

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.