporated city. Consolidation begins with the filing of a petition with the SBC signed by five percent of the total population of the two or more consolidating municipalities. The petition is reviewed in the same manner as the processing of petitions for incorporation. If the petition is approved, there is a 45-day period for the filing of a petition for a referendum containing the signatures of at least five percent of the registered electors residing in the area to be consolidated. If a petition for referendum is filed, the proposition is submitted to a vote of the electors of the affected municipalities. In order to be adopted, the proposition to consolidate must receive an affirmative majority vote in each affected municipality voting separately. When the SBC order approving a proposed consolidation becomes final, the SBC calls for an election of nine charter commissioners. Alternatively, the consolidating municipalities may, by resolution of their respective governing bodies, choose to appoint their charter commissioners. The charter commission drafts the proposed charter. If the governor's office approves the charter, the election is held on the charter and candidates for office to the newly consolidated entity.

Annexation

Annexation is the process of bringing land from one municipality into another municipality and can be accomplished several different ways. There are three rules to consider. First, in order to be annexed, the territory has to be contiguous to the municipal border. Second, the amount of land touching along the boundary line must be somewhat proportional to the size of the territory to be annexed. And third, no islands of township property can be created between the municipality's old boundary and the newly drawn boundary line.

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

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

city and the township. If the property is in a charter township, the county is petitioned to hold an election in the city and in the area to be annexed.

Most other annexations are through petition to the SBC. Petitions can be filed by the city, by 75 percent or more of the landowners, by 20 percent of the registered voters in the area to be annexed or by one percent of the entire population of the territory affected.

The petition process consists of:

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

If the SBC approves the petition, a 30-day referendum period is required before the annexation becomes final. If 25 percent of the registered voters in the area to be affected file a petition to hold an election on the question of annexation, the election is held. If both the majority of the electors in the annexed area and the majority of the city or township electors voting separately approve the annexation, the decision of the SBC stands. If either group fails to register a majority vote, the SBC decision is overturned.

Exemption and Exclusions from Annexation Two Year Rule

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

Charter Townships

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

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

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

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

- election called for by petition of registered voters within the territory to be annexed and the city;
- joint resolution of the city and the township, and
- petition to the SBC to straighten the boundary between the two municipalities or to remove free standing islands of the charter

township completely surrounded by an annexing city.

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

Boundary Changes by Agreement
Two statutes, the "Urban Cooperation Act" and "Act 425," are often used to approve a boundary change between a city and township.

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

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

PA 425 Agreements—Conditional Transfer of Property for Economic Development
1984 PA 425, as amended (Act 425), permits units of government to conditionally transfer municipal jurisdiction over property from one municipality to another for the purposes of economic development. An agreement under Act 425 (425 Agreement) must have been entered into for an actual economic development project, and there has to be an actual conditional transfer of property. A 425 Agreement cannot be entered into merely to exchange utility services between the municipalities.

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

Property within the jurisdiction of an agreement entered into pursuant to Act 425 cannot be annexed during the term of the agreement, so long as the 425 Agreement was not entered into as a sham or "shark-repellant" to block annexation.

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

Detachment—Home Rule Cities
The detachment process is started by the circulation and filing of a petition signed by one percent of the registered electors of the city or township with the county clerk. If legally sufficient, the county board approves and orders an election to be held on the question of detachment, with the combined total of all the votes cast in both the city and township being counted together.
A simple majority determines the outcome. Any assets that the city may own in the detached territory are then sold under special formula in the home rule city act and divided proportionately between the city and the township. Debts and obligations are also divided proportionately with the township.

Original chapter provided by William B. Beach, retired senior attorney with Miller, Canfield; revised by **Eric McGlothlin** and **John Weiss**, attorneys with Dickinson Wright PLLC.

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Our attorneys practice in a range of legal areas including banking & financial services, corporate, municipal law & finance, real estate, and more.

Section 2: Roles and Responsibilities

Chapter 5: Duties of City and Village Officials

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

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

Mandatory Charter Provisions
(HRCA, MCL 117.3; HRVA, MCL 78.23)

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

Permissive Charter Provisions
(HRCA, MCL 117.4; HRVA, MCL 78.24)
Both Acts list many provisions which *may* be included in the charter.
Some of these include:

- provisions for streets;
- utilities;
- establishment of special assessment districts; and
- penalties for ordinance violations.

Prohibited Powers
(HRCA, MCL 117.5; HRVA, MCL 74.25)
In addition, both Acts prohibit cities and villages from taking certain actions in their charter. For example, no city may exceed the tax limits established by law or the charter; call more than two special elections a year; or sell certain land or issue certain bonds except by the vote of the people.

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

Cities and villages operate as governments of law within a system of constitutional federalism and a complex network of federal and state laws and regulations. Foremost are the guarantees and restraints found in the U.S. Constitution, and federal legislation and regulations. Next are Michigan's constitution, statutes, and regulations. The next level of regulation is local, and includes your charter, municipal ordinances, and policies.

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

Ordinances are formal actions by the council and constitute local legislation. If the council wants to change a duly adopted ordinance, it must amend, repeal, or rescind the ordinance. Ordinances carry the force of law and may impose penalties on violators. The clerk is required by state law to maintain an ordinance book, and from time to time a municipality may compile or codify all its current ordinances and publish that compilation or code. (See Chapter 7: Local Ordinances).

Resolutions are less formal than an ordinance, and are often used for short-term matters, such as adopting the annual budget. A resolution may be used to state the council's position, such as to support or oppose a piece of state or federal legislation. When the council wishes to commend a citizen or commemorate an occasion, it acts by resolution. Resolutions are a part of the permanent record of the municipality.

Motions are used to introduce a subject or propose an action to the council. For example, a trustee might say, "I move the ordinance (or resolution) be adopted." Once a motion is made and seconded, the matter can be discussed and acted upon. (See Chapter 6: Successful Meetings).

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

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

Some villages and cities require an ordinance to be "read" several times before it is adopted. This may be a full reading of the entire ordinance—which can be quite lengthy—or only a

synopsis. The introduction of the ordinance is usually considered the first reading, and a second reading occurs at a subsequent meeting when the ordinance is actively considered. These readings are not required by state statute, but they do provide an opportunity for public awareness and input. Your charter or council rules of procedure may provide for such readings and may authorize the suspension of one or more readings to avoid verbatim readings of lengthy measures or emergency actions.

Operating in the Sunshine

A basic premise of democracy is that the public's business is conducted in public. This requirement is particularly necessary in a representative democracy. The State of Michigan has established that the public is entitled to full and complete information regarding the affairs of government and the actions of those who represent them. In 1976, the Legislature enacted the "Sunshine Laws." The Open Meetings Act (OMA), and the Freedom of Information Act (FOIA) provided for the people's right to know and set limits and parameters on a council's actions. (See Appendix 2: Overview of the Open Meetings Act and Appendix 3: Overview of the Freedom of Information Act).

The OMA requires that all deliberations and decisions of a public body shall be made in public—with only a few, very specific exceptions. The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all public bodies in the state. FOIA states that all persons, except those in prison, upon written request have a reasonable opportunity to inspect, copy, or receive copies of the requested public record of the public body. This sounds easy—however, the problem arises in the definition of terms.

For example:

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

The answer to these questions is: "It depends." Documents may be kept confidential only when there is an actual detriment to the municipality. General guidelines and reference materials are available from many sources, including the League's Resource Center. However, when specific circumstances arise that make you question the appropriateness of a closed session or the necessity to post a meeting or whether or not to release a document, the safest course of action is to follow the guidance of your municipal attorney. Based on a professional understanding of the law, and the interrelationships of various levels of the law, your municipal attorney will be able to assist you in determining which laws are applicable and how they apply to your village or city.

Powers and Duties of Elected and Appointed Officials

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

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

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

Municipal Attorney An important, though not always visible, member of the team is the attorney. Although the duties of the attorney are not always spelled out in the charter, at the request of council they might include:

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

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

The League's Resource Center and Legal Affairs Division do not give legal advice or render legal opinions (and in fact, are not allowed to by law). However, the legal staff will confer with your attorney on legal issues in your community. The Resource Center can assist by providing sample ordinances and policies as a starting point for drafting ordinances or policies for your city or village. Many are available on the League's website at mml.org.

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

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

assigned by the council and/or the manager.

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

City/Village Treasurer Appointment of the treasurer by the council allows for the requirement of specific job skills and experience for the position, makes the treasurer accountable to the council, and provides greater job security and continuity. Generally, the treasurer:

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

Changing your Charter
The charter for your city or village can be changed following the procedures outlined in the Home Rule Village Act, 1909 PA 278 as amended (MCL 78.1-78.28) or the Home Rule City Act, 1909 PA 279 (MCL 117.21-117.26).
An amendment must be approved by the council, submitted to the governor's office for review, and approved by the electors. Both the Acts provide for amendment to the charter to be instituted by petition. Municipalities interested in amending their charters should work with their municipal attorney to assure that the procedure required in the relevant state statute is followed. A detailed account of charter amendment and revision can be found in Chapter 3: Charter Revision and Amendment.

Words of Wisdom
The following suggestions have been provided by experienced municipal officials:

- Realize you cannot solve every problem quickly. Looking at problems from the inside lends a different perspective when you are forced to look at all aspects. *Manager*

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

- Get involved. Know what is going on. Communicate with other council members. Review your meeting material prior to the night of the meeting. *Councilmember*

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

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

- Be professional. Don't turn municipal issues into personal issues. Communication and cooperation are the key. *Councilmember*

Chapter by League staff.

Chapter 6: Successful Meetings

Rules of Procedure
One of the most important actions a council takes is to adopt rules of procedure to govern its meetings. 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

- Notification of meetings
- Regular and special meetings
- Attendance at meetings
- Agenda preparation and distribution (including the use of a consent agenda)
- Discussion and voting
- Public hearings
- Parliamentary procedure
- Conduct of meetings (decorum of councilmembers; disorderly conduct)
- Citizen participation
- Minute preparation
- 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., city manager, city 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 Deford; revised by **Henry Ballout** and **John Gillooly** of the law firm Garan Lucow.

Garan Lucow

The Municipal Practice Group represents hundreds of public entity clients in a wide variety of civil litigation needs. Our preeminent attorneys, with nationally recognized expertise, are uniquely suited to address complex legal issues.

Section 2: Roles and Responsibilities

Chapter 7: Local Ordinances

Prerequisites to Valid Ordinance Enactment

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

Local Government Authority

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

1. **The Michigan Constitution** provides local governments with the legislative power and authority to adopt ordinances. Further, the constitution requires that constitutional provisions and state laws concerning local government powers must be liberally construed.
2. **State statutes** also provide local governments with authority to adopt ordinances. These statutes (the Home Rule Cities Act and the Home Rule Village Act) are specific to the type of local government involved and set forth procedures for adoption and other matters such as permissible penalties for ordinance violations.

Must Serve a Public Purpose

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

Consistency with State and Federal Laws and Local Charters

The provisions of an ordinance must be consistent with state law; the ordinance may not conflict with or be preempted by a state law. The same holds true for federal law. A direct conflict exists if an ordinance permits what a state statute prohibits or prohibits what a state statute permits. Some areas of potential local regulation may be preempted by a state (or federal) statute, either expressly or because the statutory scheme occupies the field of regulation. In that case, the local regulation cannot be upheld, even though there is no direct conflict.
An ordinance may not conflict with the provisions of a local charter.

Clear and Precise Language

If an ordinance is vague, ambiguous, or indefinite so that it is impossible to determine what the ordinance requires or to determine the legislative intent, the courts will hold the ordinance void.

The meaning of an ordinance must be clear enough so that persons who are subject to its provisions can determine what acts will violate it. A penal ordinance (one that imposes a penalty for violation) will be strictly construed by a court in favor of the defendant.

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

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

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

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

Notice
Generally, to be bound by an ordinance, a person must have notice of an ordinance, or the reasonable opportunity to have had notice of it. This requirement does not typically pose any problems. State statutes may require that specific notice requirements be met

in adopting or amending an ordinance. For example, MCL 125.3103 of the Michigan Zoning Enabling Act provides that prior to the adoption of a zoning ordinance, not less than 15 days' notice of the time and the place of the public hearing must be published in a newspaper of general circulation. Local charters may also contain notice requirements which must be observed.

Voting Requirements

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

Publication

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

Printing and Adopting

Local charters will set forth ordinance requirements. These are to include the method for adopting, continuing, amending, and repealing city ordinances under the Home Rule City Act, and for the publication of an ordinance or a synopsis of an ordinance according to the Home Rule Village Act.

Effective Date

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

Reading Requirements

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

Adoption of Technical Codes by Reference

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

The statutes authorizing adoption of technical codes by reference may also provide specific means of publishing the codes. Further, all requirements for publication contained in a local charter must be met. Failure to meet the publication requirements as provided by statute and charter will make the code unenforceable. Efforts should be made to stay current. State codes adopted by reference should be readopted to reflect changes made in the codes as they occur.

Drafting

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

Ordinance Amendments

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

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

The first, and perhaps one of the most important steps in the preparation of an ordinance, is to determine exactly what it is the local governing body wants the ordinance to accomplish. After gaining a clear understanding of the local governing body's purpose and intent, the drafter must express that purpose in appropriate language arranged in a readable and useable manner.

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

Section 2: Roles and Responsibilities

Chapter 8: Ethics

So, there you were, as a councilmember, trying to do the best job you could juggling competing demands—answering calls from residents; asking questions of your city manager, finance director, and DPW director—trying to keep up with what's going on. And 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 city or village council would be easy?

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

This chapter summarizes the two statutes comprising the principal ethics regulation of Michigan local government officials: The State Ethics Act, 1973 PA 196 (Act 196); and 1968 PA 317 (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 of the following occur:

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

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

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

Prohibitions on Public Contracts (Act 317)

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

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

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

Miller Canfield

Specializing in municipal representation in municipal bonds and finance, communications, cable television regulation, franchises, construction contracts and disputes, employee benefits and pensions, environmental law and regulation, labor relations and discrimination, litigation, taxation and assessment appeals.

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 9: Influencing State and Federal Legislation

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

Since the late 1960s, the League has maintained a full-time advocacy and lobbying presence at the State Capitol in Lansing through the League's State and Federal Affairs 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.

Chapter 10: Training of Municipal Officials

Elected officials
In this era of unprecedented change, citizens expect more of their elected officials. The public expects responsiveness and accountability at all levels of government. What better place to start than at the local level, where citizens can 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 11: Written Policies and Procedures

Why You Should Put Policies and Procedures in Writing

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

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

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

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

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

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

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

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

There should be a single, current, authoritative source of guidance and information that 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 12: Municipal 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 & 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.

Rosati Schultz Joppich & Amtsbuechler, P.C.

All 26 of our attorneys have dedicated their entire practice to serving cities, villages, and townships throughout the State of Michigan. We serve both as municipal attorneys (general counsel) on a day-to-day basis, and as litigation counsel defending or prosecuting cases for local governments in court. Many communities also call us in to help with special or complex matters that require the assistance of outside special legal counsel. Municipal law is what we do.

Section 3: Operations

Chapter 13: Employment and Personnel

A proactive approach to employment related issues can pay substantial dividends in reduced legal challenges and associated costs. Municipalities should review the following 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 do not include:

- Employee references supplied to an employer if the identity of the person making the reference would be disclosed;
- Materials related to the employer's staff planning with respect to more than one employee, including salary increases, management bonus plan, promotions, and job assignments;
- Medical 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.

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Plunkett Cooney, P.C. is a full-service law firm with more than 110 years of experience providing municipalities with successful legal representation and quality client service.

Section 3: Operations

Chapter 14: Labor Relations

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

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

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

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

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

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

Stay Off the Negotiating Team
First, elected officials should not be on the management negotiating team.
In most municipalities, elected officials rarely consider this role. However, in smaller communities, there are not always enough executives who can handle negotiations. Councilmembers are sometimes tempted to get directly involved. This is almost always a mistake.

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

Another reason to exclude elected officials from the bargaining team is that they may not be skilled negotiators.

Most people negotiate many aspects of their daily lives, but labor negotiations require specific technical knowledge. Experience in negotiating the price of a house or used car or the settlement of a lawsuit is, unfortunately, of very little practical use in labor negotiations.

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

The last reason for an elected official not to be on the bargaining team is political. Issues in labor negotiations stir the emotions. Members of management negotiating teams routinely must say “no” to union representatives who passionately believe in the justice of their proposals. Management negotiators are often perceived as stingy and mean. Frequently union negotiators do not realize that they are told “no” simply because management cannot say “yes.” The elected official who is one of the people at the table saying “no” is alienating constituents.

Avoid Discussing Negotiations

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

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

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

Stay Uninvolved, but Informed

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

If the city or village has an experienced management negotiator with whom the council is comfortable, the need for such involvement is minimal. In a municipality with an elected chief executive, the council can quite properly exercise no involvement until it is called upon to approve the negotiated labor agreement. If the council feels it needs

to discuss the negotiations prior to their completion, it should do so only under carefully controlled circumstances. Whatever the degree, the method of such involvement is important.

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

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

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

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

Never Disapprove the Labor Agreement
Even though the option is always available, a city or village council should never veto a labor agreement. Disapproval by a council of a labor relations agreement is roughly equivalent to using atomic weapons in international relations. Disapproval is a power whose very existence keeps both management and union negotiators in line, but which should not be exercised unless all else fails. It is much better to fire the negotiator than to disapprove the agreement.

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

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

Another Pitfall
Another labor relations pitfall that councils should avoid is employee discipline cases. An employee who has been disciplined might turn to a friendly councilmember for help. If the councilmember takes any action, he or she is in a no-win situation. If the

employee is represented by a union, the councilmember cannot possibly be of any real assistance, and could add to the problem. The employee's union is always in the best position to see to it that each employee is treated fairly and justly. The union has the know-how, the means, the legal duty, and the exclusive right to stand up for its members.

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

In most communities, elected officials have a serious responsibility regarding the operation of the municipal government. No elected official, particularly a member of a city or village council, should be advised to abdicate or ignore such responsibility. Ironically, the collective bargaining process works best when there is no direct involvement by elected officials. The issues at the bargaining table are complex enough without adding a political dimension. Involvement by elected officials, by definition, adds a political dimension.

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

Chapter by League staff.

Section 3: Operations

Chapter 15: 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 16: 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 <u>any</u> 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.

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All 26 of our attorneys have dedicated their entire practice to serving cities, villages, and townships throughout the State of Michigan. We serve both as municipal attorneys (general counsel) on a day-to-day basis, and as litigation counsel defending or prosecuting cases for local governments in court. Many communities also call us in to help with special or complex matters that require the assistance of outside special legal counsel. Municipal law is what we do.

Section 3: Operations

Chapter 17: 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
Lou LaPonsie, retired city manager, former League trustee, and charter member of the village management committee of the Michigan Local Government Management Association (now the Michigan Municipal Executives).

-and-

Reid S. Charles, retired from management and planning positions; formerly lectured and taught courses on planning and municipal finance.

Section 4: Finance

Chapter 18: Authority and Internal Controls

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

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

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

Limitations on Local Authority
Authority and responsibility for municipal financial policies are established by the Michigan Constitution, state statutes, federal statutes, state and federal administrative codes, and city and village charters. These instruments, along with case law, grant certain authority on one hand and limit it on the other.

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

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

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

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

Again in 1994 the Michigan electorate amended the Constitution with Proposal A. This amendment defined a special class of property, *Homestead*, which is treated differently than the other classes of property (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 annual audit to creating 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.

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 benefits (i.e., the street upon which their homes fronted) and such may not be levied for indirect benefits (for the major thoroughfare to which their frontage street connected). See *Jonson v Inkster,* 401-MICH-263, Michigan Supreme Court, 1977.

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.

The ruling in *Bolt v City of Lansing* has significant implications for municipalities statewide. (See CH 22 Special Assessments and User Fees for more information on *Bolt.*)

Case law in municipal liability has been a source of concern for the financial stability of municipal units of government. Indeed, 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
City and village charters, ordinances, and resolutions of policy are instructive to uninitiated elected officials. These local instruments often reflect provisions of the State Constitution, state statutes, and other regulatory requirements of the higher levels of government. Indeed, they must be in compliance with them. Careful review and drafting by legal counsel and financial administrators should ensure compliance.

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

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

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

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

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

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

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

Financial Controls—Internal Management

After the city or village council has approved the annual budget and allocated funds for specific purposes, financial controls should be in place to assure compliance with the council's wishes, as well as compliance with laws, charters, and ordinances. These controls include an accounting system from which regular financial reports are extracted and transmitted to managers, administrative officers, department heads, and the governing body for review and examination. Charters and ordinances of some units require monthly financial reports, others quarterly.

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

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

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

Purchasing

State Statute

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

Charter Provisions

Local government officials must look to their charter for purchasing guidelines and restrictions. A charter may establish who is responsible for purchasing (such as the manager or administrator) and include the maximum dollar amount that can be appropriated before advertising for competitive bids. Other local control mechanisms for the allocation of municipal funds are through ordinances and policies. In recent years, in order to set more realistic spending limits, some municipalities have amended their charters (which requires review by the governor and a vote of the electors) to allow the purchasing function to be legislated by local ordinance.

Local Ordinances

Legislation has a major impact on the services that can be provided to residents. The activities conducted in public procurement are restricted to those authorized by law. Therefore, many public entities have an ordinance that defines important parameters of the purchasing process. Well-written legislation will allow the purchasing department flexibility in using criteria in addition to price as evaluation tools.

This ordinance may discuss how responsibility for the purchasing function flows. For example, the ordinance may state that the organization's executive branch (manager, mayor, administrator, etc.) may enter into contracts based on the recommendation of the purchasing director with approval of the legislative body for certain dollar limits.

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

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

The Independent Audit

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

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

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

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

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

problems are apparent, continued improvements in these systems can be expected.

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

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

Chapter by League staff.

Section 4: Finance

Chapter 19: 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).

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

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

A city income tax is currently imposed in 25 Michigan cities, ranging in population from less than 2,000 (Grayling) to more than 650,000 (Detroit). Again, as is the case with property tax, state statutes closely control the creation of revenues from this source through the Uniform City Income Tax Act (1964 PA 284). As amended, the Act now provides:

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

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

Expenditures

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, etc.);
- public works (streets, drains, sidewalks, engineering, water and sewer, etc.); and
- culture and recreation (parks and recreation, library, museum, etc.).

The Capital Budget—A Longer View

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

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

Revenue Sources for the Capital 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,
- concrete sidewalks—leveling and flag replacement—five-year cycle,

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

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

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

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)

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

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

Rehmann

At Rehmann, our professionals leverage years of experience to help you provide the best value to your communities with the resources you have. We are the trusted advisor team for government entities, K-12 education, higher education, and not-for-profit entities. We provide audit and financial reporting, federal and state compliance, organizational development and operations consulting, pension and retirement plan services, technology and cybersecurity solutions, CFO and accounting solutions, human resource solutions, investment advisory services, internal audit, and internal controls.

A *suggested* schedule for the budgeting process **(for fiscal years beginning July 1. If yours is different, adjust the schedule accordingly)**	
On or about	Step in the budget process
March 1	Chief administrative officer or fiscal officer asks department heads to compile budget requests for the coming fiscal year
April 1	Department heads submit budget requests for the coming fiscal year
May 1	Chief administrative officer presents the proposed budget to the legislative body
June 1	Council review completed; revisions made; union negotiations completed, etc.
June 7	If necessary, council adopts a resolution on the proposed additional millage rate for the coming fiscal year
June 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).)
May	Millage set after final SEV figures are received. Cannot be more than proposed in public hearing.
June 28	Public hearing on budget (at least 6 days' notice), which may also include the millage rate information. Budget adopted

Section 4: Finance

Chapter 20: Purchasing

Introduction
Elected officials have an important responsibility to monitor the finances of their organizations, part of which includes approving purchase transactions. There are several ways that the legislative body can support purchasing activity. First, the council establishes the vision for the organization, setting the tone for the day-to-day activities, as well as the ethical standards for the organization. Elected officials can set meaningful rules regarding fairness and open competition and work to keep these rules current.

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

Charter Provisions
Local government officials must look to their charter for purchasing guidelines and restrictions. A charter may establish who is responsible for purchasing (such as the manager or administrator) and include the maximum dollar amount that can be appropriated before advertising for competitive bids. Other local control mechanisms for the allocation of municipal funds are through ordinances and policies. In recent years, in order to set more realistic spending limits, some municipalities have amended their charters (which requires review by the governor and a vote of the electors) to allow the purchasing function to be legislated by local ordinance.

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

Ordinances will vary in the level of detail included. Some will establish a dollar amount for obtaining both written bids and legislative approval for purchase transactions; advertising requirements; and outlining the circumstances in which competitive bidding is not required. Ordinances may further detail specific responsibilities of the purchasing function such as encouraging

competition; promoting standardization in the use of like products throughout the organization; barring vendors from bidding opportunities; and disposal of obsolete property. Some organizations have socially motivated buying policies, such as local preferences or disadvantaged business programs.

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

Purchasing Process

The purchasing process begins with the adoption of the budget, which is the organization's fiscal plan for the year. The budget document provides purchasing with information about upcoming capital projects, equipment, and service needs, as well as daily operating supply item needs.
The budget document can be used to prepare a procurement calendar for bidding all capital and recurring operating supply needs. The calendar helps purchasing meet the entity's needs using an organized approach. The purchasing calendar, in conjunction with the budget, permits the organization to spread its expenditures throughout the fiscal year.

The next step involves developing specifications of the product or service needed. The specifications are combined with the appropriate terms and conditions into a bid document and are advertised in the local press and distributed to service providers/vendors.

Bidders are informed of the date, the location, and the time-of-day responses must be submitted (often referred to as the bid due date or bid opening date). In general, bids are submitted to the clerk's office or some other area independent of the requesting department. They are time-stamped and held in a secure location until the time of the scheduled bid opening. Such precautions help protect the integrity of the bid process by reducing the possibility of bid tampering. Bid openings are conducted in public and vendors are encouraged to attend and take advantage of the opportunity to review the responses submitted by their competitors.

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

After the evaluation process, the purchasing transaction will be submitted to the legislative body for approval in accordance with the dollar limits set within the charter, ordinance, or policy. Transactions below the specified limit will be approved administratively.

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

Conclusion

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

A well-run, professional purchasing process reflects positively on the municipality. As an elected official, you can encourage suppliers to contact the purchasing department knowing they will be treated fairly. Taxpayers can be informed that their money is being handled responsibly.

Original chapter provided by **Rae Townsel**, purchasing agent for the City of Southfield.

Updated by League staff.

Section 4: Finance

Chapter 21: Financing Capital Improvements

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

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

Bond Issuance and Notes—Incurring Debt

Notes

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

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

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

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

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

Bond Issuance
Long term municipal debt is most often incurred in the form of bond issues. Most are issued as tax exempt bonds but municipalities may be, under certain circumstances, required to issue taxable bonds. Interest income received by the buyer or holder of the tax-exempt bond is not subject to federal, state, or local income taxes. This creates a higher demand for tax-exempt bonds and issuing municipalities realize great savings in interest costs. This also reduces income tax revenues returned to the various units of government.

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

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

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

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

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

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

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

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

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

The county drain commission may issue **county drain bonds—**bonds for drain and sanitary sewer system improvements and apportion the cost for debt service among the cities, villages, and townships which benefit.

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

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

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

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

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

- **Building authorities** may, among other things, acquire, own, construct, operate, and maintain buildings, recreational facilities, parking garages, and so on for any legitimate public purpose of the

municipality. They can incur debt through bond issues and lease the resultant facility back to the municipality with rental income to pay the principal and interest on the bonds. Upon final retirement of the bonds, the authority would convey the property to the municipality. Michigan cities and villages have made widespread use of this financing technique. However, it should be noted that the capital improvement bonds discussed above could eliminate the issuance of building authority bonds.

Special Financing for Economic Development

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

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

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

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

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

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

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

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

- **An economic development corporation (EDC)** may be created to alleviate and prevent conditions of unemployment and to assist industrial and commercial enterprises. In 2011, transit-oriented development and transit-oriented facilities are now part of the list of enterprises for which a project may be undertaken in the Act.
- **A principal shopping district (PSD)** may be created to develop or redevelop a principal shopping area and to collect revenues, levy special assessments, and issue bonds to pay for its activities.
- **A business improvement district (BID)** may be created to develop a more successful and profitable business climate in a defined area, and to collect revenues, levy special assessments and issue bonds to pay for its activities.

Tax Abatement Programs

In 1974, the Legislature decided to encourage economic development by providing for reduced property tax assessments for specifically selected business projects which were yet to be developed. The Legislature adopted 1974 PA 198 (Plant Rehabilitation and Industrial Development Districts Act), which 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	CIA	PSDs	BIDs
Authorized municipalities	Cities, villages and townships	Cities	Cities, villages and urban townships	Cities, villages and townships	Cities, villages and townships	One or more cities, villages, and townships	Cities with designated principal shopping district(s)	One or more cities with an urban design plan
Limitations	One per municipality	No new areas established after 1989	One per municipality	Industrial or commercial property	Industrial area	Established commercial district adjacent to arterial or collector road with size and use restrictions	Commercial area with at least 10 retail businesses	Commercial or industrial area with boundaries established by city resolution
Requirements	Deteriorating property values	Deteriorating property values	Industrial area	Environmental contamination	Industrial or 501(c)(3) nonprofit	10 contiguous parcels or 5 acres; mixed-use; water and sewer available	Designated as a principal shopping area in master plan	Designated as a BID by one or more cities by resolution
Eligible projects	Located in DDA district with approved DDA/TIF plans	Within defined TIFA area	Public facility to benefit industrial park	Environmental cleanup	Issue bonds for private industrial development	Improvement of land and to construct, rehabilitate, preserve, equip or maintain buildings or facilitate transit in the area	Improve highways and walkways; promotion; parking, maintenance, security or operation	Improvement of highways and walkways; promotion; parking, maintenance, security or operation
Funding sources	TIF from District; millage	TIF from plan area	TIF on eligible property	TIF; Revenue Bonds	Tax exempt bonds	TIF, special assessments, bonds, fees, donations	Bonds, special assessments	Bonds, special assessment, gifts, grants, city funds, other

Section 4: Finance

Chapter 22: Special Assessments and User Charges

Municipalities often raise funds for special purposes by imposing special assessments or user charges as an alternative to imposing a tax. All three financing mechanisms have elements in common, and distinguishing one from the other is not always a simple matter. 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

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

to the expenses of providing the service or the improvement. The expenses of providing the service may include some indirect costs of providing the service.

Special Assessments

Authority

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

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Specializing in municipal representation in municipal bonds and finance, communications, cable television regulation, franchises, construction contracts and disputes, employee benefits and pensions, environmental law and regulation, labor relations and discrimination, litigation, taxation and assessment appeals.

Section 4: Finance

Chapter 23: Limits of Municipal Expenditures

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

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

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

What Is a Public Purpose?

The Michigan Supreme Court has defined the objective of a public purpose:

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

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

1. Is the purpose specifically granted by the Michigan Constitution, by statute, or by court decision?
2. Is the expenditure for a public purpose?

3. Is the municipality contracting for services that the municipality is legally authorized to provide?
4. Is the operation or service under the direct control of the municipality?

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

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

- Article 7, Sec. 26.
  Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose.

- Article 9, Sec. 18.
  The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution. (Note: This applies to all political subdivisions of the state. *Black Marsh Drainage District v Rowe,* 350 Mich 470 (1958)).

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

1. A contract in which the village of Fenton proposed to expend $1200 to drain a marsh, improve a highway, and construct a dock in order to induce a certain firm to establish a 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:

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

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

Revenue Bond – A bond payable from revenues secured from a project which

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

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

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

Special Assessment – A method of raising funds for special purposes available to municipalities as an alternative to imposing a tax. A special assessment may only be levied on land and may only be imposed to pay the cost of an improvement or service by which the assessed land is specially (as opposed to generally) benefited.
To impose a special assessment, a municipality must first have the statutory authority to make the improvement or provide the service for which the assessment will be imposed and, second, the statutory authority to assess for that type of improvement or service.

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

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

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

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

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

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

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

Appendix 2: 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

Council rules of procedure for home rule cities and villages are generally authorized by city/village charter. Rules of procedure help a council to run an efficient meeting and to deal with the public and the media in a positive manner.

The council should review its rules of procedure at its first meeting after councilmembers have been elected, have taken office and when a quorum is present. Following discussion and any amendments, the council should adopt the rules of procedure. This sample provides suggestions on what can be included in the rules of procedure.
It may be modified locally as appropriate.

Author's notes are contained in brackets.

Table of contents

A. Regular and special meetings
1. Regular meetings
2. Special meetings
3. Posting requirements for regular and special meetings
4. Minutes of regular and special meetings
5. Study sessions

B. Conduct of meetings
1. Meetings to be public
2. Agenda preparation
3. Consent agenda
4. Agenda distribution
5. Quorum
6. Attendance at council meetings
7. Presiding officer
8. Disorderly conduct

C. Closed meetings
1. Purpose
2. Calling closed meetings
3. Minutes of closed meetings

D. Discussion and voting
1. Rules of parliamentary procedure
2. Conduct of discussion
3. Ordinances and resolutions
4. Roll call
5. Duty to vote
6. Results of voting

E. Citizen participation
1. General
2. Length of presentation
3. Addressing the council

F. Miscellaneous
1. Adoption and amendment of rules of procedure
2. Suspension of rules
3. Bid awards
4. Committees
    a. Standing and special council committees
    b. Citizen task forces
5. Authorization for contacting village attorney

Council rules of procedure

A. Regular and special meetings

All meetings of the city/village council will be held in compliance with state statutes, including the Open Meetings Act, 1976 PA 267 as amended, and with these rules.

1. **Regular meetings**
   Regular meetings of the city/village council will be held on the ________________ of each month beginning at ___ p.m. at the city/village office unless otherwise rescheduled by resolution of the council. Council meetings shall conclude no later than __ p.m., subject to extension by the council.

2. **Special meetings**
   A special meeting shall be called by the clerk upon the written request of the mayor/president or any three members of the council on at least 24 hours' written notice to each member of the council, served personally or left at the councilmember's usual place of residence.

3. **Posting requirements for regular and special meetings**
   a. Within 10 days after the first meeting of the council following the election, a public notice stating the dates, times and places of the regular monthly council meetings will be posted at the city/village offices. [Villages without a principal office must post in the county clerk's office.]
   b. For a rescheduled regular or a special meeting of the council, a public notice stating the date, time and place of the meeting shall be posted at least 18 hours before the meeting at the city/village office. [Villages without a principal office must post in the county clerk's office.]
   c. The notice described above is not required for a meeting of the council in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when two-thirds of the members of the council determine that delay would be detrimental to the city/village's efforts in responding to the threat.

4. **Minutes of regular and special meetings**
   a. The clerk shall attend the council meetings and record all the proceedings and resolutions of the council in accordance with the Open Meetings Act.
   b. A copy of the minutes of each regular or special council meeting shall be available for public inspection at the city/village offices during regular business hours.

5. **Study sessions**
   Upon the call of the mayor/president or the council and with appropriate notice to the councilmembers and to the public, the council may convene a work session devoted exclusively to the exchange of information relating to municipal affairs. No votes shall be taken on any matters under discussion, nor shall any councilmember enter into a formal commitment with another member regarding a vote to be taken subsequently.

B. Conduct of meetings

1. **Meetings to be public**
   All regular and special meetings of the council shall be open to the public, and citizens shall have a reasonable opportunity to be heard in accordance with such rules and

regulations as the council may determine, except that the meetings may be closed to the public and the media in accordance with the Open Meetings Act.

All official meetings of the council and its committees shall be open to the media, freely subject to recording by radio, television, and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings.

2. Agenda preparation

An agenda for each regular council meeting shall be prepared by the mayor/president with the following order of business:

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

Any councilmember shall have the right to add items to the regular agenda before it is approved.

3. Consent agenda

A consent agenda may be used to allow the council to act on numerous administrative or non-controversial items at one time. Included on this agenda can be non-controversial matters such as approval of minutes, payment of bills, approval of recognition resolutions, etc. Upon request by any member of the council, an item shall be removed from the consent agenda and placed on the regular agenda for discussion.

4. Agenda distribution

[This section should explain when and how councilmembers will receive their agendas.]

5. Quorum

[Add the language from your charter on what constitutes a quorum in your city or village].

6. Attendance at council meetings

Election to a city/village council is a privilege freely sought by the nominee. It carries with it the responsibility to participate in council activities and represent the residents of the city/village. Attendance at council meetings is critical to fulfilling this responsibility.

The council may excuse absences for cause. If a councilmember has more than three unexcused successive absences for regular or special council meetings, the council may enact a resolution of reprimand. In the event that the member's absences continue for more than three additional successive regular or special meetings of the council, the council may enact a resolution of

censure or request the councilmember's resignation, or both.

[Add the provision from your charter on absences, if you have such a provision].

7. **Presiding officer**
The presiding officer or chair shall be responsible for enforcing these rules of procedure and for enforcing orderly conduct at meetings.
The mayor/president is ordinarily the presiding officer. The council shall appoint one of its members mayor pro tempore/ president pro tempore, who shall preside in the absence of the mayor/president. In the absence of both the mayor and the mayor pro tempore or the president and the president pro tempore, the member present who has the longest consecutive service on the council shall preside.

8. **Disorderly conduct**
The presiding officer may call to order any person who is being disruptive by speaking out of order, failing to speak on matters germane to city/village business, speaking longer than the allotted time, or otherwise disrupting the proceedings. Such person shall be seated until the chair determines whether the person is in order.

If the person so engaged in presentation is called out of order, he or she shall not be permitted to continue to speak at the same meeting except by special leave of the council. If the person shall continue to be disorderly and disrupt the meeting, the chair may order the sergeant at arms to remove the person from the meeting. No person shall be removed from a public meeting except for an actual breach of the peace committed at the meeting.

[It is suggested that there be an ordinance governing disruption of public meetings, prepared with advice of the municipal attorney and the municipal liability insurance carrier on the risks, limits and force allowed to eject members.
This ordinance should stipulate the procedure to be followed and the resources to be used for the sergeant-at-arms function, e.g., local police, county sheriff, etc. By planning in advance how to handle attempted disruptions, you can keep the meeting in order.]

C. Closed meetings

1. **Purpose**
Closed meetings may be held only for the reasons authorized in the Open Meetings Act, which include the following:

a. To consider the dismissal, suspension, or discipline of, or to hear complaints or charges brought against a public officer, employee, staff member or individual agent when the named person requests a closed meeting. (majority vote)
b. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement when either negotiating party requests a closed hearing. (majority vote)

c. To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained. (2/3 roll call vote)
d. To consult with the municipal attorney or another attorney regarding trial or settlement strategy in connection with specific pending litigation, but only when an open meeting would have a detrimental financial effect on the litigating or settlement position of the council. (2/3 roll call vote)
e. To review the specific contents of an application for employment or appointment to a public office when a candidate requests that the application remain confidential. (2/3 roll call vote). However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting.
f. To consider material exempt from discussion or disclosure by state or federal statute. (2/3 roll call vote)

2. Calling closed meetings
   At a regular or special meeting, the council may call a closed session under the conditions outlined in Section 1 above. The vote and purpose(s) for calling the closed meeting shall be entered into the minutes of the public part of the meeting at which the vote is taken.

3. Minutes of closed meetings
A separate set of minutes shall be taken by the clerk or the designated secretary of the council at the closed session. These minutes will be retained by the clerk, shall not be available to the public, and shall only be disclosed if required by a civil action, as authorized by the Open Meetings Act. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

D. Discussion and voting

1. Rules of parliamentary procedure.
The rules of parliamentary practice as contained in the latest edition of [*Robert's Rules of Order* or an alternative source of procedural rules] shall govern the council in all cases to which they are applicable, provided that they are not in conflict with these rules, city/village ordinances, or applicable state statutes. The mayor/president may appoint a parliamentarian.

The presiding officer shall preserve order and decorum and may speak to points of order in preference to other councilmembers.
The presiding officer shall decide all questions arising under this parliamentary authority, subject to appeal and reversal by a majority of the councilmembers present.

Any member may appeal a ruling of the presiding officer to the council. If the appeal is seconded, the member making the appeal may briefly state the reason for the appeal and the presiding officer may briefly state the ruling. There shall be no debate on the appeal and no other member shall participate in the discussion. The question shall be, "Shall the decision of the presiding

officer be sustained?" If the majority of the members present vote "aye," the ruling of the presiding officer is sustained; otherwise, it is overruled.

2. **Conduct of discussion**
During the council discussion and debate, no member shall speak until recognized for that purpose by the presiding officer. After such recognition, the member shall confine discussion to the question at hand and to its merits and shall not be interrupted except by a point of order or privilege raised by another member. Speakers should address their remarks to the presiding officer, maintain a courteous tone and avoid interjecting a personal note into debate.

No member shall speak more than once on the same question unless every member desiring to speak to that question shall have had the opportunity to do so.

The presiding officer, at his or her discretion and subject to the appeal process mentioned in Section D.1., may permit any person to address the council during its deliberations.

3. **Ordinances and resolutions**
No ordinance, except an appropriation ordinance, an ordinance adopting or embodying an administrative or governmental code or an ordinance adopting a code of ordinances, shall relate to more than one subject, and that subject shall be clearly stated in its title.

A vote on all ordinances and resolutions shall be taken by a roll call vote and entered in the minutes unless it is a unanimous vote. If the vote is unanimous, it shall be necessary only to so state in the minutes, unless a roll call vote is required by law or by council rules.

4. **Roll call**
In all roll call votes, the names of the members of the council shall be called in alphabetical order. [Names may be called with all names in alphabetical order or alphabetical order with the mayor/president voting last or the council may select another system.]

5. **Duty to vote**
Election to a deliberative body carries with it the obligation to vote. Councilmembers present at a council meeting shall vote on every matter before the body, unless otherwise excused or prohibited from voting by law. A councilmember who is present and abstains or does not respond to a roll call vote shall be counted as voting with the prevailing side and shall be so recorded, unless otherwise excused or prohibited by law from voting.

Conflict of interest, as defined by law, shall be the sole reason for a member to abstain from voting. The opinion of the city/village attorney shall be binding on the council with respect to the existence of a conflict of interest. A vote may be tabled, if necessary, to obtain the opinion of the city/village attorney.

The right to vote is limited to the members of council present at the time the vote is taken. Voting by proxy or by telephone is not permitted.

All votes must be held and determined in public; no secret ballots are permitted.

6. **Results of voting**
   In all cases where a vote is taken, the presiding officer shall declare the result.

   It shall be in order for any councilmember voting in the majority to move for a reconsideration of the vote on any question at that meeting or at the next succeeding meeting of the council. When a motion to reconsider fails, it cannot be renewed.

E. Citizen participation

1. **General**
   Each regular council meeting agenda shall provide for reserved time for audience participation.
   If requested by a member of the council, the presiding officer shall have discretion to allow a member of the audience to speak at times other than reserved time for audience participation.

2. **Length of presentation**
   Any person who addresses the council during a council meeting or public hearing shall be limited to ___ minutes in length per individual presentation. The clerk will maintain the official time and notify the speakers when their time is up.

3. **Addressing the council**
   When a person addresses the council, he or she shall state his or her name and home address. Remarks should be addressed to the presiding officer. No person shall have the right to speak more than once on any particular subject until all other persons wishing to be heard on that subject have had the opportunity to speak.

F. Miscellaneous

1. **Adoption and amendment of rules of procedure**
   These rules of procedure of the council will be placed on the agenda of the first meeting of the council following the seating of the newly elected councilmembers for review and adoption. A copy of the rules adopted shall be distributed to each councilmember.

   The council may alter or amend its rules at any time by a vote of a majority of its members after notice has been given of the proposed alteration or amendment.

2. **Suspension of rules**
   The rules of the council may be suspended for a specified portion of a meeting by an affirmative vote of two-thirds of the members present except that council actions shall conform to state statutes and to the Michigan and the United States Constitutions.

3. **Bid awards**
   Bids will be awarded by the council during regular or special meetings.

4. **Committees**
   a. The city/village shall have the following standing committees of council:
      - [Committees should be listed by name and with a definition

of their purposes and scopes.]

b. Special committees may be established for a specific period of time by the mayor/president or by a resolution of the council which specifies the task of the special committee and the date of its dissolution.
c. Citizen task forces may be established by a resolution of the council which specifies the task to be accomplished and the date of its dissolution. Members of such committees will be appointed by the mayor/ president, subject to approval by a majority vote of the council and must be residents of the city/village. Vacancies will be filled by majority vote of the council in the same way appointments are made.

5. **Authorization for contacting the city/village attorney**
   The following officials (by title) are authorized to contact the city/village attorney regarding municipal matters:

   ____

   ____

   ____

We highly recommend consulting your municipal attorney for assistance in modifying these rules to suit your municipality's individual needs.

Appendix 5:
Sample Budget Ordinance

We strongly recommend that you consult with your municipal attorney to appropriately modify this sample ordinance to meet your municipality's needs.

AN ORDINANCE to establish a budget system for the City/Village of (Name of City/Village) to define the powers and duties of the city/village officers in relation to that system; to provide that the chief administrative officer shall be furnished with information by the departments, boards, commissions, and offices relating to their financial needs, receipts and expenditures, and general affairs; to provide for an annual budget resolution; to prescribe a disbursement procedure; and to provide penalties for refusal or neglect to comply with the requirements of this ordinance.

The Council of the City/Village of (Name of City/Village) ordains:

Section 1. Title
This ordinance shall be known as the City/Village of (Name of City/Village) Budget Ordinance.

Section 2. Fiscal year
The fiscal year of the City/Village of (Name of City/Village) shall begin on (date) in each year and close on the following (date).

Section 3. Chief administrative officer and fiscal officer
[If the city/village has a manager, the following language can be used.]
The manager shall be the chief administrative officer referred to in this ordinance and shall be responsible for the performance of the duties of that officer enumerated in this ordinance.

The manager may appoint a fiscal officer and delegate to that officer any or all of the budgeting duties specified in Sections 5 through 8. The fiscal officer shall be responsible to the chief administrative officer for the performance of budgetary duties.

[If the city/village does not have a manager, the following language can be used.]
The mayor/president shall be the chief administrative officer referred to in this ordinance and shall be responsible for the performance of the duties of that officer enumerated in this ordinance.
The mayor/president may appoint a fiscal officer and delegate to that officer any or all of the budgeting duties specified in sections 5 through 8.
The fiscal officer shall be responsible to the chief administrative officer for the performance of budgetary duties.

Section 4. Budget policy statement
No later than (date) of each year, the chief administrative officer shall send to each officer, department, commission and board of the city/village a budget policy statement for the use of those agencies in preparing their estimates of budgetary requirements for the ensuing fiscal year.

Section 5. Budget estimates required
Any officers, elected or appointed, departments, commissions, and boards of the city/village financed in whole or in part by the city/village shall, on or before (date) of each year, transmit to the chief administrative officer their estimates of the amounts of money required for each activity in their agencies for the 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 city/village showing the expenditures for corresponding items for the current and last preceding fiscal year.
b. Statements of the bonded and other indebtedness of the city/village, showing the debt redemption and interest requirements, the debt authorized and unissued, and the condition of sinking funds, if any.
c. An estimate of the amount of surplus expected in the current fiscal year.
d. An estimate of all anticipated revenues of the city/village which will be necessary to meet the proposed expenditures and commitments during the ensuing fiscal year.
   This should include:
   - sources other than taxes,
   - income from borrowing,
   - current and delinquent taxes, and
   - bond issues.

   Included in this estimate shall be corresponding figures for the current and preceding fiscal year.
e. Such other supporting schedules as the council may deem necessary.
f. An informative summary of projected revenues and expenditures of any special assessment funds, public improvement or building and site funds, intragovernmental service funds or enterprise funds, including the estimated total cost and proposed method of financing each

capital construction project, and the projected additional annual operating cost and the method of financing the operating costs of each capital construction project for three years beyond the fiscal year covered by the budget.

Section 9. Transmittal of budget to city/village council
No later than (date) of each year, the chief administrative officer shall transmit the budget to the council. The budget shall be accompanied by:

a. A draft resolution for adoption by the council, consistent with the budget, which shall set forth the anticipated revenue and requested expenditure authority for the ensuing fiscal year in such form and in such detail deemed appropriate by the chief administrative officer, provided that it is consistent with the uniform chart of accounts prescribed by the State of Michigan. No budget resolution shall be submitted to the council in which estimated total expenditures, including an accrued deficit, exceed estimated total revenues, including an available surplus.
b. A budget message which shall explain the reason for increases or decreases in budgeted items compared with the current fiscal year, the policy of the chief administrative officer as it relates to important budgetary items, and any other information that the chief administrative officer determines to be useful to the council in its consideration of the proposed budget.

Section 10. Consideration of budget by council
The council shall fix the time and place of a public hearing to be held on the budget and proposed budget resolution. The clerk shall then have published in a newspaper of general circulation with the city/village, notice of the hearing and an indication of the place at which the budget and proposed budget resolution may be inspected by the public.
This notice must be published at least seven days before the date of the hearing.

The council may direct the chief administrative officer to submit any additional information it deems relevant in its consideration of the budget and proposed budget resolution. The council may conduct budgetary reviews with the chief administrative officer for the purpose of clarification or justification of proposed budgetary items.

The council may revise, alter or substitute for the proposed general budget resolution in any way, except that it may not change it in a way that would cause total appropriations, including an accrued deficit, to exceed total estimated revenues, including an unappropriated surplus. An accrued deficit shall be the first item of expenditure in the general appropriations measure.

Section 11. Passage of the budget resolution
No later than (date) the council shall pass a resolution providing the authority to make expenditures and incur obligations on behalf of the city/village.

The council may authorize transfers between appropriation items by the chief

administrative officer within limits stated in the resolution. In no case, however, may such limits stated in the resolution or motion exceed those provided for in section 16 of this ordinance.

The city/village budget may include information concerning the amount of tax levy expected to be required to raise those sums of money included in the budget resolution. In conformance with state law, and at such times as the council shall determine to be appropriate, the council shall order to be raised by taxation those sums of money necessary to defray the expenditures and meet the liabilities of the city/village for the fiscal year. The council may take such action after the value of the property in the village as finally equalized has been determined.

Section 12. Procedure for disbursements
No money shall be drawn from the village treasury unless the council has approved the annual budget.

Each warrant, draft, or contract of the village shall specify the fund and appropriation, designated by number assigned in the accounting system classification established pursuant to law, from which it is payable and shall be paid from no other fund or appropriation.

Expenditures shall not be charged directly to any contingent or general account. Instead, the necessary amount of the appropriation from such account shall be transferred pursuant to the provisions of this ordinance to the appropriate general appropriation account and the expenditure then charged to the account.

Section 13. Limit on obligations and payments
No obligation shall be incurred against, and no payment shall be made from, any appropriation account adopted by the budget resolution unless there is a sufficient unencumbered balance in the account and sufficient funds are or will be available to meet the obligation.

Section 14. Periodic finance reports
The chief administrative officer may require the appropriate agencies to prepare and transmit to him or her monthly a report of city/village financial obligations, including, but not limited to:

a. a summary statement of the actual financial condition of the general fund at the end of the previous month.
b. a summary statement showing the receipts and expenditures and encumbrances for the previous month and for the then current fiscal year to the end of the previous month.
c. a detailed listing of the expected revenues by major sources as estimated in the budget, actual receipts to date for the current fiscal year, the balance of estimated revenues to be collected in the current fiscal year and any revisions in revenue estimates occasioned by collection experience to date.
d. a detailed listing for each organizational unit and activity of the amount appropriated, the amount charged to each appropriation in the previous month and for the current fiscal year to date, and the unencumbered balance of appropriations, and any revisions in the estimate of expenditures.

The chief administrative officer shall transmit the above information to the council on a monthly basis.

Section 15. Transfers
Transfers of any unencumbered balance, or any portion, in any appropriation amount to any other appropriation account may not be made without amendment of the budget resolution as provided in this ordinance, except that transfers within a fund and department may be made by the chief administrative officer within limits set by the budget resolution.

Section 16. Supplemental appropriations
The council may make supplemental appropriations by amending the original budget resolution as provided in this ordinance, provided that revenues in excess of those anticipated in the original resolution become available due to:

a. an unobligated surplus from prior years becoming available.
b. current fiscal year revenue exceeding original estimates in amounts great enough to finance the increased appropriations.

The council may make a supplemental appropriation by increasing the dollar amount of an appropriation item in the original budget resolution or by adding additional items. At the same time, the estimated amount from the source of revenue to which the increase in revenue may be attributed shall be increased or a new source and amount added in a sum sufficient to equal the supplemented expenditure amount.
In no case may such appropriations cause total estimated expenditures, including an accrued deficit, to exceed total estimated revenues, including an unappropriated surplus.

Section 17. Appropriation adjustment required
Whenever it appears to the chief administrative officer or the council that actual and probable revenues in any fund will be less than the estimated revenues upon which appropriations from such fund were based, the chief administrative officer shall present to the council recommendations which, if adopted, will prevent expenditures from exceeding available revenues for the current fiscal year. Such recommendations shall include proposals for reducing appropriations, increasing revenues, or both.

Within 15 days of receiving this information the council shall amend the budget resolution by reducing appropriations or approving such measures as are necessary to provide revenues sufficient to equal appropriations or both. The amendment shall recognize the requirements of state law and collective bargaining agreements. If the council does not make effective such measures within this time, the chief administrative officer

shall, within the next five days, make adjustments in appropriations in order to equalize appropriations and estimated revenues and report such action to the council.

Yeas: ___________
Nays: ___________

Ordinance Declared
Adopted___________

City/Village Clerk

Effective Date___________

Appendix 6:
Frequently Asked Questions

Budgets and Budgeting

Q1 What budget procedures should we have in place?
The budget process is a complicated and involved procedure. A chapter of this handbook is devoted exclusively to financial management and budgeting details. The Uniform Budgeting and Accounting Act (1968 PA 2) as amended, spells out the procedures and requirements of the budgeting process and the accounting function for municipalities.

A public hearing is required prior to adopting the budget. (1963 PA 43). Remember that someone must be responsible for budget preparation and execution. The legislative body must annually adopt a budget (spending and revenue plan) for the city or village and must make amendments when necessary. Proper procedures must be followed in setting the millages.
(See Ch. 19: Budgeting for further information.)

Q2 Do we need to have a public hearing before adopting the budget?
Yes, according to the Budget Hearings of Local Governments Act (1963 PA 43), which requires all local units to hold a public hearing on a proposed budget. Notice must be published at least six days prior to the hearing in a "newspaper of general circulation" and must include a statement, printed in 11-point boldfaced type, stating **"The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing."** Budget hearings held in accordance with the provisions of the local charter and/or ordinance will meet this requirement. This hearing will also fulfill the requirement for a "truth in taxation" hearing.

Q3 Is a public hearing necessary to amend the budget?
No. However, the budget should be amended before you overspend, not after.

Q4 If our city has not adopted a budget and the new fiscal year has begun, is it legal to pass a monthly appropriation bill to pay the bills?
Your city charter may address this issue. Some charters provide for an "interim authority" stating that if the council fails to adopt a budget ordinance before each new fiscal year, the council, on written request of the mayor, may make an appropriation for a department's current expenses in an amount sufficient to cover the minimum necessary expenses of the affected department(s) until the appropriation ordinance is in force.

Q5 Is there a "rule of thumb" for a fund balance amount?
Operating fund balances should be maintained at levels sufficient to absorb unpredictable revenue shortfalls and to ensure 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. Email info@mml.org to request sample fund balance policies.

Q6 We would like to start a capital project in five years and add a little to our reserves every year until we have enough to fund the project. How do we budget for this?
For five years, you should have excess revenues over expenditures. The excess revenue should end up in your fund balance. You may want to place the excess revenue in a restricted “capital improvement fund” to avoid the temptation to use the funds to cover budget shortfalls while you are saving for your capital project. The year that you incur expenses on the capital project, you will need to use your fund balance to offset your capital project expenditures in order to balance the budget.

Consultants

Q7 How do we find a consultant and/or other services and products for municipalities?
The Municipal Yellow Pages, in which consultants can advertise, are currently online at mml.org.

The *Directory of Michigan Municipal Officials*, published annually by the League also contains the Municipal Yellow Pages. In addition, consultants also advertise in the League’s magazine, The *Review*. Through its Municipal Consulting Services, the league offers a wide range of management consulting projects with a primary focus on human resources. Specifically, we offer classification and compensation systems, benefits analysis, personnel policies review and development, 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. Find out what others’ experience has been with consultants.

In addition, there is an online directory municipal service providers enrolled in the League’s Business Alliance Program (BAP). Companies are listed alphabetically or by service category at mml.org. (See also Ch. 17: Selecting and Working with Consultants).

Q8 What is the maximum amount for which we can write a contract without going out for public bids under state law?
There is no state law requiring public bids on municipal contracts. However, many cities and home rule villages have such a requirement written into their charter and other cities and villages have ordinances or policies establishing a threshold amount over which contracts must be bid. Even if your municipality does not have such a requirement, it is often prudent to solicit bids on large projects.

Council/Staff Relationships

Q9 What constitutes appropriate contact between individual councilmembers and city staff? Some of our councilmembers ask staff (other than the city manager) directly for information they desire. This causes problems because information may be given to one council member and not to others, thus putting the manager in an awkward position.
Direction on appropriate council action with respect to city staff can be incorporated into council rules or ethics policies. For example, the City of Manistee covers the issue in their council rules and encourages council members to work through their city managers for information from city staff.

Downtown Development Authorities

Q10 Does the DDA budget have to go to the city/village council for approval?
Yes. MCL 125.1678 (1975 PA 197) states "Before the budget may be adopted by the board it shall be approved by the governing body of the municipality."

Email

Q 11 Is email a public record?
Email messages are public records if they are created or received as part of performing a public employee's official duties.

The Michigan Freedom of Information Act (FOIA) defines a public record as "a writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

Q 12 I sometimes use my home computer and personal email account to conduct government business. Am I creating public records?
Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer recourses.

Q13 Do all emails have the same retention period?
No. Just like paper records, email records are used to support a variety of business processes. Email messages must be evaluated for their content and purpose to determine the length of time the message must be retained in accordance with the appropriate Retention and Disposal Schedule.

Elections

Q14 How many home rule cities and home rule villages have non-partisan elections?
A check of the MML charter database shows an overwhelming majority (over 90 percent) of home rule cities conduct elections on a non-partisan basis.
The Election Consolidation Act of 2005 required all village elections to be non-partisan.

Q15 Our clerk administers the oath of office to the mayor, commission members, and appointed officials. Who swears in a new city or village clerk?
The county clerk or any notary public can administer the oath of office to a newly elected or appointed clerk.
In addition, the oath can be sworn before a justice, judge, or clerk of a court.

Finance- Expenditures

Q16 Can the village/city make donations to local service organizations?
Under Michigan law, municipalities have the power to expend public funds only for public purposes. Authorized by the Michigan constitutions or by statute, Michigan courts have ruled that gifts or donation of money or property is a violation of state law. For more information, see Ch. 23: Limits on Municipal Expenditures.

Q17 Can a city or village use public funds for employee picnics, retirement dinners, flowers for sick employees, etc.?
It is difficult to meet the standard of “public purpose” for these expenditures. The Michigan Supreme Court has held that an improper “lending of credit” occurs when a municipality gives something of value without getting something of specific value in return. For more information, see Ch. 23: Limits on Municipal Expenditures.

Q18 Our library asked for a donation in order to match outside funding but we told them that we couldn’t contribute to a private nonprofit organization.
A public library is not a private nonprofit organization. Chapter 397 of the Michigan compiled laws, sets out the forms of libraries, including city and village libraries. If a library is established, the budget should not show a disbursement as a donation but as a line item like any other department.
A municipality can hire a private nonprofit agency to perform a service that it might otherwise have performed.

Finance - Payment in lieu of taxes

Q19 Can a municpality require payments in lieu of taxes (PILT) from state and county government agencies?
No. You cannot require payment in lieu of taxes, but you can try to negotiate an agreement with them.

Finance – Purchasing

Q20 Can municipalities use credit cards?
There are two public acts that allow municipalities to use credit cards for procurement (1995 PA 266, MCL 129.241 et seq.) and for accepting payments (1995 PA 280, MCL 129.221 et seq.). Both require some type of action by the local legislative body.
To use credit cards for procurement, a written policy is required. The Act lists what must be included in the policy.
An authorizing resolution is required to accept payments by credit cards. There are other requirements and restrictions as well. To request sample policies, email info@mml.org.

Legislation

Q21 I am interested in receiving copies of new bills introduced in the Legislature. Is there any way to get on the legislature's mailing list?
The Michigan Legislature maintains an interactive, user-friendly website: legislature.mi.org. You can search for a bill by number, by sponsor, or by text. The website is updated frequently and posts the current language of the bill, as well as its current status.

Meetings, Minutes, etc.

Q22 How does one go about making changes to minutes?
The Michigan Open Meetings Act (1976 PA 267, MCL 15.261 et seq.) requires that corrections in the minutes must be made no later than the next meeting to which the minutes refer. Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Q23 What is the difference between a public hearing and a special meeting?
A *public hearing* is that portion of a meeting designed specifically to receive input from the public on a single issue. It may be required by ordinance or statute. The time, place, and subject of the hearing must be posted as required by the ordinance or statute and only the posted subject can be discussed. The hearing may be before, during or after a regular meeting or may be at a special meeting called specifically for that purpose.

A *special meeting* is any meeting of the governing body other than those called for by the charter. It may be a meeting of the full body or just a subcommittee. Your charter will outline the criteria for a special meeting and the Open Meetings Act requires the date, time, and place of the meeting be posted at least 18 hours before the meeting.

Q24 Can the council discuss an item not on the agenda?
There is no law prohibiting discussion of an item not on the agenda. The Open Meetings Act outlines the time required for proper notice of regular and special meetings. Although it specifies that the name, address and telephone number of the public body be included in the notice, it does not require a listing of specific items to be discussed. However, a number of cities and villages, either through their charter or their council rules, have agreed that items not on the agenda may not be considered by the council. Some permit the agenda to be amended during the meeting. Your municipal clerk and/or municipal attorney will be able to guide you as to your requirements.

Q25 How long can the public speak during the public comment portion of a council meeting?
It is up to the council to determine the policy. Some communities limit each person to two minutes; in other communities the limit is five minutes. Some municipalities set aside a total of 15 minutes for proponents, and 15 minutes for opponents on a specific issue. One community even sets a timer, and when it goes off, the citizen must quit speaking. The length of time for public commentary should be established in your council rules.

Q26 Is there a requirement regarding the length of time a public hearing has to be kept open? We often hold a public hearing during the regular council meeting. If no one appears to speak at the scheduled time, how long must we wait before proceeding with the remainder of our agenda?
Unless you have something established in your council rules or charter, we know of nothing in state law that sets a specific amount of time. Normally the mayor gavels the public hearing open and asks if there is anyone who wishes to speak. If no one does, the hearing is declared closed. Public hearings are often held during council meetings. You do need to make sure the hearing is open at the time advertised. Again, you need to check your charter and any rules the council may have adopted.

Q27 What can be done about a councilmember not attending meetings?
If you want to deal with council absences, you can enact a provision in your council rules to address it or amend your charter to address it.
The provision can say something like:

A. Council Rules
No city councilmember shall miss three (3) consecutive, unexcused regular meetings in a twelve (12) month period. Any violation of this provision shall result in the matter being reviewed by the Board of Ethics for appropriate action, including but not limited to removal from the city council. This provision recognizes the duty of city councilmembers to be in attendance to represent the citizens in matters concerning the city. An absence shall be excused only upon a quorum vote by the present city council.

B. Charter Provisions
Most city charters contain a provision dealing with council absences. The most common is: four unexcused absences or missing 25 percent of meetings in a year result in a councilmember getting removed from office. Variations include three consecutive absences or 25 percent; 30 percent in a year; or seven consecutive meetings in a year. The League's charter database has a listing of all the city charters and what method they use. Email info@mml.org to request sample provisions.

Q28 I think the council as a body is operating under questionable legal and ethical practices. Is there an organization or agency that has oversight over the council?
No, there is no oversight agency.
The municipal attorney should be alerted to questionable legal or ethical practices. As a councilmember, you might suggest the council attend training seminars on the Open Meetings Act, the Freedom of Information Act, or other seminars that the League offers.

<u>Open Meetings Act</u>

Q29 Is it a requirement to post a schedule of the regular meetings of the council?
Yes, according to Michigan's Open Meetings Act, "For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates,

time, and places of its regular meetings." If there is a change in the schedule, the changes must be posted within three days after the meeting at which the change is made.

Q30 Can we go into a closed meeting in order to discuss selling a piece of property?
No. This is not permitted under the Michigan Open Meetings Act. However, you can go into closed session to consider purchase or lease of real property up to the time an option to purchase or lease that property is obtained.

Q31 What can we discuss in a closed meeting?
Every councilmember should be familiar with the Michigan Open Meetings Act. The intent of the Act is for a public body to conduct its business in the open. There are only a few circumstances where a closed meeting is allowed. These include discussion of employee or officer discipline, etc. when the employee or officer requests a closed meeting; consideration of purchase of property; consultation with the municipal attorney on pending litigation and review of an employment application upon request of the applicant. The statute states how to go into closed session and how to record the proceedings. You cannot conduct interviews in closed session. You cannot go into closed session to avoid discussing issues in front of citizens.

Q32 Our village would like to have a joint meeting with the adjacent township. Is there anything to prevent us from holding this meeting outside the village limits?
There is nothing in the Open Meetings Act that prevents your council from meeting outside the corporate limits. However, don't forget the posting requirements. This type of meeting, close to the village boundaries, should pose no political problems because the citizens can easily attend if they so desire. But, if your council ever considers a meeting at a remote location from the village, you'll need to factor in the reactions of the village constituents. There are benefits and drawbacks to meetings like this and all aspects need to be considered, not just the legal aspects.

<u>Elected Officials Academy</u>

Q33 Can *appointed* clerks and treasurers participate in the Elected Officials Academy?
They are welcome to attend the classes, but they are not eligible to graduate from the different levels. However, *elected* clerks and treasurers may earn credits and graduate from the Academy levels. If a person is appointed to fill an elected position, then he/she is eligible to participate in the Elected Officials Academy. See the Training Calendar section of mml.org for a list of upcoming classes and check the program descriptions for details of Elected Officials Academy credits.

Utilities

Q34 Our city is in the process of setting water and sewer rates. Can we use rates from neighboring communities as the basis for our rates?
The setting of utility rates is a complicated matter that needs to include substantial input from your city attorney, engineer and your water and sewer department. In the past, many municipalities set their water and sewer rates based on the rates charged by their neighbors and/or other comparable communities. However, in *Bolt v City of Lansing 459 Mich. 152 (1998)*, the Michigan Supreme Court ruled that there are legal differences between a tax and a fee. The Court said that a fee must serve a regulatory purpose, be proportionate to the necessary cost of the service, and be voluntary.

As a result, the methods used by many municipalities prior to the *Bolt* decision (i.e., determining rates based on comparable rates in other cities and villages) is no longer be valid. Because of the potential impact on any municipality’s utility revenues, most rate ordinances should be reviewed by your municipal attorney for legal compliance with *Bolt*. (See Ch. 22: Special Assessment and User Charges for further discussion on *Bolt*).

Q35 Can unpaid utility bills be added to tax bills as a lien against the property?
1939 PA 178 (MCL 123.161 et seq.) as security for collection of water or sewage system rates, assessments, charges, or rentals and states, provides for a lien for water or sewage system charges which accrues to the property at the time the service is furnished by municipalities.

Weddings

Q36 Our mayor has been asked to perform several wedding ceremonies this summer. Who decides how much the mayor should charge?
The law giving a mayor the authority to perform marriage ceremonies (MCL 551.7(3)) states the mayor shall charge and collect a fee. The amount is to be determined by the city council and paid to the city treasurer to be deposited in the general fund of the city at the end of the month. In general, a fee of $50-100 has been approved in many cities.

Appendix 7: 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 researches legislative issues of importance to municipalities; through their research, they develop issue papers and legislative briefs that provide the framework for the League's efforts to represent municipalities' best interests at the state and federal level.

- Issue Papers
  - *Revenue Sharing Fact Sheet*
  - *Home Rule in Michigan—Then and Now*
- Legislative Briefs
- Prosperity Agenda
- Inside 208 blog
- League position on current legislative bills

(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

Index

Act 425
  defined, 22
Act 51
  as revenue source for operating budget, 107
ADA. *See* Americans with Disabilities Act
Administrative officials
  appointment of, 11
Agenda
  a guide for conducting meetings, 31
  at council meeting, 165
  sample outline, 31
Americans with Disabilities Act, 69
Annexation, 19
  defined, 134
  home rule cities, 21
  home rule villages, 20
  procedures, 20
  public hearing, 21
Appropriation, adjustment,
  as addressed in sample budget ordinance, 160
Appropriations, supplemental,
  as addressed in sample budget ordinance, 159
Attorney
  duties of, 27
Audit report, 104
Background checks
  as it relates to the hiring process, 68
BANs. *See* Bond anticipation notes
Bidding process, 115
Bolt v *City of Lansing*, 101
Bolt v *City of Lansing*, **124**, 168
  related to standards in ratemaking, 126
Bond
  defined, 134
Bond anticipation notes, 117
Bond issuance and notes
  incurring debt, 117
Bonds
  types of, 118
Boundaries, 19
Brownfield redevelopment authority
  as special financing option for economic development, 121
Budget
  as a financial plan, 106
  defined, 134
  public hearing, 161
Budget document contents
  as addressed in sample budget, 156
Budget estimates
  as addressed in sample budget ordinance, 156
Budget forms
  as addressed in sample budget ordinance, 156
Budget policy statement
  as addressed in sample budget ordinance, 155
Budget procedures, 161
Budget resolution, passage,
  as addressed in sample budget, 158
Budget review
  as addressed in sample budget, 156
Budget, consideration by council
  as addressed in sample budget ordinance, 157
Budget, transmittal to council
  as addressed in sample budget, 157
Building authorities
  as special financing tools for economic development, 120
Business improvement districts
  as special financing option for economic development, 121
Business partnership program
  Michigan Municipal League, 162
Capital budget
  defined, 108
  revenue sources, 109
Capital improvement bonds, 119
Capital improvement program, 109
Capital improvements, 117
Case law

related to limitation on local financial authority, 101
Charter
adoption, 15
amendment, 13, 15, 16
attorney general, 14, 16
Attorney General, 17
ballot, 16
changing, 28
commission, 17
Commission, 14
consultant, 14
defined, 134
election, 17
Provisions, 12
publication of, 15
Revision. ***See***
Village, 14
Charter provisions
related to offials' duties, 24
Charter Township
annexation, 21
Charter Township Act
annexation, 22
Cities
as form of government, 9
defined, 8
Clerk
duties of, 27
Closed meetings
defined, 32
minutes, 33
Compensation
employees, 68
Compensation time
as it relates the Fair Labor Standards Act, 71
Conditional transfers of land
defined, 134
Conflict of interest
laws relating to, 43
related to elected officials, 42
Consolidation
defined, 134
procedures, 20
Consultants
finding, 162
how to retain, 95
selection process, 95
types, 94
when to use, 94
why to use, 94
Contractors
independent, 68, 72
Corporation
defined, 136
Council
defined, 135
Council duties, 25
Council manager form of government, 9
Council meetings
official's role as participant, 2
Council staff relationships, 163
Councilmembers
not attending meetings, 166
County drain bonds, 119
Credit cards, 165
Detachment, 23
home rule cities, 23
villages, 23
Development or redevelopment financing tools, 119
Disability
employee, 68
Disbursements`
as addressed in sample budget ordinance, 158
Discrimination
as it relates to disability, 69
Donations, 164
Downtown development authorities, 163
as special financing option for economic development, 120
Drug testing
as it relates to the hiring process, 68
Economic Development
Options for special financing, 120
Economic development corporations. *See* EDCs
as special financing option for economic development, 121
EDCs. *See* Economic development corporations
Eelctions

ward, 10
Elected official
responsibilities, 2
Elected Officials Academy
Michigan Municipal League
program, 168
Elections
at-large, 10
<u>non-partisan</u>, 164
Employee
disability, 68
Employment issues, 68
Energy conservation notes, 118
Enterprise fund
defined, 135
Ethics, 42
of council, 167
state laws relating to, 43
Expenditures
for public purpose defined, 129
of capital budget, 108, 109
statutory expenditures, 132
<u>Fair Labor Standards Act</u>
<u>defined</u>, 71
Family and Medical Leave Act
types of leaves, 73
Financial controls
internal management, 102
Fiscal year
as defined in sample budget
ordinance, 155
<u>FLSA</u>. *<u>See Fair Labor Standards Act</u>*
FMLA. See Family Medical Leave Act
<u>Form of government</u>
<u>villages</u>, 11
<u>Form of Government</u>
<u>cities</u>, 9
Fourth Class City Act, 8
Franchise agreement
defined, 135
Franchise ordinance
defined, 135
Freedom of Information
records exempt, 144
Freedom of Information Act
defined, 26, 143
Fund balance
amount, 162
General fund
defined, 135
General law village
defined, 135
General obligation bonds, 118
Governmental immunity
defined, 135
GRANs. *See* Grant anticipation notes
Grant anticipation notes, 117
Headlee amendment
limitation on financial authority, 99
Home rule
defined, 135
Home Rule
defined, 9
Home Rule Cities
annexation, 21
Home Rule City Act
as authorized for public funds, 132
as it relates to adopting ordinances, 37
charter revision, 12, 13, 16
Home Rule Village Act, 8
charter revision, 12, 16
Home Rule Villages
annexation, 20
detachment, 23
Housing authorities
as special financing option for
economic development, 120
Incompatible offices
law relating to, 45
Incorporation
charter commission, 19
Public Hearing, 19
Installment sales contracts, 118
Insurance
need for program, 81
Intergovernmental contracts and
authority bonds, 119
Internal financial controls, 99
Labor agreements, 76
Labor Relations
collective bargaining, 79
negotiations, 76, 77
The role of elected official, 76
the role of elected officials, 77

unions, 79
Unions, 76
Legal Defense Fund
Michigan Municipal League, 171
Liability, 80
related to training, 53
Limited tax general obligation bonds, 118
Line item budget, 106
Local development financing authority
as special financing option for economic development, 121
Local government
structure of, 8
Marriage ceremonies
performed by mayor, 169
Mayor
as defined by charter, 27
defined, 136
election or selection of, 10
strong form of government, 10
weak form of government, 10
Mayor council plan, 10
Media
tips for working with, 6
Meeting
posting of. ***See***
Meetings. ***See* also Council meetings**
abstain from voting, 165
closed, 167
location, 167
Michigan Constitution, 12
related to ordinances, 37
Michigan Employment Relations Commission (MERC), 78
Michigan Legislature, 165
Michigan Municipal League Liability & Property Pool, 81
Michigan Municipal Review, 170
Michigan Open Meetings Act, 165
Michigan Persons With Disabilities Civil Rights Act, 69
Michigan transportation fund bonds, 119
Millage limits, 100
Minutes
recording of, 32
MIOSHA. *See* Michigan Occupational Safety and Health Act, *See* Michigan Occupational Health and Safety Act
Motion
defined, 34
incidental, 36
main, 35
privileged, 35
subsidiary, 35
Motions
defined, 25
Municipal bond
defined, 136
Municipal corporation
defined, 136
Municipal Finance Act, 117
Non voted GO bonds, 118
Oath of office
without a clerk, 164
Obligations and payments, limit on,
as addressed in sample budget ordinance, 158
Occupational Safety and Health Act, 70
OMA. *See* Michigan Open Meetings Act
Open Meetings Act
closed meetings, 140
defined, 26, 31, 139, 167
emergency meetings, 140
enforcement, 142
Minutes, 141
minutes of closed meetings, 141
notification of meetings, 140
penalities for violation, 142
special and irregular meetings, 140
Operating budget
types of, 106
Ordinances
adoption of technical codes by reference, 40
adoption procedures and requirements, 38
amendments, 40
defined, 25, 136
drafting of, 40
effective date, 39
local government authority, 37
notice of, 39

printing and adopting of, 39
publication of, 39
reading requirements, 40
related to purchasing, 103, 114
related to Special Assessments, **125**
related to user charges, 126
voting requirements, 39
writing of, 38
Organization of City and Village Government in Michigan, 170
Overtime pay
as it relates to the Fair Labor Standards Act, 71
Parliamentary procedures, 33
Payment in lieu of taxes, 164
Performance budget, 107
Personnel
harassment policies, 68
medical records, 68
personnel records, 68
pre-employment inquiries, 68
Personnel issues, 68
Policies and Procedures
need for written, 55
Policy manual
purposes, 56
Policy Manual
purposes, 57
Posters
as it relates to federal and state labor regulations, 68
Pre-employment inquiries
as it relates to the application form, 68
President
as defined by charter, 27
defined, 136
President pro tempore
as defined by charter, 27
Principal shopping districts
as special financing option for economic development, 121
Program budget, 106
Project Management
related to consulting and professional services, 97
Property taxes
as source of operating budget funds, 107
Proposal A
limitation on financial authority, 100
Public act
defined, 136
Public address to the council
length of time, 166
Public contracts
Act 317, 44
Public hearing
defined, 165
Public hearings
length of time, 166
procedures, 33
Purchasing
function of, 103, 114
state statutes, 103, 114
use of XE "Credit cards" credit cards, 165
Purchasing departments
role of, 115
Purchasing process, 115
Questions
frequently asked, 161
RANs. *See* Revenue anticipation notes
Referendum
related to incorporation, 19
Request for proposals
defined, 137
Request for Proposals
related to consulting and professional services, 95
Request for Qualifications
related to consulting and professional services, 96
Resolution
defined, 136
Resolutions
defined, 25, 38
Freedom of Information Act - General Questions; Policy and Definitions, 170
Revenue
defined, 137
Revenue anticipation notes, 117
Revenue bond
defined, 137

Revenue Bond Act of 1933, 126
Revenue bonds, 119
Revenue sharing
defined, 137
Robert's Rules of Order Newly Revised, 34
Rules of procedure
adopting, 30
citizen participation, 153
closed meetings, 151
conduct of meetings, 149
discussion, 151
meetings, 148
sample for council, 147
voting, 151
SAD. *See* Special assessment district bonds
SAD Bonds, 118
Service options, 60
sewer rates. ***See* Utility rates**
Sexual harassment, 70
Site plan
defined, 137
Special Assessment bonds, 118
Special assessments
as revenue source for capital budget, 109
authority, **125**
defined, 137
Special Assessments, 124
procedures, **125**
Special meeting
defined, 165
Special permit or use
defined, 137
State Boundary Commission, 19, 21
State equalized value, 100
State Ethics Act, 43
State statutes
related to limitation on local financial authority, 100
relating to purchasing, 103, 114
Sunshine laws
defined, 26
TANs. *See* Tax anticipation notes
Tax abatement programs, 122
Tax anticipation notes, 117
Tax increment bonds, 119
Tax rate
defined, 138
Tax roll
defined, 138
Taxable value, 100
Taxing powers
defined, 138
Training
municipal officials, 53
Treasurer
duties of, 28
Uniform Budgeting and Accounting Act, 161
Uniform City Income Tax Act, 108
United States Constitution, 12
Unlimited tax general obligation bonds, 118
Urban Cooperation Act
defined, 22
User charges
statutory authority, **126**
User Charges, 124
enforcement and collection, 127
Utility bills
as a lien against property, 168
Utility rates
setting of, 168
Variance
defined, 138
Villages
as form of government, 11
defined, 8
Voted GO bonds, 118
Water rates. ***See* Utility rates**
Wedding ceremonies
performed by mayor, 169
Workplace violence
how to minimize the risk of, 70
Zero based budget, 107
Zoning
defined, 138