# Handbook for General Law Village Officials

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# Handbook for General Law Village Officials


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# Foreword

This handbook is the result of a collaborative effort of the Michigan Municipal League Foundation and the Michigan Municipal League. Many present and former League staff members have contributed to this work, which was edited and managed by Publications Editor Judi Lintott and Information Coordinator Kim Cekola (2006 edition). Special acknowledgment is given to former General Counsel of the league, William L. Steude, who provided his experience and insights in the preparation of the handbook and was a major catalyst in the 1998 amendments to the General Law Village Act of 1895.

The first edition of the **Handbook for General Law Village Officials** (1995) was the second publication sponsored by the Foundation. The Foundation was established to improve municipal governance through research, education, training and discussion of local government issues.

The second edition (2000) was published to give village officials more in-depth information about their offices and about the 1998 revision of the General Law Village Act. That revision was the first comprehensive change since the statute was enacted over 100 years ago. I am proud of the role that the Michigan Municipal League played in coordinating the contributions of special committees of village managers and the Michigan Association of Municipal Attorneys. League staff assisted in the revision by working with those committees and by analyzing our database of hundreds of inquiries the League has received about the Act from village officials.

This third edition builds upon the first two by adding chapters on Meetings, Local Ordinances, and Ethics, and expanding the chapters in the Finance section.

I salute all the village officials across Michigan who work to improve their local governments. The Michigan Municipal League and its staff are here to help you!

Daniel P. Gilmartin
Executive Director
Michigan Municipal League

# 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. Now you're probably asking yourself, "What do I do next?"

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

## On being an elected official

Being well informed, listening carefully and knowing how to make decisions will enhance those qualifications you need to succeed as a public official: integrity, intelligence and a genuine concern for people.

### Being well informed

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

For starters:

- **Read the General Law Village Act (1895 PA 3)** – the charter for your village. It can be downloaded from the Michigan Legislature web site at www.legislature.gov. It can also be retrieved through the MML web site, along with a index of the act prepared by the MML. You must have your password to access this ebook: www.mml.org/members/pdf/glv_index04.pdf
- **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 the General Law Village Act .
- **Know your village.** Know its history, its operations and its finances. Review all reports from the village president (and/or manager if your village has one), department heads and citizen boards and commissions.
- **Become familiar with the village plans.** Review the master plan, the parks and recreation plan, the infrastructure and economic development plans. The village may also have a number of other documents outlining its goals, objectives and plans.
- **Be aware of current state and federal legislation, pending court cases and other factors that may affect local issues.** The Michigan Municipal League and the National League of Cities frequently send materials to help you stay up-to-date.
- **Talk to people with differing points of view and relevant information.** Your constituents, officials in neighboring villages, cities and townships, and county and state officials will all have important and different perspectives on each issue.

**Listening**

- Although seventy percent of our waking day is spent in some form of communication, and at least six hours a day is spent listening to some form of oral communication, we don't always do it well. Yet, it is imperative to listen actively and accurately to be an effective trustee.

**Making decisions**

No government official can always make decisions that please everyone. Honest people have honest differences in opinion.

Making decisions is not always easy; it takes hard work and practice. However, each trustee must eventually "stand up and be counted." It is this process by which your constituency judges you and for which it holds you accountable.

## Responsibilities of an elected official

The specific duties of village officials as established in the GLV Act are set out in the next chapter. However, all elected officials share certain responsibilities.

First and foremost, trustees must remember they are elected to make decisions **as a collective body**, not to act as individuals or apart from the council. Together, as well as individually, it is their responsibility to:

**Identify community needs and determine priorities**

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

**Observe**

Take a tour of the village with the rest of the council, the manager if your village has one, and department heads. Such a tour is especially valuable for newly elected officials. They often discover parts of the village never seen before, learn where the legal boundaries are and see where major trouble spots are now and where they might develop.

Keep your eyes open as you go back and forth to work or to village hall, taking the opportunity to look for problems. Use a different route to see more than just one area. There is really no substitute for first-hand observation.

**Talk with citizens**

Direct interaction with your constituents is both politically and practically prudent. Village 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 don't know well or at all. Be sure to include people representing various economic levels, professions, occupations and cultural backgrounds.

In talking with citizens, be concerned primarily with listening. Avoid arguing or defending existing positions. Your attitude should reflect a genuine desire to secure information.

In addition to seeking information in a person-to-person setting of your choice, you will also receive unsolicited information and criticism from citizens who seek you out.

**Read**

Trustees receive a large amount of printed material: minutes, reports, articles, letters, recommendations, proposed state and federal legislation and much more. Much of this relates to problems and possible solutions, and some of it may help you discover the needs and wishes of your constituents. A letter or a newspaper article may reveal a problem that had not surfaced previously. Problems in other communities that are spelled out in journals and other printed sources may pose the question, "Do we have that same problem in this community?"

**Establish priorities**
Having defined the problems and needs of the community, it is important to establish the priority of each. How is this done – remembering that the resources, both human and financial, of any municipality are limited? Even if resources were unlimited, there are a number of activities that would not – and should not – be engaged in by the local government.

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

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

In council meetings, it is important to:

- **Look attentive, sound knowledgeable** and be **straightforward** and meticulously honest.
- **Be familiar with a systematic and efficient way to handle business brought before the council**. The president, manager or clerk will have prepared a concise and easily understood agenda outlining for you – and the general public – the order in which items will be considered during the meeting. This agenda may allow the general public and the trustees themselves to bring up additional items of business for discussion. Your copy of the agenda may come with a packet of background material prepared to assist you with your decision.
- **Bring all appropriate documents, notes and memoranda to the meeting**. Arrange the material in the same order as the agenda so pertinent information can be found easily.
- **Have a reasonable knowledge of parliamentary procedure and of the rules of procedure the council has adopted and follows.** This will keep the meeting moving smoothly and efficiently, with a clear indication of each item's disposition. However, too much attention to procedure can slow down the meetings with complicated rules.
- **Eliminate personal remarks** intended to ridicule another person. Regardless of the actual relationships between trustees, the general atmosphere of any council meeting should be relaxed, friendly, efficient and dignified. Sarcasm, innuendoes and name calling should be avoided in interactions with the other trustees, staff and the public. This does not mean falsehoods, misinterpretations, distortions and challenges to your integrity or honesty should be left unanswered. They should be answered – and sometimes vigorously – but these rejoinders should address the facts rather than the qualities, or lack of them, of the person being addressed.

**Interact with citizen boards and commissions**
Establishing commissions, boards and other citizen committees is often helpful in resolving the complex issues facing village councils, and is an important means of encouraging citizen participation. The purpose of these groups is to sift and analyze data and then make recommendations. Both board members and trustees should **keep in mind that citizen boards are advisory in nature, and that the ultimate decision making authority rests with the council**. Of note are court decisions more narrowly defining the Open Meetings Act to include a committee in the definition of a public body.

The MML advises members to post notices of meetings of committees.

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

**Appoint citizen boards and commissions**

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

- Select people who will have the interest, time and energy to devote to the responsibilities assigned to that board.
- Look for citizens interested in the welfare of the entire community rather than those with a narrow interest or an axe to grind.
- Choose people, not on the basis of their particular point of view, but based on whether they have an open mind, are willing to listen and are not afraid to express themselves.
- Try to reflect the diversity of the community on each board.
- Don't select appointees simply to pay back someone who has done you, or the village, a favor.

**Work with the village manager**

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

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

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

It is the manager's responsibility to implement policies and programs and to supervise, hire and fire village 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 village manager acts as the liaison between employees and the village council. She or he must see that both are well informed about what the other is thinking and doing. Misunderstandings are far less likely to occur if both employees and trustees are well informed.

**Respect the relationship with village employees**

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

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

**Meet with citizen groups**

From time to time, trustees are asked to meet with organized groups of citizens such as a parent/teacher organization, a subdivision association, service clubs or the chamber of commerce. Sometimes you may be asked simply to listen. At other times you may be asked to speak or to discuss a problem. The time spent with these groups can provide valuable insight and build support in the community.

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 15 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. It could be dangerous. 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 in spite of 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 in the paper or on the TV screen the same day. An unguarded comment about a person or about someone's idea may be indelibly printed, much to your embarrassment. 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.
- **Don't ever make statements "off the record."** They will only come back to haunt you later.
- **Be positive in your attitude toward the press.** The media can help the village president, manager and council communicate the work of the village to the citizens of your community. A good working relationship can be established if the council is open in its dealings with the press. Under the Open Meetings Act the press is entitled to attend **all public meetings**. Provide members of the press with copies of reports, recommendations and other documents related to the business of the village and initiate contact with reporters rather than waiting until they come to you.

## About the authors…

**Gordon L. Thomas** *(deceased)* was mayor of East Lansing from 1961 to 1972. He was a past president of the Michigan Municipal League and was an honorary life member. He served on the governor's Advisory Committee on Local Government. Dr. Thomas was on the faculty of Michigan State University from 1945 and taught speech and communications from 1960 until his retirement. He was a co-author of *Conducting Public Meetings*, a manual to assist presiding officers.

**Shirley S. Smith** *(retired)* had a 30-year career with the Michigan Municipal League that included directing its research and serving as secretary-treasurer of the MML Foundation.

**Member Resource Services**
The Member Resource Services Department is comprised of many different services of the League, including educational services, publications, web and graphic design, the business partnership program, and information services. This department provides member officials with resources and educational opportunities on a vast array of municipal topics.

# Section 1: Local Government

# Chapter 2: Structure of local government

## In general

The Michigan Constitution of 1963 (as did its precursors) recognizes various units of government within the state. Article VII of the constitution, entitled Local Government, authorizes the establishment of counties, townships, cities and villages. Section 21 of Article VII directs the state legislature to provide general laws for the incorporation of cities and villages.

**Sources of village incorporation**

Before 1908, villages in Michigan were incorporated either under a local act of the legislature, which provided the structure, powers, immunities, rights and obligations of the village much like local act cities, or under the general act (the General Law Village Act, 1895 PA 3 (MCL 61.1 et seq.)) which provided the population and other qualification requirements, procedure for incorporation, governmental structure, officers and powers, immunities, rights and obligations of the village. Some local act villages incorporated the provisions of the General Law Village Act, sometimes with selected exceptions and additions. After 1908, villages were incorporated either under the General Law Village Act or as home rule villages under the 1908 and the 1963 Constitutions and the Home Rule Village Act, 1909 PA 278 (MCL 78.1 et seq.). Regardless how a village was incorporated, it is subject to the constitutional limitations and restrictions set forth in articles I, VII and IX of the Michigan Constitution of 1963 and general state law.

**Relationship between village and township**

The purpose of incorporating and organizing a village government is to furnish and fund local public services for residents of an area within a township which the township government normally cannot provide because of its limitations and which villages are empowered to provide. Village residents pay for these local services through village taxes and, in addition, are taxed to fund the activities of the township government.

Villages remain part of the township in which they are located. Village residents are electors of the village for village purposes and of the township for township, county, state and federal elections. Village residents are subject to both village and township taxes.

Each incorporated village is part of at least one township, and some are part of two or more. The Constitution mandates that when village boundaries are coterminous with township boundaries so there is no remaining unincorporated territory in the township, the legislature must provide for the dissolution of the township government and for the classification of the village or villages as cities. (Mich Const 1963, art VII §20)

**Current law**

Incorporated villages now in existence in Michigan are organized and governed either as general law villages under the General Law Village Act, 1895 PA 3, or as home rule villages under the Home Rule Village Act, 1909 PA 278. Effective January 2006, of the 259 villages in Michigan, 211 are general law villages and the remaining 48 are home rule villages. The provisions

relating to new village incorporation in the General Law Village Act were superseded by the Home Rule Village Act in 1909. New village incorporations after that date were carried out under the later act (although general law village governance is still controlled by the GLV Act). Incorporation of a village is now initiated pursuant to the Home Rule Village Act and the Boundary Commission Act.

**Intergovernmental agreements**
Villages have the authority to enter into intergovernmental agreements with other units of government. For example, many general law villages contract with their county sheriff for law enforcement services. Villages can also be parties to intergovernmental agreements for police and fire, sewer projects and emergency ambulance services.

## Home rule villages

**Incorporation**
Home rule villages are created by adoption of a charter under article VII, sections 21 and 22 of the Michigan Constitution of 1963 and the Home Rule Village Act. Incorporation is initiated by petition of electors. The proposed village must contain at least 150 inhabitants and have an average of not less than 100 inhabitants per square mile. The charter commission is composed of five electors. (MCL 78.3, .11). The proposed charter and its structure, and the powers, immunities, obligations and rights of the village and its officers and citizens are framed in the charter and are subject to general state law.

**Charter provision**
The Home Rule Village Act provides for the content of the new charter with mandatory charter provisions for election, by nonpartisan ballot, of a president, village clerk and a legislative body; the fixing of compensation; the levy and collection of taxes; annual appropriations for municipal purposes; public peace; health and safety; election districts; keeping a written or printed journal; publication of all ordinances and for a system of accounts. (MCL 78.23)

The charter may also contain certain permissive provisions including the borrowing of money, acquisition or building of improvements, etc. (MCL 78.24)

Certain charter provisions are prohibited such as increasing taxation without a vote of the majority of the electors or adopting or amending a charter without consent of the electors. (MCL 78.26)

## General law villages

**Incorporation**
Under the General Law Village Act of 1895, all villages then incorporated were reincorporated and made subject to its provisions. The local acts and all previous general laws governing village incorporation were repealed. Moreover, all new villages were to be incorporated pursuant to the new act. (MCL 74.7). Villages incorporated before the act was passed remain subject to it and the act constitutes their general law charter. (MCL 61.1b) General law villages are subject to legislative amendments to the General Law Village Act. Many changes were made to the act by virtue of 1998 PAs 254 and 255.

**Amendments to general law charter**
The General Law Village Act originally made no provision for the village electorate to amend the general law charter, and amendments were made by state law. The Home Rule Village Act, however, authorized the electorate of a general law village to adopt local amendments to the General Law Village Act by and within the Home Rule Village Act and thereby change its provisions insofar as the amendment would apply to that particular village. (MCL 78.28)

An amendment must be approved by the village council, submitted to the governor's office for review and approved by the village electors. A village council interested in amending its charter should work with its village attorney, so that the procedure required in the state statutes is followed.

Authority to adopt local amendments to the general law charter without reincorporating or adopting a new charter under the Home Rule Village Act applies only in matters of a purely local character.

**New incorporations**

The General Law Village Act provisions for new incorporations were superseded by the Home Rule Village Act. As a result, all new incorporations of villages must be accomplished under the Home Rule Village Act. Although the incorporation provisions of the General Law Village Act have been superseded, a village that incorporates as a home rule village may adopt the provisions of the General Law Village Act for its charter.

## Alternate forms of government

Becoming a home rule city or home rule village is another alternative. Villages can become cities if they meet the standards designated by the state legislature and if their citizens approve the change. Information on the process can be obtained from the Michigan Municipal League's Library.

## About the authors…

This article is reprinted, in part and with changes, from Stratton S. Brown and Cynthia B. Faulhaber, Chapter 1, Units of Local Government, *Local Government Law and Practice in Michigan*

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Ms. Faulhaber received her law degree in 1981 from Wayne State University Law School, *magna cum laude,* and has undergraduate and graduate degrees from Oberlin College, from which she graduated *Phi Beta Kappa*.

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Mr. Brown received his B.A. in 1945 from the University of Michigan and his law degree in 1949 from the University of Michigan Law School where he was a member of the *Order of the Coif.*

Section 2: Roles and responsibilities

# Chapter 3: Duties of village officials

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

The General Law Village Act, PA 3 of 1895, serves as the charter for 211 Michigan villages. This act not only defines the powers of general law villages, but also the roles and responsibilities of the elected officials and appointed officials of those villages.

## Roles of elected and appointed officials

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

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

## Village council

"The legislative authority of villages shall be vested in the council." (MCL 65.1). Does this mean that as a village trustee you may take any action you think will benefit your village? Probably not.

Villages operate as governments of law within a system of constitutional federalism and a complex network of federal and state laws and regulations. At the top are the guarantees and restraints found in the United States Constitution and federal legislation and regulations.

Next are the Michigan State Constitution, statutes and regulations. In addition to the General Law Village Act, other state statutes apply to village councils.

For example, the Open Meetings Act, provides that "All meetings of a public body shall be open to the public and shall be held in a place available to the general public." Public bodies may hold closed sessions only for the very specific reasons specified in Section 15.268 of that act. The complete text of this act can be downloaded from the Michigan legislature web site at www.legislature.mi.gov

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

## Ordinances, resolutions and motions

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

- **Ordinances** are formal actions by the council and constitute local legislation. 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 of its current ordinances and publish that compilation or code. (See Ch 8—Local Ordinances)
- **Resolutions** are less formal than ordinances, and are often used for short-term matters, such as adopting the annual budget. A resolution may be used

to state the council's position, such as in support or opposition to a piece of state or federal legislation. When the council wishes to commend a citizen or commemorate an occasion, it acts by resolution. Resolutions are a part of the permanent record of the village.

- **Motions** are used to introduce a subject or propose an action to the council. For example, a trustee might say "I move that the ordinance (or resolution) be adopted." Once a motion is made and seconded, it can be discussed and acted upon (See Ch 6—Succesful Meetings).

The League Library maintains a collection of sample ordinances for local officials to use. You may call the League offices in Ann Arbor, at 800-653-2483, to request them. Your village attorney should review all ordinances, including samples you receive from the League, to provide you with guidance on the language, the relevance of state statutory requirements, and the application of case and constitutional law.

Some actions by ordinances, such as a zoning ordinance, require that a public hearing be held prior to enactment. In other instances it may be advisable to hold a public hearing, even though it may not be mandatory. A two-thirds majority of the village council is required to pass certain ordinances, and you should consult the village attorney about these requirements.

In some villages, rules 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. Law does not require these readings, but they do provide an opportunity for public awareness and input. 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.

### Rules of procedure

Section 65.5 of PA 3 of 1895 as amended requires every general law village council to adopt "rules of its own proceedings." As a new trustee, you should become familiar with any rules of procedure already adopted by previous councils. These rules help in running an efficient and genial meeting and in dealing lawfully and effectively with the public and the media. The rules of procedure should indicate the sequence of the council agenda as well as the procedure for holding public meetings. Sample rules of procedure are included in Appendix 5 of this handbook.

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

Trustees should become very familiar with the requirements of the Michigan Open Meetings Act, PA 267 of 1967 as amended. For example, Section 3 of the act states that "a public body may establish reasonable rules and regulations in order to minimize the possibility of disruption" in the taping, broadcasting, or telecasting of the proceedings of a public body.

Many local governments in Michigan use the latest edition of *Robert's Rules of Order* as a basis for their council rules. Most people are familiar with it, and it offers a framework for your meetings. If possible, the village president should appoint a parliamentarian to assist the council in following Robert's Rules. The League offers educational programs on parliamentary procedure and the Open Meetings Act.

### Citizen participation in council meetings

The president, the council and citizens should keep in mind one important difference between villages and townships. Townships may hold an annual town meeting where citizens may participate and

vote. This is not an option for villages. Only the president and the trustees may introduce an agenda item and vote on matters brought for action.

The village council agenda should include an opportunity for members of the public to address the council. Under Section 3 (5) of the Open Meetings Act, "a person shall be permitted to address a meeting of a public body under rules established and recorded by the public body." Sample rules of procedure are printed in Appendix 5: Rules of Procedure for General Law Village Councils.

## Public hearings

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

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

**Suggestions for public hearings:**

- **Encourage citizens to participate in the discussion** of the issue. Although limits may have to be placed on how long any individual may talk, everyone who wishes to be heard should be allowed "their day in court." Public hearings can be tiring and it is tempting to close discussion before everyone has spoken. Resist this temptation. It is better to err in the direction of permitting "overtalk" rather than "undertalk."
- **Avoid debating with citizens at a public hearing**. The purpose of the hearing is to **receive** their information and/or opinion. You will have your opportunity later to state your position and rebut any information or argument you may feel needs it. Give the appearance – and feel it too – of encouraging individuals to express themselves. You can help by looking directly at the person talking and by using nonverbal cues such as nodding affirmation and physically leaning in the direction of the speaker. At the same time, avoid such negative nonverbal cues as scowling, reading, talking to another trustee or using facial expressions that suggest ridicule or contempt.
- **Avoid being trapped by the idea that the number of citizens who speak** on one side of an issue or the other should determine the nature of the decision. Although the number speaking on one side or the other may be one factor influencing a solution, this should not be the only factor. There is no easy way to determine the extent to which speakers represent their claimed constituents; the other side may be far more numerous but far less vocal. Decisions should result from careful balancing of the facts and arguments both from the point of view of those directly concerned and of the community at large, with all citizen input given equal consideration if not equal weight.

## Operating in the "sunshine"

A basic premise of democracy is that the public's business is conducted in public. This requirement is particularly necessary in a representative democracy.

Two pieces of legislation enacted in 1976 have spelled out the people's right to know and set limits and parameters on a council's actions. These are the Open Meetings Act (OMA), PA 267 of 1976, MCL 15.261 et seq., and the Freedom of Information Act (FOIA), PA 442 of 1976,

MCL 15.231 et seq. The policy of the State of Michigan is that the public is entitled to full and complete information regarding the affairs of government and the actions of those who represent them.

In a nutshell, the OMA requires that – with only a few, very specific exceptions – all "deliberations" and "decisions" of a "public body" shall be made in public. By the same token, FOIA states that all persons, except those in prison, upon "written request" have a "reasonable opportunity" to inspect, copy or receive copies of the requested "public record" of the "public body."

A general rule of thumb is to conduct the public's business in public. Deliberate so the constituents know why decisions are made. The deliberations and documents may be kept confidential only when there is an actual detriment to the municipality, not when the matter would simply be embarrassing.

General guidelines and reference materials are available from many sources, including the League Library. 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 best course of action is to seek guidance from your village attorney. The specific details of the situation and recent legislation and court decisions will make each situation unique.

## Powers of elected and appointed officials

### Powers of the council

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

- reduce the number of trustees to four. The proposed ordinance requires a public hearing, followed by a ten-day waiting period before adoption by a two-thirds majority. It cannot take effect for 45 days following adoption, during which time a petition signed by 10 percent of the registered voters can force a referendum on the issue. There are additional requirements regarding the timing of the ordinance and the effect on the term of sitting trustees. (MCL 62.1) A sample ordinance to reduce the size of council is available in Appendix 8 of this handbook.
- make the position of clerk and/or treasurer appointed. (MCL 62.1) Sample ordinances to appoint the clerk and treasurer are available in Appendices 6 and 7 of this handbook.
- provide for the appointment of additional officers not provided for in the charter and prescribe their duties. (MCL 62.2, 62.3)
- appoint individuals nominated by the president. (MCL 62.2)
- act on resignations, determine vacancies and make appointments to fill vacant offices. (MCL 62.10 through 62.13)
- provide for compensation of village officers (by ordinance for the president and council). (MCL 64.21)
- exercise all legislative authority. (MCL 65.1)
- select one member of the council to serve as president pro tempore. (MCL 65.3)
- hold regular meetings, at least one each month. The president or three members of the council can call special meetings as needed. (MCL 65.4)
- create or abolish offices. (MCL 65.5)
- vacate, purchase, lease and sell property. (MCL 65.5)
- order public improvements. (MCL 65.5)
- appropriate money, i.e. adopt a budget (MCL 65.5) (See Appendix 9), and levy taxes sufficient to support the budget (MCL 69.1) but not to exceed:

  - general operating, maximum 12.5 mills before any Headlee rollback (MCL 69.1) and subject to Truth in Assessing.
  - highways, maximum 5 mills before any Headlee rollback. (MCL 69.2)
  - cemeteries, maximum 2.5 mills for grounds purchase and 1 mill for operation before any Headlee rollback. (MCL 69.4)
  - garbage collection, maximum 3 mills before any Headlee rollback. (Garbage Disposal Act, 1917 PA 298, MCL 123.261)
- audit and allow accounts, i.e. authorize payment of bills. (MCL 65.7)
- by two-thirds vote, increase taxes and special assessments. (MCL 65.5)
- employ a village manager and enter into an employment contract with the manager. (MCL 65.8)
- adopt ordinances providing for the safety, health, welfare and good government consistent with Michigan and/or Federal laws. (MCL 67.1)

  The style of the ordinances and the requirements for publication are set out in Chapter VI of the GLV Act. The council may also set penalties for violation of these ordinances. (MCL 66.2)

  The MML Library can provide samples as starting points for drafting language for your ordinances. However, it is imperative that your village attorney at least reviews, and preferably prepares, the final draft for the council to consider. If your ordinance is challenged in a court of law, it is the village attorney who will normally defend the village action.
- grant licenses and set the terms and conditions under which a license will be granted and/or revoked. Determine the amount to be charged for the license. (MCL 67.2)
- establish public parks and grounds and provide rules for their use and vacating. (MCL 67.4-67.6)
- supervise and control all public streets, bridges, sidewalks, alleys, etc. (MCL, 67.7-67.23), including:
  - assessment of costs to benefiting property owners. (MCL 68.32-68.35; 69.5)
  - regulation of signs and awnings. (MCL 67.11)
  - condemnation of private property. (MCL 67.12, 73.1 et seq.)
  - vacating of streets and alleys. (MCL 67.13)
  - determination of grades, paving, curbs and gutters, etc. (MCL 67.15-67.16)
- provide for and/or regulate the planting and trimming of trees. (MCL 57.21)
- provide for and/or regulate street lighting. (MCL 67.2)
- provide for village lighting. (MCL 72.1-72.9)
- establish, construct and maintain sewers and drains. (MCL 67.24-67.34)
- establish and maintain public wharves, piers and levees and regulate navigable waters, including licensing of ferries. (MCL 67.35-67.40)
- purchase, improve and care for cemeteries. (MCL 67.55 through 67.64)
- establish and maintain a fire department. (MCL 70.10)
- establish a police force and adopt rules governing the powers and duties of the police officers. (MCL 70.13-70.16)
- establish a Department of Public Safety. (MCL 70.18)
- designate a street administrator and/or establish a department of public works. (MCL 71.12-71.14)
- incur debt. (MCL 69.21-69.25)
- condemn private property for public use. (MCL 73.1-73.5)
- alter village boundaries. (MCL 74.6)

**Powers of the village president**

The GLV Act also establishes the duties and responsibilities of the village president. The president not only presides at each meeting of the council, but also votes on each

question. However, the president of a village does not have veto power. Some administrative duties of the president may be transferred to a village manager. (These duties are noted in **bold face.**)

The village president:

- serves as chief executive officer, **with supervisory authority over affairs and property of the village.** (MCL 64.1)
- serves as a voting member of the council on all issues. (MCL 64.1)
- presides at council meetings. (MCL 64.1, 65.2)
- **gives the council information concerning the affairs of the village and recommends appropriate actions.** (MCL 64.1)
- **sees that laws relating to the village and ordinances and regulations of the council are enforced.** (MCL 64.1)
- is a conservator of the peace and may exercise power to suppress disorder. May command citizen assistance to help enforce ordinances in emergency and disaster situations. (MCL 64.2)
- **may remove any appointed officer or suspend any police officer for neglect of duty.** (MCL 64.3)
- **may examine all books, records or papers of the village.** (MCL 64.3)
- **performs all duties prescribed by village ordinances.** (MCL 64.3)
- calls special meetings of the council. (MCL 65.4)
- approves synopsis (or entire proceedings) of actions taken at council meetings prior to publication. (MCL 65.5)
- authenticates, by signing, all ordinances. (MCL 66.3)
- nominates the clerk and/or treasurer for council appointment if village has appointed a clerk and/or treasurer. (MCL 62.1)
- signs certification of assessment roll and amount required to be raised by general tax and special assessment. (MCL 69.13)
- warrants the treasurer to collect taxes. (MCL 69.15)
- countersigns disbursement warrants. (MCL 69.24)
- nominates a harbormaster (if needed) for appointment by council. (MCL 67.39)
- **directs the fire chief.** (MCL 70.4)
- **appoints police officers and personnel with the consent of the council.** (MCL 70.13)
- **nominates a chief of police for council appointment.** (MCL 70.15)
- **nominates a director of public safety for council appointment.** (MCL 70.18)
- **nominates a director of public works for council appointment.** (MCL 71.14)
- **nominates non-elected officers for council appointment in accordance with the ordinance/resolution creating the position.** (MCL 62.2)
- **fills vacancies of non-elected officials, with the consent of council.** (MCL 62.13)
- concurs with the fire chief to order the destruction of a building, if necessary, to arrest the progress of a fire. (MCL 70. 11)
- signs boundary adjustment petition for presentation to the county commission. (MCL 74.6)
- **prepares budget for presentation to council.** (Michigan Uniform Budgeting and Accounting Act, MCL 141.421 et seq.)

**Powers of the president pro tempore**

Each year, the village council appoints one of its members as president pro tempore. If the village election is held at the general election, then the appointment should be made on November 20th or as soon as possible thereafter. If the village election is held at the September election, then the appointment should be made on October 1, or as soon after that date as possible. When the president is absent, the president pro tem

presides at council meetings and exercises all powers and duties of the president. (MCL 65.3)

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

**Duties of a village manager**

Of Michigan's 211 general law villages, 56 have a village manager. In determining whether or not to establish the position of a village manager, each village must decide what will best meet the needs of the community.

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

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

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

Villages with manager positions predating 1985 PA 173 may wish to review their experience and enact an ordinance in accordance with the latest revisions to the Act. (MCL 65.8)

### Municipal Manager Pool

If you are a small village, provide a minimum number of services, and have limited resources, you may want to consider the Municipal Manager Pool. This pool provides some creative solutions for communities in need of professional municipal management on a part-time or short-term basis. For example, to manage a large capital improvement project, assist with budget development or negotiate an employment contract. Not to mention communities seeking professional management on an on-going, part-time basis. More information is available at www.mml.org/resources/information/interim/index.html, or by calling 800-653-2483.

**The work of the village attorney**

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

- drafting ordinances,
- preparing legal opinions,
- reviewing policies and procedures for compliance with local, state and federal law,
- defending the village in a court of law,
- advising the council on legal issues and
- prosecuting violators of village ordinances.

Often a general law village cannot afford to have the attorney present at all

meetings. However, copies of agendas and minutes should be submitted for review to assure that the village is in conformity with the law and to keep the council from unintentionally placing the village in a questionable legal position.

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

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

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

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

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

**Duties of a village clerk**

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

Traditionally, the village clerk has been an elected official. The 1998 revision of the GLV Act allows the council, by ordinance subject to referendum, to appoint the clerk (MCL 62.1). A sample ordinance to appoint a village clerk is available in Appendix 6. Many of the clerk's duties may be transferred to the manager by ordinance. In many villages without a manager, the clerk performs the day-to-day administrative duties.

- Keep the corporate seal and all records and documents not entrusted to another officer by the charter. (MCL 64.5)
- Serve as clerk of the council, record all proceedings, resolutions and ordinances. (MCL 64.5)
- Countersign and register all licenses. (MCL 64.5)
- Make reproductions in accordance with the Media Records Act 1992 PA 116, MCL 24.401-24.403. (MCL 64.5)
- Administer oaths and affirmations. (MCL 64.5)
- Serve as general accountant. (MCL 64.6, 64.7)
- Collect claims against the village, present them to council for allowance and, if allowed, submit check disbursement authorization to treasurer. (MCL 64.6)
- Report tax or money levied, raised or appropriated to treasurer as well as the fund to be credited. (MCL 64.6)
- Make complete finanancial report to council as requested. (MCL 64.8)
- Manage village elections as outlined in the Michigan Election Law, if the village chose to hold its own elections. (MCL 168.1 et seq.)

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

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

**Duties of a village treasurer**

Prior to the 1998 revision of the GLV Act, a number of villages amended the general law village charter to provide for the appointment of the treasurer by the council. This allows the council to require specific job skills and experience for the position, makes the treasurer accountable to the council and provides greater job security and continuity. With the 1998 amendments, the village now has the option of council appointment of the treasurer by ordinance, subject to referendum. A sample ordinance to appoint a village treasurer is available in Appendix 7. Duties of the treasurer may be transferred to the village manager by ordinance. The treasurer:

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

### Changing your charter

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

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

### Words of wisdom

The following suggestions have been provided by experienced village officials:

- Realize you cannot solve every problem quickly. Looking at problems from the inside lends a different perspective when you are forced to look at all aspects. *Village Manager*
- You have information citizens do not and you are charged with educating as well as listening to citizens. *Village Manager*
- Get involved. Know what is going on. Communicate with other trustees. Review your meeting material prior to the night of the meeting. *Trustee*
- When first elected, listen and observe. Don't challenge existing staff or practices in public until you have done your homework and know what you are talking about. It boils down to good

manners. Often, "jumping the gun" on an issue causes it to be magnified in the media. *Clerk*

- Show respect to other village officials, including those appointed rather than elected. Our clerk and treasurer are now appointed by the council. They are still officials. Don't treat them like they are your private secretaries. *Clerk*
- Be professional. Don't turn village issues into personal issues. Communication and cooperation are the key. *Trustee*

### About the Author…

**Member Resource Services**
The Member Resource Services Department is comprised of many different services of the League, including educational services, publications, web and graphic design, the business partnership program, and information services. This department provides member officials with resources and educational opportunities on a vast array of municipal topics.

Section 2: Roles and responsibilities

# Chapter 4: Influencing state and federal legislation

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

Since the late 1960s, the MML has maintained a full-time advocacy and lobbying presence at the State Capitol in Lansing through the League's State and Federal Affairs Division (SFAD). The SFAD staff monitors, analyzes and articulates the municipal viewpoint on many of the more than 3,000 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 people 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 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 three standing committees:

- Legislative and Urban Affairs,
- Finance and Taxation, and
- Transportation, Infrastructure and Environmental Affairs

These committees, each consisting of 55-60 mayors, councilmembers, managers and senior staff from cities and villages throughout the state, meet at least three times per year 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 policy statements, which guide League staff in discussions and negotiations on legislative issues.

Recommendations on legislation and League policies are then forwarded to the League's 18-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.

Additionally, at the start of each two-year legislative session, the League's standing committees recommend a list of specific MML legislative priorities which are discussed and given final approval by the Board of Trustees.

## 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 people 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, the League has established a legion of legislative directors, elected officials and municipal staff people who volunteer to coordinate an individual community's response to a League call-to-action in the *Legislative Bulletin* or *Environmental Impact*.

In some instances – upon receiving a call-to-action communication from the League – a local official or legislative director 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, faxes, 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 pre-arranged, 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 Division staff in Lansing closely monitors the development and introduction of many of the more than 3,000 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 in both legislative chambers who are working on issues of interest to cities and villages.

League staff also nurtures professional relationships with key staff people 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 a 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. And 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, ascertaining 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 Division 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 work groups, task forces, sub-committees 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 Local Government Management Association (MLGMA), 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 Division produces a number of publications to keep member cities and villages up-to-date on current legislative and regulatory developments in Lansing.

- ***Legislative Link*** – Produced by the League staff in Lansing, the *Legislative Link* is a brief one-page weekly update on the "happenings" in Lansing and Washington. This communication is sent via email and/or fax.
- ***FAX Alerts/Advisories*** – Produced by MML staff and distributed via the League's FAX Network, MML FAX 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.

  League staff also periodically distributes, via the League's FAX Network MML FAX Advisories, information updates and communications of a less urgent nature that are of interest to municipal officials. The League is relying more and more on its fax network as a means of communication because of its timeliness.
- ***Targeted FAX alert and advisories*** – Occasionally, League staff prepares and distributes via FAX, 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.
- ***Michigan Municipal Review Articles*** – Each issue of the MML's magazine features detailed columns from State & Federal Affairs on issues of interest to members, as well as highlighting key legislators and their work in the legislature on behalf of local government

## About the Authors…

Michigan Municipal League State & Federal Affairs Division (SFAD)

# Section 2: Roles and Responsibilities

# Chapter 5: Elections

In 2004, significant amendments were made to Michigan Election law (1954 PA 116, MCL 168.1 et seq.) and the General Law Village Act (1895 PA 3, MCL 61.1 et seq.) affecting village elections.

The MML has prepared the following material to aid in this transition:

Michigan Municipal Review articles "Election Consolidation Act: What You Need to Know," (March/April 2004) and "Election Consolidation Act-Revisited" (Sep/Oct 2004), and a *One-Pager Plus*, *Election Consolidation*.

A clean-up bill, HB 5813, which clarifies village nominating petitions are due the 12th Tuesday prior to the November general election (i.e. August 15, 2006) unless the village passed a resolution to hold its election on the September primary election date, is now law. The Governor signed the bill on Friday, April 14th, 2006. It is now Public Act 122 of 2006.

For election administration information, contact the State of Michigan, Department of State, Bureau of Elections at 517-373-2540, or visit their web site. This link will take you to a web page on "election resources."
www.michigan.gov/sos/0,1607,7-127-1633_11976---,00.html

# Section 2: Roles and Responsibilities

# Chapter 6: Successful meetings

## Rules of procedure

Adopting rules of procedure to govern its meetings may very well be one of the most important actions a council takes. And, in a general law village, it is mandated (MCL 65.5). These rules assist in ensuring that meetings are efficient and genial and provide guidelines for dealing lawfully and effectively with the public and the media.

Typically, council rules contain provisions for:

- notification of meetings
- attendance at meetings
- meeting information packets
- agenda preparation
- voting
- public hearings
- parliamentary procedure
- conduct of meetings (decorum of council members; disorderly conduct)
- public participation
- minute preparation
- committees (establishing; appointments; duties and responsibilities)
- resolutions, and
- ordinances (introduction; public hearing; publication; amendments).

The rules should indicate the sequence of the council agenda as well as the procedure for holding public meetings. They might also include whether or not the president is entitled to speak in debate, any restrictions on abstentions, how items are added to the agenda, how the agenda is distributed, limitation on speeches, basically, anything having to do with how you procedurally conduct your meetings.

Rules of procedure should be adopted by a majority vote and reexamined regularly. As a new trustee, you should become familiar with any rules of procedure adopted by previous councils.

## 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**

1. Call to Order (Pledge of Allegiance, if there is to be one)
2. Roll Call
3. Approval of (regular/special) minutes of the last meeting

4. Approval of Agenda
5. Public Comments – Reserved Time (for items listed on this agenda)
6. Petitions and Communications
7. Consent Agenda
8. Introduction and Adoption of Ordinances and Resolutions; Public Hearings
9. Reports of Officers, Boards and Committees; Routine Monthly Reports from Departments
10. Unfinished Business (unfinished or pending matters)
11. New Business
12. Miscellaneous
13. Public Comments – General
14. Closed Session (for situations that meet the circumstances specified in the Michigan Open Meetings Act.)
15. Adjournment

## Open Meetings Act

The basic intent of the Michigan Open Meetings Act (OMA) is to strengthen the right of all Michigan citizens to know what goes on in government.

Briefly, the OMA requires that nearly all deliberations and decisions of a public body be made in public. Remember, the general rule of thumb is to conduct the public's business in public. Deliberate so the constituents know why decisions are made. Deliberations and documents may be kept confidential only when disclosure would be detrimental to the municipality, not when the matter would simply be 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 vote must be taken; depending on the circumstances, either two-thirds of its members must vote affirmatively in a roll call or it must be a majority vote. Please See Appendix 2: Overview of the 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;
- 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 when 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; and
- to consider material exempt from discussion or disclosure by state or federal statute.

## Recording minutes

Minutes are recorded to provide an accurate written history of the proceedings of a board, commission or committee meeting. Specifically, the record must include those official actions taken by the group of persons legally charged with conducting the business of the organization. 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 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. 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 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. You should feel comfortable with how to make a motion, what is expected of you in debate, and how a vote is taken. In other words, know 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 serve as a protection of the rights of all – the majority, the minority, individual members, absent members and all of these together. For a governmental body, that also includes the public, your constituency. The purpose is to expedite business, maintain order, insure justice, and make sure that the will of the organization is accomplished properly and fairly. In other words, 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 city or village 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. And it shouldn't last too long either.

It all sounds so simple. A motion is made, we talk about it, and then we vote on it. How much easier can it get? Well, we have a tendency to make it much more difficult than it has to be.

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 (i.e. the GLV Act stipulates the president is a voting member of council), 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 Michigan's Open Meetings Act, your own governing documents, especially your charter, and any council rules that have been adopted regarding the conduct of business. Your agenda, how business is introduced, how debate is conducted, how the vote is taken – all of these things have their basis in parliamentary 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 had a chance to speak the first time.
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 noes 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 mean.

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, remember 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 insuring 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.

As you perform your duties as an elected official in the public meetings in your community, keep in mind the wisdom of General Henry Robert, who wrote the following:

> *"In enforcing the rules there is a need for the exercise of tact and good sense. In small assemblies, and especially when the members are unfamiliar with parliamentary procedure, a strict enforcement of the rules is unwise. It is usually a mistake to insist upon technical points, so long as no one is being defrauded of his rights and the will of the majority is being carried out. The rules and customs are designed to help and not to hinder business."*

## Would you like to learn more?

Contact the Michigan Municipal League's Member Resource Services staff at 1-800-653-2483 for training opportunities in basic parliamentary procedure for elected officials. In addition, the League's Inquiry Service can provide you with information on running public meetings effectively, and provide samples of rules of procedure adopted by other communities.

## About the authors . . .

**Connie M. Deford** retired as city clerk of Bay City in 2000. She has been a Professional Registered Parliamentarian since 1988 and has worked extensively as an instructor on Parliamentary Procedure for both Michigan State University and Kent State University and is well known among municipalities for her parliamentary expertise. She was elected Michigan City Clerk of the Year in 1990, received a Special Award of Merit from the Michigan Municipal League in 1997, and the prestigious Quill Award from the International Institute of Municipal Clerks in 1999. Connie currently serves as Vice-president of the National Association of Parliamentarians.

**Member Resource Services**

The Member Resource Services Department is comprised of many different services of the League, including educational services, publications, web and graphic design, the business partnership program, and information services. This department provides member officials with resources and educational opportunities on a vast array of municipal topics.

# 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. For example, cities and villages get their authority from Article 7, §22.

   *"Each such city and village shall have the power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law."*

   The Michigan constitution requires that constitutional provisions and state laws concerning local government powers must be liberally construed. Article 7, §34 provides:

   *"The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution."*

2. **State statutes** also provide local governments with authority to adopt ordinances. These statutes 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. The basic authorization sections are as follows:
   - 1909 PA 279, The Home Rule City Act
   - 1909 PA 278, The Home Rule Village Act
   - 1895 PA 3, The General Law Village Act

## Requirements of a local ordinance

### 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. See, for example, MCL 752.370, which expressly preempts local regulation of the possession or dissemination of obscene materials ("A municipality, township, village, city, or an instrumentality thereof shall not enact or enforce any law, ordinance, or rule [other than a zoning ordinance] which regulates, or intends to regulate, any matter covered by this act."). 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 125.584 of the City and Village Zoning Act provides that prior to the adoption of a zoning ordinance, not less than 15 days' notice of the time and the place of the public hearing must be published in a newspaper of general circulation.

**Voting requirements**
Unless otherwise provided by statute, an ordinance must be adopted by a majority vote of the elected members of the governing body. 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.

**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 (general law villages, MCL 66.4).

The ordinance must be published within the time period specified by statute. The time period varies depending upon the type of local government involved—for general law villages the time period is 15 days ( MCL 66.4).

**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 should be consulted to determine the reading requirements in a particular jurisdiction.

GLV Act ordinance provisions:
**Ordinance style**
The style of an ordinance shall be: "The Village of _____ ordains."
(MCL 66.1)

**Effective Date**
An ordinance shall state its effective date, which may be upon publication (MCL 66.4)

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

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

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

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

The GLV Act does not have requirements for reading ordinances, however, village councils may pass reading requirements if they choose. Typically this is done by placing a provision in the council rules of procedure.

**GLV Act adoption of technical codes by reference**

A village may adopt a plumbing code, electrical code, mechanical code, fire protection code, building code, or other code promulgated by this state, by a department, board, or other agency of this state, or by an organization or association which is organized or conducted for the purpose of developing a code by reference to the code in an adopting ordinance and without publishing the code in full. (MCL 66.4)

The code shall be clearly identified in the ordinance and a statement of the purpose of the code shall be published with the adopting ordinance. (MCL 66.4)

Printed copies of the code shall be kept in the office of the clerk available for inspection by or distribution to the public during normal business hours. (MCL 66.4)

The village may charge a fee that does not exceed the actual cost for copies of the code distributed to the public. (MCL 66.4)

**Publication**

The publication in the newspaper shall contain a notice to the effect that a complete copy of the code is available for public use and inspection at the office of the clerk. (MCL 66.4)

**Adoption of technical codes by reference**

Various statutes authorize the adoption of specified 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.

Drafting forms and structure guidelines are discussed in Chapter 16 *Local Government Law and Practice in Michigan,* MML/MAMA. Order forms for this two-volume book are available from the MML. Rules of form and legal requirements that are applicable to provisions commonly included in ordinances are provided as well as some suggestions for drafting plain and accurate 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. Often, local legislation is proposed on the vague idea that there "ought to be a law" and with no clear understanding or articulation of what the ordinance should prohibit or require. If the person drafting an ordinance does not know the precise objectives of a proposed new ordinance or the purpose for a proposed change in an existing ordinance, he or she will be defeated from the outset.

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. Although the drafting of plain, accurate and effective ordinances may be as much of an art as it is a science, it is an endeavor that one can get better at with practice.

### About the author . . .

**George B. Davis** is a partner at Davis & Davis PLC in Grand Rapids, Michigan. He specializes in municipal, environmental and land use matters. Mr. Davis' expertise includes the review and custom drafting of local ordinances, and assisting with the administration and enforcement of those regulations.

Mr. Davis received his J.D. from McGeorge School of Law, University of the Pacific; an LL.M in land use and environmental law *summa cum laude* from The National Law Center, George Washington University; a masters degree in Urban Planning from the University of Michigan; and he has studied in the Ph.D. program in Urban Technological and Environmental Planning at the University of Michigan. He is a member of the state bars of Michigan and California.

# Section 2: Roles and Responsibilities

# Chapter 8: Ethics

**So there you were, just trying to do the best job you could as a city council member while juggling all the competing demands. Answering calls from residents. Asking questions of your city manager, finance director and DPW director to keep up with what's going on. And all of a sudden, an angry resident jumps up at a council meeting, charges you with having "a conflict of interest" on a zoning matter, and says you are violating the state ethics law. Your friendly local newspaper reporter corners you after the meeting and asks, "Well, what about it? Are you in violation of the law?"**

Who said serving on the village council would be easy?

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

This chapter summarizes the two statutes comprising the principal ethics regulation of Michigan local government officials: The State Ethics Act, 1973 PA 196 (Act 196); and 1968 PA 317, as most recently amended in 1997, dealing with public contracts (Act 317). Every local public official in Michigan is subject to them and should be familiar with them.

## What's a conflict of interest? And why do we care?

To understand the Michigan laws on the subject, let's begin with what they are trying to address: Just 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 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 statutes 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.

**Act 196, the State Ethics Act**

Act 196 prescribes general standards of conduct for public officers and employees. Although originally drafted to exclude local officials, in 1980 local officials were brought within its scope. (Opinion of the Attorney General (OAG) No. 6005 (1981), pp. 440-41).

The ethical constraints imposed by Act 196 are mandatory provisions to which local government officials are obliged to adhere. (OAG No. 6005, p. 443).

Act 196 establishes seven areas of prohibited conduct. A local government official shall not:

1. divulge confidential information to an unauthorized person in advance of the time set for its public release.
2. represent his or her opinion as that of the local government.
3. use governmental personnel, property or funds for personal gain or benefit or in a manner not in accord with proper procedures.
4. solicit or accept gifts, loans, goods, services or other things of value 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 his or her official position or benefit financially from confidential information. (Instruction done outside of regularly scheduled working hours generally is exempt. Act 196, Sec. 2(5).)
6. engage in or accept employment or render services for a public or private interest which is incompatible or 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 or certificates or other regulation or 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 and commissioners – who are usually employed full-time at other jobs. The legislature in 1984 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 can not 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.

**Act 317, concerning public contracts**

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, which were last modified by the legislature in 1997 (1997 PA 145). 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 or state college or university employees. This is a more useful exception for council members and commissioners than that found in Act 196 since the quorum issue is not a precondition.

Even if the exception is available, however (meaning that the official can be a party to a contract or can solicit a contract with the governmental unit), Act 317 imposes rather strict disclosure and approval requirements. These are:

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. Approval requires a 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.

**Ethics questions: What would you do in these situations?**

**Situation #1**
You work for a large manufacturing company with facilities across the country. The company also happens to be your city's largest taxpayer and employer. The company applies for a tax abatement for the plant in your city. 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 city council you served on your city's zoning board of appeals (ZBA), so you know the ZBA procedures very well. A few months after your election to council, your neighbor and campaign manager 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. Should 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 city commission. The chamber of commerce later proposes that the chamber and the city enter into a contract in which the city pays the chamber for economic development services. Should you vote on the contract?

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.

**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. Prior to 1997, Act 317 contained a provision which said that the act superseded all local charter provisions pertaining to conflicts of interest, and that Act 317 constituted the "sole law in this state" with respect to conflicts of interest in public contracts. This created an argument that all local ethics regulation was preempted by the act. In 1997, however, the legislature amended Act 317 to reduce the scope of the potential preemption and expressly approve of local ethics regulation in subjects other than public contracts (1997 PA 145). The legislative analysis accompanying the bill makes it clear the state preemption is narrow, and therefore, that 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.

### 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:**

**No.** The Michigan Court of Appeals has labeled this situation as "patently improper" and an abuse of public trust for the reason that the person making the argument to the ZBA is also one of the people charged with appointing the ZBA. This creates duress on the ZBA, raising doubt about the impartiality of the ZBA's decision. 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 city 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.

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. While Act 566 is not strictly an ethics statute, it too 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 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 negotiations (*Macomb County Prosecuting Attorney v. Murphy*, 496 Mich 149 (2001)). 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.

**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**.**

### About the author . . .

**Michael McGee** served as a Livonia city councilmember for six years (1992-98) and authored that city's ethics ordinance. He was a member of the League's ad hoc committee on ethics provisions in city charters and is a faculty presenter to the MML Elected Officials Academy. Mr. McGee is a principal in the Detroit office of Miller, Canfield, Paddock and Stone, P.L.C., where he practices public finance.

# Section 2: Roles & Responsibilities

# Chapter 9: Planning and Zoning

## A balancing of interests

Perhaps one of the most difficult aspects of planning and zoning is the need to balance the various, often competing, interests of property owners and residents. These competing interests are represented through the concept of property rights. Local decision makers are required to balance the interests of private property rights against the need to protect the public interest. In other words, how much regulation is enough to protect the public and at what point does that regulation begin to infringe on property rights?

In the midst of these sometimes competing interests and views are the local authorities for zoning; the zoning administrator, the planning commission, the zoning board of appeals, and the city or village council. Dealing with each of these conflicting perspectives is simply not possible, and the intent of zoning is to avoid conflicts that arise. Instead, zoning follows some basic principles and procedures designed to treat each person, property, and point of view in a fairly and consistently.

## The planning team

The laws that originally set up the land use planning and zoning system for Michigan anticipated the need for the three bodies most involved to work closely together to coordinate their efforts.

**The planning commission,** an appointed body**,** was originally given the responsibility of writing and adopting the master plan. This was done to ensure some degree of independence from the political arena, which had plagued the planning process in earlier years. In 2002, this requirement was changed to include more involvement by the legislative body in the planning and adoption process. The planning commission was also given the duty of writing the first draft of the zoning ordinance. This was done to ensure a direct connection between the master plan and zoning ordinance.

**The city or village council** may choose to be the adopting authority of the master plan, but is required to adopt the zoning ordinance because it is the law.

**The zoning board of appeals (ZBA)** was granted the authority to waive certain zoning ordinance requirements where conditions of the ordinance deprived property owners of the right to develop their property.

There are, however, situations where this delicate balance fails. For example:

- The planning commission adopts a master plan with which the legislative body has fundamental differences. The legislative body may refuse to allow the plan to be adopted by the planning commission, or the legislative body may itself refuse to adopt the plan. Accordingly, any attempt to implement the plan through the zoning ordinance may then fail when the legislative body refused to adopt either the plan or the ordinance.
- The ZBA grants variances without sufficient justification, which detracts from the ordinance's effectiveness. In extreme cases, such actions might allow the ZBA to, in effect, take over the zoning policy-making function that is normally reserved for the planning commission and legislative body.

The linchpin of this system, then, is the master plan, from which all other

regulations related to land use are intended to spring.

## The master plan

Policies regarding land use are expressed through the master plan. A master plan will include a description of the community, outline goals and objectives and map areas of different land uses, ranging from residential to industrial. The master plan must constantly be reviewed to make sure that the new growth conforms to what was planned. But as events unfold, these plans may change to take unanticipated events into account. The 2002 amendment to the Municipal Planning Act requires a community to review its plan at least every five years.

As noted earlier, changes to the Municipal Planning Act now require the legislative body to "approve the plan for distribution," or if it elects to do so, become the adopting authority for the plan. After preparing a proposed plan, the planning commission must submit the proposed plan to the legislative body for review and comment. Before the adoption process can proceed, the legislative body must approve the distribution of the proposed plan. If it does not, it must return the plan to the commission with its objections. The Commission must then revise the plan until it is accepted by the legislative body.

The long-term effect of this change to the adoption process will have to be determined. But even if the planning commission is delegated the responsibility of completing and adopting the master plan, the legislative body should be involved in all of the critical steps of the process in order for the plan to be effectively implemented.

Developing a master plan is a reasonably logical process. It consists of:

- identifying community issues
- collecting information regarding those issues
- determining the direction in which the community wants to develop
- deciding how to proceed in that direction
- adopting the plan
- fashioning a method of implementation and
- reviewing the plan periodically.

Of these, perhaps the most important is determining the direction of the community through the development of a community vision and setting goals that will achieve that vision. To begin this process, the planning commission and legislative body should discuss philosophical, broad-ranging questions related to growth and community character. These might include such questions as, "Do we want to grow?" or "What does 'small town character' mean to us?"

Once the master plan is in place the normal reaction is a let-down; the planning commission's hard work has paid off and the plan is completed and ready to be filed. But, in reality, the work has just begun. All too often, the plan sits on a shelf and collects dust.

A plan which is not actively followed and implemented may lead to problems for the community in the future. Failure to follow the plan may discredit any attempt to use the plan as a defense for actions which may be challenged by property owners or developers.

## The zoning ordinance

Local control of the use of land (with some exceptions, such as state and federal land uses) is an accepted legal principle. Land use is controlled through the separation of land into various use areas, called zoning districts. The rules governing these districts are contained in a zoning ordinance which includes provisions controlling the type and intensity of development allowed.

Communities often have to wrestle with complex zoning and growth policy issues brought on by new development. The need to provide flexibility, coupled with the desire to maintain some degree of control, has created the need to find innovative zoning and land use policy solutions.

## The zoning board of appeals

A community that has established a zoning ordinance must have a zoning board of appeals (ZBA). A city council may act as the ZBA, or a separate board of not less than five members may be appointed. The Zoning Board of Appeals has a quasi-judicial function and must act objectively when evaluating an appeal. If the elected body also serves as the ZBA, it may become difficult to remain an objective evaluator when an individual is also an elected official.

The number of members is based on population; less than 5,000 must have at least three members. More than 5,000 must have at least five members. The only appointment guidelines are residency, population distribution, and representation for the various interests in the community (residential, commercial, industrial, education, etc.). All members serve three-year terms. Two alternate members may be appointed and serve in the case of an absence or in the case of a conflict of interest with one of the regular members. The alternate, if called, serves on a case until a decision is reached, even if called on the basis of an absence of the regular member, and even if that member returns.

The board has the responsibility for ensuring that the zoning ordinance is properly and fairly applied. The need for the ZBA is based on the realization that a single set of regulations cannot anticipate every potential condition related to individual properties and uses. The most common action by the board is the consideration of variances.

A **variance** is permission to waive or alter a requirement or limitation of the zoning ordinance. There are two types of variances.

A **use variance** permits a use of land that is otherwise not allowed in that district. A use variance is a modification of the literal provisions of the zoning ordinance that may be authorized by the board when strict enforcement of the ordinance would cause *unnecessary hardship* for the property owner due to circumstances unique to the property. To obtain a use variance, the applicant must demonstrate through review standards that the unnecessary hardship related to the use of the property exists. The community may choose to exclude the consideration of use variance in its zoning ordinance.

A **nonuse variance**, also known as a dimensional variance, is a modification of the literal provisions of the zoning ordinance that may be authorized by the board when strict enforcement of the ordinance would cause *practical difficulties* for the property owner due to circumstances unique to the property. Nonuse variance requests are typically associated with modifications of required yard setbacks, building heights, parking requirements, landscaping or buffering restrictions, and related building or facility placement matters and sizes.

Every person has the right to seek relief from a zoning ordinance requirement. If the standards used by the board are carefully considered and followed, the integrity of the ordinance will be maintained. But too often variances are granted because no one sees any harm in doing so, rather than carefully considering the ordinance standards. The board soon gains a reputation for not following its ordinance; one merely has to go to the ZBA to obtain relief from the ordinance.

Eventually, the offhand granting of variances harms the community's ability to enforce the ordinance. Moreover, poorly supported decisions can, over time, have the effect of destroying the credibility of the zoning ordinance as well as the ZBA. It is up to the members to prevent this by strictly applying the review standards of the ordinance necessary to obtain a variance.

## Procedures and processes

Foremost among today's planning and zoning issues is the need to have specific, written procedures for handling planning and zoning matters. The entire zoning process, from the time that a person first approaches the municipality to the issuance

of the occupancy permit or possible sanction of violations, should be clearly understood by all parties involved. Some basic rules

- Proper forms should be in place to document applications and permits.
- Meetings should be governed by consistent rules.
- All actions should be clearly and thoroughly documented.
- Applications should not be accepted if incomplete (inadequate site plan, fee unpaid, etc).
- If required public notices were not sent or were published improperly, stop the process and start over.
- Action on any application should be delayed until the applicant or a representative is present (unless legal time limits dictate otherwise).

Another important aspect is keeping good records. One test of record-keeping is the ability to pick any application that has been approved and constructed and be able to follow each step, from the first contact of the application to the last permit, by the records kept for that application. Project files should include, at a minimum:

- relevant pages of minutes at which the proposal was discussed,
- staff notes, meeting notes, correspondence, telephone conversation notes, etc.,
- copy of the application and supporting material, and
- approved/signed copy of the site plan.

## Making effective decisions

Following an effective decision-making process is one of the most important methods of avoiding, or at least surviving, challenges to decisions. Careful consideration and support of decisions through the use of the standards of the zoning ordinance is important. These standards must be written into the ordinance and if all standards are met, the application must be approved.

If the decision is challenged, the importance of using the ordinance's standards becomes self-evident. A well-supported decision provides the background needed to build a solid legal foundation for the decision. The use of standards will help avoid the "arbitrary and capricious" label often given to zoning decisions that are not well supported.

The record must show sufficient facts to back up the findings made according to the ordinance standards. Some simple considerations:

- It is not enough to deny an application because of a vague notion that the use is not a "good idea," or that it will "harm the neighborhood."
- The presence of a roomful of people opposing the project is not sufficient reason to deny an application.
- The past performance of the applicant should not be used as a basis for a denial. If there are doubts about performance, make proper use of conditional approvals, performance bonds, and proper documentation.
- Approvals and denials should each be thoroughly documented on the record, clearly stating how the ordinance standards were, or were not met.
- Questions of doubt should be resolved before taking action; do not act hastily. Zoning decisions are permanent; take care that the decision is the best that can be made given the information available.

## The role of the public

Having noted the need for objectivity, the question arises as to what role the public should play. Various zoning approvals require participation by the public in the decision-making process, usually in the form of public hearings. The dilemma in which most decision makers find themselves is trying to determine what weight to give the comments (and complaints) of the public.

People do not generally come to a meeting in support of a particular project; most have concerns that they wish addressed, many are simply opposed to what is proposed. The foremost concern that any decision maker should have is to ensure

fairness for all concerned; the applicant as well as the public. To ensure fairness, keep some simple things in mind.

- Everyone must have the opportunity to speak and present evidence at public hearings. While some limitations may be placed on this right, no action should be taken that would deprive a person of their right to be heard.
- Most people are uncomfortable speaking in public. While the chair cannot make everyone effective speakers, he/she can make sure that meeting rules are followed and order maintained. Keeping a subtle balance between the degree of formality required, and the degree of informality that is sometimes needed is a learned art.
- Recognize emotional responses and treat them with concern and understanding. Land use issues can elicit strong emotions. Strong responses, within limits, should be expected and understood. Decision makers must learn to control their emotions, even when the comments get personal.
- The chair can help maintain order by following meeting rules and requiring that comments are made only on the subject at hand. It is often helpful to point out what request is being made and to ensure that the public understands the limitations of the board or commission.

## Enforcement

No matter how well written the zoning ordinance may be, it is essentially made meaningless unless the community has an effective enforcement process. Creating and maintaining an effective enforcement program requires a good COP (Commitment, Ordinances, Process):

**Commitment**: The community, including its enforcement officials, administration and legislative body, needs to have a firm commitment to the enforcement of its ordinances. This means providing the necessary resources to monitor and penalize. It also means ensuring that enforcement officials are not subject to interference from the administration and legislative body members.

**Ordinances**: Ordinances must be clearly written and be able to be reasonably monitored and enforced. Each time a new regulation is drafted, it would be useful to ask the enforcement officials how they may go about monitoring and implementing the various ordinance provisions. Ordinances that require unreasonable actions on the part of enforcement officers are less likely to be properly administered.

**Process**: Finally, it is important that there be a consistent, well documented enforcement process. For example, a follow up to a violation might be similar to this:

1. Verbal notification is sent to the property owner, followed up by a written notice.
2. If not corrected, a second notice (usually worded somewhat more forcefully) may be sent.
3. If not corrected after the second notice, a citation is issued.

(Note: The procedures for each community will be different, and may depend on whether the ordinance violation requires a civil or criminal action.)

## How to avoid litigation

The short answer to avoiding litigation is simple. You can't! Governments are always open to lawsuits, regardless of the methods used to reach a decision. Disappointed applicants and neighbors far too often look to the courts to make a decision favorable to their position. However, there are some actions that you may take to strengthen your legal position.

The first way to avoid a legal challenge to your decisions is to follow the procedures and principles outlined in this chapter. As many members have already experienced, the zoning process involves a wide variety of technical, administrative, and discretionary factors. The technical factors may include compliance with the specific requirements of the zoning ordinance, such as setbacks, height, parking, etc. The

administrative requirements may include ensuring that notices are mailed and published, meeting procedures followed, and other similar actions.

Finally, and probably most important, are the judgmental factors that are required in making effective zoning decisions. The standards provided in the zoning ordinance for various types of decisions are the clearest guide given to decision makers. All decisions should be based on these standards and the facts that are used to apply them.

Other factors that should be remembered:

- Keep the master plan and zoning ordinance up-to-date. A current plan and ordinance can bolster an effective defense. An outdated plan or ordinance is subject to attack as not relevant to today's conditions.
- Recognize the landowner's right to a reasonable rate of return, although that may not be the use that provides the highest profit or "highest and best use," not a term applicable to zoning.
- Do not exclude lawful land uses if there is a demand and an appropriate location in the community.
- Base decisions on the ordinances and facts rather than emotions or opinions of the applicant.
- Make decisions using the written standards of the zoning ordinance.
- Know the rules of procedure and follow them consistently.
- Resolve questions of doubt before taking action; do not act hastily. Zoning decisions are permanent; try to get it right the first time.
- Know the limits of the community's authority and act in good faith.
- Correct immediately any situations that could be/are found liable.
  If sued, hire competent legal counsel familiar with the type of litigation involved.

## Recent Developments

There are some basic procedures and requirements that have been added to the legislation related to planning and zoning. These include:

- Authorization for two or more communities to form a joint planning commission.
- Authority to place conditions offered by an applicant on a rezoning approval.
- Authorization for a local purchase of development rights program.
- Authority for a planned unit development to take place on noncontiguous properties.
- Repeal of the City and Village Zoning Act, and passage of the Michigan Zoning Enabling Act (MZEA) (PA 110 of 2006).

While all are important, the most sweeping changes came with the consolidation of all zoning acts into a single piece of legislation. Perhaps the most significant change was in the noticing procedures for various zoning approvals. The MZEA is effective as of July 1, 2006.

## About the author . . .

**Steve Langworthy** is a partner with LSL Planning in Grand Rapids. He is highly respected as an expert in the field of planning and zoning, including form based codes. With extensive experience as a lecturer, he has conducted dozens of zoning seminars and education programs for local government clients, the MML, MTA and Michigan Association of Planning.

Section 2: Roles and Responsibilities

# 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 experience directly 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 Michigan Municipal League's education programming. In 1997, an Elected Officials Academy was established. In addition, the Michigan Association of Mayors formed the Institute of Mayors and Presidents to address issues unique to those who are at the helm of Michigan's cities and villages.

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 MML and ask for Education services.

## About the author . . .

**Member Resource Services**
The Member Resource Services Department is comprised of many different services of the League, including educational services, publications, web and graphic design, the business partnership program, and information services. This department provides member officials with resources and educational opportunities on a vast array of municipal topics.

# Section 3: Village Operations

# Chapter 11: Village service options

## Introduction

A principal responsibility of local government policy bodies is determining the mix of community services to provide to local residents. While variation or mix of services is noted among municipal governments, each unit makes four basic decisions about services:

1. method of organization, production and provision;
2. quantity of services to be produced and provided;
3. quality of services to be delivered to citizens and
4. how to pay for services provided.

These decisions display a degree of interdependency, but can be addressed separately.

Cities and villages throughout Michigan have generally been formed when a group of residents has requested additional or a higher level of services than those provided by the township.

When township residents are willing to become part of a village incorporation and pay additional taxes for services, the jurisdiction has increased financial capacity to provide a broader mix of services (sewer, water, hard surface roads, fire, police, land use planning and solid waste disposal) to support a quasi-urban life style.

The village incorporation process also creates new sets of intergovernmental relationships. Village residents are members both of the village and township, and therefore are subject to both village and township taxes.

As population increases in the areas outside the village boundaries, new demands are put on village services, straining the village's capacity to sell excess municipal services to township residents. These increased population pressures and service demands stimulate a rethinking of township-village service production and provision relationships.

This chapter is intended to provide general law village officials with both a conceptual framework and practical guidelines for exploring ways to provide municipal services other than through internal village operations.

## Community service production and provision options

Communities, given a choice, would prefer to self-produce and provide municipal services. Any other option to service provision increases transaction costs (negotiating with someone else, public or private).

### Why seek alternatives to self-production of service?

Communities explore alternatives to self-production and provision when faced with excess service capacity, financial stress, capacity constraints (financial or human capital), spillover benefits or costs associated with the service, or as a means of sharing risk.

For example, fire protection and emergency service production requires significant financial investment in equipment and accessories, training of personnel and management. Once the fire suppression or emergency response capacity is generated, excess capacity is often created since emergencies do not occur frequently or regularly.

Communities with excess capacity attempt to sell a portion of the capacity to neighbors, thus a buyer-seller relationship is established.

Village government as a population center of a township historically became the

producer and provider of fire services. A local unit would be unwilling to sell services to an area outside of the incorporated territory if they lacked the capacity or were unable to obtain compensation to cover the marginal costs of the additional service requirements.

**Intergovernmental contracting**
The buy-sell, or intergovernmental contracting, method to obtain municipal services is by far the most common method of service provision once self-production is not possible.

Research done in the 1970s found that contracting for fire services was the least expensive way to acquire this service.

**Joint service production through authorities**
Joint production of service may take several forms. One or more townships and a village may join forces to provide services such as fire, police, emergency dispatch, solid waste, land use planning, building inspection, assessing, recreation or tax collection, to name a few.

The village may join with neighboring local governments to establish a special assessment district with a defined service district. Increasingly, local units are creating authorities as a means of producing and providing a service and sharing both financial and associated risks.

**Privatization of services**
When adequate private market options are available to the community, service provision may be privatized. Solid waste collection is a service that a large percentage of Michigan municipal governments have privatized.

**Consolidation of services**
A final option is the consolidation of municipal services.

Three types of consolidation exist:

- functional,
- geographic and
- political.

**Functional consolidation** might include specific service functions such as fire, police, sewer/water, assessing, road maintenance or solid waste collection. Such arrangements would involve two or more local government units with each legislative body appointing representatives to an oversight board. The consolidation of school districts is an example of **geographical consolidation.**

The political boundaries of a consolidated school district are not consistent with the general-purpose governments, but cut across boundaries. So, a separate governing body (school board) is established to provide oversight.

The most difficult consolidation to achieve is **political**; that is, merging two or more separate units of government into a new government.

The most recent example is the consolidation in the Upper Peninsula of the Cities of Iron River and Stambaugh and the Village of Mineral Hills. This merger was approved by voters on November 2, 1999 and took effect July 1, 2000. The new city was called Iron River.

Another example of political consolidation is Battle Creek Township and the City of Battle Creek, although technically the merger between the city and township was accomplished through annexation. As one would expect, political consolidation is difficult to achieve since a sense of community and community identity is involved.

## Legal authority for contracting and alternative delivery systems

The State of Michigan has permissive legislation enabling local governments to engage in contracting, consolidation and joint ventures for service provision. Basically, if a local government unit has the authority to engage in the provision of a service to residents, the entity may provide the service through a contractual arrangement (public or private).

The legislature has enacted a number of intergovernmental statutes specific to governmental services in villages, such as fire, police, sewer, water, and other utilities.

In 1967, during a specifically called session of the legislature, two broad intergovernmental statutes to facilitate intergovernmental contracting and cooperation were enacted. The Urban Cooperation Act (PA 7) and Intergovernmental Transfers of Functions and Responsibilities Act (PA 8) are frequently used for buy-sell contracts and joint production arrangements for a variety of community services. The popularity of the two statutes is in part due to the flexibility of the laws permitting local governments to tailor agreements to the specific needs of the communities. The two statutes do not provide taxation authority, thus necessitating contracting parties to negotiate the terms, conditions, financing and method of cost-sharing for the services exchanged or provided.

The Emergency Services Authority Act (1988 PA 57) provides general purpose governments with the ability to create a special unit of government (an authority) to provide police, fire or emergency service for a unit or in a multiple arrangement. The advantage of creating an "authority" to produce and provide the service is that the new entity is an independent body with its own appointed board, bylaws and capacity to levy millage in support of the enterprise. Levying millage to support an authority requires voter approval.

## Obstacles to contracting and joint ventures

Joint or contractual partnerships may be impeded due to the transaction costs, the costs of reaching joint decisions. The fear over the perceived loss of control, turf protection, "skeletons in the closet," uncertainty of the sustainability of the joint agreement, and the perception that "hidden agendas" are present may constrain viable partnerships from materializing. Local residents and public officials often shy away from joint production arrangements due to the perception that service quality and quantity will change once the unit engages in a joint or contractual venture.

## Methods of cost allocation under joint production arrangements

The method of sharing and allocating cost shares under a joint production or contractual arrangement is often critical to the success and failure of joint ventures. A necessary step in negotiating sustainable joint ventures involves developing a clear rationale of why a particular cost allocation method has been selected.

Allocating cost shares is a separate decision from selecting a method to finance the service. In joint production arrangements, sharing costs and generating monies needed to finance a service become somewhat muddled. The strengths and weakness of a number of cost allocation methods will be discussed to illustrate how the distributional consequences change under each method.

### Relating benefits to costs

A basic guiding principle in allocating cost shares is: where possible, relate benefits (services received) to the costs of production and provision. Identifying service demand gets complicated with services such as police, fire, emergency response services, economic development activities or services that are oriented to prevention and emergency response. Other services such as sewer and water, streets, sidewalks, curb/gutters, street lighting, inspection, tax assessing, etc., lend themselves to easier identification of beneficiaries and demand.

### Factors to consider in allocating cost shares

A variety of options are available to local governments when it comes to allocating cost shares under joint ventures and co-production arrangements. Units that are similar in size and demographic composition and engage in joint ventures will find that an equal sharing of cost shares presents no

problems. The more dissimilar communities are who enter into joint production arrangements the more creative they need to be to insure that equity in cost sharing occurs. Developing a weighted cost share formula may be more equitable due to the inclusion of factors that influence demand. A weighted cost share formula is perhaps more equitable to services such as fire, police, ambulance, library and recreation services. Population density, congestion, household income, or other demographic characteristic may influence demand. Readers interested in learning more about "cost weighted formulas" are encouraged to review "Buying and Selling Fire Service" by Harvey (see Appendix 13: For more information).

Population may be the appropriate factor to determine cost shares for jointly produced planning and development services. Or, a combination of population and tax base could be used since the output from planning and development has applicability to a wide variety of users (governments, private firms and individuals).

Jointly produced infrastructure services, such as sewer and water, present less of a challenge. Variable costs are easily identified and are related to consumption.

Buy-sell, contractual or co-production/provision arrangements for providing community services present a challenge for both the producer (seller) and buyer. The seller is concerned about covering their total costs of producing and providing services, maintaining service capacity and establishing the price to charge for the services rendered.

Buyers, on the other hand, are concerned that they not be overcharged for the service since many municipal services are provided in a monopoly environment.

Units contracting services are also concerned whether the supplier of services will accommodate their specific needs.

## Financing joint ventures

Financing joint ventures represents a critical decision point, for the selected finance method has far-reaching distributional consequences (who benefits and who pays the costs). Local governments can use general fund revenues, extra-voted property taxes, special assessment, user fees, third party payments, grants and donations/contributions to fund community services. Each financing strategy carries issues that need to be resolved by the body politic.

**General fund revenues** are used to finance services that are made available to all community residents. Units engaging in co-production arrangements for service provision often use general fund monies (if available) to support such activities, but with stressed budgets, local governments have sought alternative sources of funding.

**Extra-voted property taxes** have become a common means of supporting local services and are a way to expand service delivery. Local governments frequently go to the voters requesting additional millage levies for police and fire protection, library, buildings, recreation, new technology acquisition, emergency services and 911, all aimed at maintaining or expanding the level of output of services. Extra-voted revenues become restricted revenues and are treated as special revenue funds meaning that their use is limited for a specific activity.

**Special assessment levies** are the financing strategy most municipalities prefer. Special assessment districts are formed when the beneficiaries of a service or public improvement are clearly identifiable, such as the case of streets, sidewalks, street lighting, drains, roads, streets and curb/gutters. Increasingly, local governments use the special assessment districts to provide fire, police, ambulance and recreation. Technically, special assessment levies are not considered property taxes, although property value is used as the base upon which the levy is assessed.

**User fees and service charges,** in large part, eliminate the problem of benefits not being related to costs of the service received. Beginning in the mid-1980s, local

governments began to rely more on user fees and service charges to support community services. This was especially true after the demise of the federal revenue sharing program in 1986 as units scrambled to replace federal monies. User fees increase administrative costs due to collection, monitoring and accounting, but help to regulate demand for the service.

**User fees** are increasingly being used to support fire run calls, selected police services (such as obtaining an accident report for an insurance carrier) and ambulance calls. Even if a governmental unit is producing and providing a service through the general fund or special millage, local units may assess a user fee.

**Third party payments** can partially support services such as emergency services, police, fire and ambulance. Home owner and auto insurance policies, in most cases, contain provisions for reimbursing policyholders for costs incurred in ambulance transport and fire suppression calls. Though local governments incur additional costs in billing customers who use emergency services, third party payments can assist in offsetting costs for service provision. If a unit decides to bill residents or users of emergency services for emergency response, an informational campaign is needed to inform citizens of the new strategy. Residents may have to check with their insurance carriers to see if such coverage is provided or if a rider can be purchased. Charging users for emergency services permits a service provider to charge non-community residents for services used.

Obviously, local governments can combine financing options to provide community services. Utilizing extra-voter millage to support a service does not preclude the use of third party payments. Or a base level of service can be financed through general fund revenue and additional services through the collection of user fees and service charges. Local officials need to examine each revenue option and determine which method matches their community's needs.

## Village-township financing agreements

Intergovernmental agreements among townships and cities are fairly straightforward compared to village-township contracts. The complexity of the agreements is due to village residents still being a part of the township. Care needs to be taken in the development of joint cost share agreements to insure that village residents are not subjected to double taxation. This issue becomes relevant in cases of joint production arrangements where the township levies a millage for a service but still expects the village government to contribute a proportionate share. In fact, the village resident has paid their share in most cases via the millage levy since village residents are also township residents. The selected method of financing a joint service needs to be evaluated to insure that cross-subsidization is not occurring.

## Concluding comments

Joint production arrangements and intergovernmental contracting for services represent cost-effective means to obtain services or provide services to units lacking the financial capacity. The key to developing viable and endurable intergovernmental arrangements is to develop a concise and detailed intergovernmental agreement.

Intergovernmental arrangements require patience, perseverance, compromise and most of all, an open mind. It is often said "cooperation is an un-natural act between two non-consenting adults."

### About the Author…..

**Dr. Lynn R. Harvey** retired from Michigan State University as professor and extension specialist for state and local government. For the past 31 of his 37 years at MSU, Professor Harvey has provided technical assistance and education for county and municipal officials in the areas of public finance, budgeting, intergovernmental contracting, service consolidation, taxation, and training of newly elected public officials.

He received his BS, MS, and Ph.D. from Michigan State University with his graduate work focusing on institutional economics.

## Section 3: Village Operations

# Chapter 12: Selecting and working with consultants

Today, villages need to consider delivery options for information and services not even contemplated during the 1990s. Both small and large villages 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 community 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 by the villages though 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 village/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. Since the general law village act does not address this, each village must come up with its own procedure. 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 village 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 village 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 July 2002, the State of Michigan enacted legislation (2002 PA 504) requiring state agencies to use Qualification Based Selection (QBS) methods to select consultants. While this legislation does not apply to local governments, it emphasizes the advantages to using QBS in selecting consultants.

For more information on the QBS process, visit www.qbs-mi.org or call 517-332-2066.

In preparing the RFQ the following elements should be included:

- a 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 in the QBS, 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.

The QBS process allows the local community to select one or a small number of consultants to interview. This selection should be based on the number of responses to the RFQ.

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 village 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 village 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 village 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, e-mails 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.

### About the authors . . .

**Reid S. Charles** is the manager of the City of Mt. Morris. For the past 35 years, he has served in various management and planning positions in local government. He has lectured and taught courses on planning and municipal finance and contributed to the book *Financial Handbook for Mayors and City Managers*, Clark, DeSeve & Johnson, 1985 and *City Money: Political Processes, Fiscal Strain and Retrenchment*, Clark and Ferguson, 1983.

Mr. Charles holds a BA and MA from Wichita State University in Political Science and Public Administration. He is a member of the International City/County Management Association and a charter member of the American Institute of Certified Planners.

**Lou LaPonsie** served as manager of the Village of Cass City for more than 25 years until his retirement, and consulted with the village on special projects. He served as street commissioner of the Village of L'Anse and worked for the Michigan Department of Transportation's Road and Bridge Construction Division. He is a U.S. Navy veteran, having served in the Korean War.

Mr. LaPonsie is a past trustee of the Michigan Municipal League, was a charter member of the Village Management Committee of the Michigan Local Government Management Association and is a past chairman of the Tuscola County Planning Commission.

Currently Mr. LaPonsie is serving as the manager of the City of Sandusky.

Section 3: Village Operations

# Chapter 13: The importance of 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 they can use when making decisions or enforcing policy. This will reduce the tendency to act on memory or instinct.

With a policy manual, managers and supervisors 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 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.

**Managing complex operations**
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.

**Employees' right to know**
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.

## About the Authors….

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Section 3: Village Operations

# Chapter 14: Employee and labor relations

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

## Bring in the experts

In *Michigan Public Employment and Labor Relations Law* (1994), published by the Michigan Public Employer Labor Relations Association (an affiliate of the Michigan Municipal League), there are listed 147 Michigan statutes, 35 federal statutes and a few provisions of the Michigan Constitution that bear upon employee relations or labor relations in Michigan's public sector.

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

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

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

In general, elected officials should not get directly involved in union and labor relations matters, but sometimes certain individuals have knowledge and expertise and can hold down consultants' fees by doing some of the negotiating themselves.

## The council's role

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

Another dimension to employee and labor relations in a village that sometimes can be important is how its employment practices and employee benefits compare to those in its township. Cities don't need to worry about this as much because they do not co-exist with townships geographically.

But, the taxpayers of a village, being also taxpayers of the township, sometimes expect the two organizations to be consistent, or, at least, not completely different.

The MML has published a new resource for labor negotiations, "Negotiations Handbook for Municipal Officials." It is available as an e-book on our web site at www.mml.org/members/pdf/lr/book.pdf (password required), and may also be obtained by calling our Inquiry Service.

### About the Author…

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Mr. Fremont holds two Master's Degrees, in economics and industrial relations, from Wayne State University and has been an adjunct faculty member teaching public sector labor relations at Wayne State. He is a past president of the Detroit Chapter of the Industrial Relations Research Association and of the Michigan Public Employer Labor Relations Association.

# Section 3: Village Operations

# Chapter 15: Employment and Personnel

### Employment relations audit

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

1. *Pre-employment inquiries*. Whether in an interview or in an employment application, employers are prohibited from asking applicants particular questions. Application forms should be reviewed, and where necessary, revised. An employer should also ensure that all individuals responsible for interviewing applicants know what interview questions are prohibited.
2. *Separating medical and personnel records.* The municipality is required to keep the medical records of its employees separate from other personnel records. Employers should review personnel files and remove records relating to disabilities and accommodations, work-related injuries, fitness for duty examinations, physician notes or any other documents pertaining to an employee's medical condition. A separate file for each employee's medical records must be maintained.
3. *Employees with disabilities.* An employer is required to accommodate an employee's disability if it does not pose an undue hardship. An employer should ensure that it has, and follows, an appropriate policy that requires an interactive process with the employee to attempt to meet the employee's needs.
4. *Prohibition of harassment.* Ensure that an anti-harassment policy includes all forms of harassment, not just sexual harassment and that the policy contains effective reporting procedures. The policy should be distributed to all employees and posted in prominent places.
5. *Overtime compensation.* Paying an employee a salary is not, in itself, enough to meet the exempt status tests. The municipality should review the actual duties of all salaried employees to determine whether they meet the statutory requirements for exempt employees.
6. *Independent contractors.* Merely paying an individual on a contractual basis does not make him/her an independent contractor. The IRS or the Department of Labor may determine that an "independent contractor" is actually an employee. The municipality should, therefore, review the actual services rendered by independent contractors under established criteria.
7. *Employment related documents*. All employment related documents, including employment contracts, employee handbooks and employment policies should be reviewed and updated to deal with changing business practices, technology, means of communication and employment-related laws.
8. *Posters.* Both federal and state labor regulations require employers to post notices in conspicuous places with respect to a wide variety of state and federal laws. The municipality should ensure that the proper notices are posted.
9. *FMLA.* An employer's obligations under the federal Family and Medical Leave Act of 1990, begin before a leave commences and continue after an employee returns to work. The

municipality should ensure that it has a proper FMLA policy and understands and implements the corresponding procedural requirements.

10. *Document, document, document.* Too often employers cannot establish the appropriateness of an adverse employment action that is challenged by an employee because of a failure to either candidly evaluate an employee or document instances of misconduct or poor job performance. Candid and proper documentation should be emphasized.

## Pre-employment inquiries

While most employment disputes involve current or former employees, the municipality must be aware of issues related to applicants as well. The following guidelines apply to both pre-employment interviews and information requested on an application form:

*Protected classification.* An employer should not ask for information concerning the religion, race, color, national origin, age, sex, disability, height, weight or marital status of a prospective employee.

*Disabilities and medical history.* An employer generally may not ask an applicant if he or she needs an accommodation to perform the job. An exception to this rule is that an employer may ask about the type of accommodation needed if the applicant has an obvious disability or reveals the existence of a disability, or an employer reasonably believes the applicant will need an accommodation to perform specific job functions. Similarly, an employer should not ask medical history related questions.

*Accommodating applicants.* An employer has a duty to accommodate a disabled applicant. This duty includes removing barriers in the application process to allow the individual to compete for jobs. For example, an employer may need to modify its application forms, testing procedures and facilities to allow disabled applicants to participate in the process. As a consequence, an employer may ask applicants if they need an accommodation for the application process.

*Arrest and conviction records.* The Equal Employment Opportunity Commission and the Michigan Department of Civil Rights take the position that an employer should not ask for information concerning arrests. Questions relating to criminal convictions are permissible when they are job-related.

*Physical and medical examinations.* An employer cannot require that an applicant take a physical or medical exam before an offer of employment has been made. After an offer has been made, an employer can require such an exam, but only if the exam is required of all entering employees in the same job category and the exam is job-related. An employer can deny employment to an applicant based on exam results only if the applicant cannot perform the essential functions of the job, with or without an accommodation.

*Drug testing.* Tests for illegal drug use are not considered medical examinations under the federal Americans with Disabilities Act. Therefore, an employer's ability to require a drug test is not affected by the act.

*Background checks.* The federal Fair Credit Reporting Act requires an employer who contracts with a third party to obtain information about an applicant (e.g., motor vehicle record, criminal record, credit standing, general reputation, etc.) to notify the applicant in writing and obtain the applicant's written authorization. The notice and authorization must be provided on forms separate from the application form. Before taking adverse action against an applicant based in whole or in part on information received, the employer must provide the applicant with a copy of the information received and a "summary of rights" as provided under the act.

## Personnel files

If a current or former employee requests a copy of his or her personnel file, an employer must supply it – upon written

request and at reasonable intervals. The Bullard-Plawecki Employee Right to Know Act (1978 PA 397) permits a current or former employee the opportunity to review and obtain a copy of his or her personnel records. Generally, an employee's review is limited to not more than twice a 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.

**Contents**

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 affect or be used relative to an employee's qualifications for employment, promotion, transfer, additional compensation 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. Personnel records do not include:

1. employee references supplied to an employer if the identity of the person making the reference would be disclosed;
2. 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;
3. medical records (Note: all medical-related information pertaining to an employee must be kept confidential, in a separate locked cabinet, apart from the location of an employee's personnel records);
4. 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;
5. information that is kept separately from other records and relates to a criminal investigation;

General Law Village Act employment issues:

**Appointment of clerk and/or treasurer**
By a 2/3 vote, a council may provide by ordinance for the appointment of the clerk or treasurer, subject to a referendum. MCL 62.1(3) and (4).

**Additional officers**
Provides for method by which additional officers can be appointed or elected. MCL 62.2(1).

**In default**
Provides that a person in default to the village is not eligible "for any office" in the village. MCL 62.7(2).

**Failure to give or maintain bond**
Sets out consequences if appointed (or elected) official fails to give or maintain bond. MCL 62.12

**Vacancy in elected position**
Sets out manner of filling office of vacant elected office. MCL 62.1

**Suspension or removal of officer**
Sets out manner by which an officer may be suspended for neglect of duty or removed from office. MCL 64.3

**Absence of clerk**
Provides for appointment of individual to act temporarily on behalf of clerk. MCL 64.7

**Contract with village manager**
Provides for appointment of a manager and for terms and provisions of employment contract. MCL 65.8.

**Employment of fire fighters**
Provides for employment of fire fighters and rules and regulations regarding employment. MCL 70.1.

**Employment of police force**
Provides for employment of police officers and adoption of standards for employment. MCL 70.13

**Employment of department of public safety**
Provides for employment of public safety officers. MCL 70.18

**Compensation**
Provides for method of compensation. MCL 64.21

6. records limited to grievance investigations which are kept separate from other records and not used for purposes of qualifications for employment, promotion, transfer, additional compensation or disciplinary action;
7. records maintained by an educational institute which are directly related to a student; and
8. 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.

**Disagreement on contents**
The Bullard-Plawecki Act allows for the employer and employee to mutually agree to remove or correct information contained in a personnel record. If a mutual agreement cannot be reached, an employee may submit a written statement explaining his or her position. The statement may not exceed five sheets of 8 ½ x 11 inch paper and shall be included when information is divulged to a third party as long as the original information is a part of the file.

**Failure to supply copy**
Under the Bullard-Plawecki Act, an employee may bring an action in circuit court to compel compliance. In addition to an order compelling the employer to provide the personnel records, the court is required to award actual damages plus costs or, in the case of a willful and knowing violation, $200.00 plus costs, reasonable attorney fees and actual damages. Further, personnel record information which was not included in the personnel records but should have been as required by the act, cannot be used by an employer in a judicial or quasi-judicial proceeding unless a) the employee agrees to its use, or b) the judge or hearing officer determines the information was not intentionally excluded and the employee has been given reasonable time to review the information.

The Bullard-Plawecki Act also addresses issues relating to the disclosure of disciplinary reports to a third party, information relating to an employee's non-employment activities, investigative information relating to suspected criminal activity of an employee, and an employee's arrest records.

## Discrimination: Disability

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. Reasonable accommodation is a key requirement of 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. This section briefly discusses some of the issues related to an employer's reasonable accommodation obligations.

**Overview of legal obligation**
The municipality must provide reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee with a disability unless it can demonstrate that the accommodation would impose an undue hardship. An employer's obligation, which applies to all aspects of employment, is ongoing and may arise at any time that an individual's disability or job function changes. An employer, however, does not have to provide an accommodation for an individual who is not otherwise qualified for a position. An employer is also not required to provide the best accommodation or an accommodation requested by the employee as long as the accommodation provided by the employer effectively allows the employee to perform the essential job functions. Furthermore, the municipality as the employer is not required

to provide an accommodation that is primarily for an individual or an applicant's personal use.

**Reasonable accommodation**

Reasonable accommodation is a modification or adjustment to a job or work environment that enables a qualified individual with a disability to enjoy an equal employment opportunity. Examples of reasonable accommodations may, depending on the circumstances, include:

- making the facilities accessible,
- buying or modifying equipment,
- restructuring or modifying jobs,
- modifying work schedules,
- providing flexible leave policies, and
- reassigning to vacant positions.

An employer is obligated to make an accommodation only to *known* limitations. In general, it is the responsibility of the employee to inform the employer that an accommodation is necessary. The employer however, is responsible for notifying employees of its obligation to provide accommodations to employees with disabilities. Both statutes require an employer to post notices to this effect. If an employee with a known disability is having difficulty performing a job, the employer should assess whether this is due to a disability and may inquire whether the employee requires an accommodation.

**Undue hardship limitation**

An employer is not required to make a reasonable accommodation if it would impose an *undue hardship* on the employer's operation. However, if a particular accommodation would impose an undue hardship, the employer must consider whether there are alternative accommodations that would not impose such hardship. An undue hardship is an action that requires significant difficulty or expense in relation to the size of the employer, the resources available, and the nature of the operation. Whether a particular accommodation will impose an undue hardship must be determined on a case-by-case basis.

### Workplace violence

Workplace violence continues to be a significant issue for employers. Violence in the workplace obviously affects employee safety, well-being and productivity. Subject to the provisions of the Michigan Governmental Tort Liability Act, an employer may be held responsible for the actions of its employees. Under the legal doctrine of *respondeat superior,* an employer may be liable for the acts of an employee committed in the course of employment. In addition, the courts have recognized claims against employers based upon negligent hiring, supervision and retention of employees. Also, the "general duty" clause in the federal Occupational Safety and Health Act of 1970 (OSHA) under which an employer is required to provide employees with employment free from recognized hazards that cause or are likely to cause death or serious physical harm has been extended to cover incidents of workplace violence.

Ten steps a municipality as an employer can take to minimize the risk of workplace violence are:

1. Analyze the work environment for security risks and take appropriate precautions, including installing intercom systems in remote areas, providing adequate lighting, etc. Notify employees that employer-provided desks, computers and lockers are subject to inspection without prior notice. Develop a relationship with local law enforcement agencies and solicit their input.
2. Carefully screen applicants. Question applicants about gaps in employment history. Require applicants to provide consent to contact former employers and have them release former employers from liability for providing employment related information. Consider conducting an in-depth investigation that includes credit history and criminal

background checks. If done by an outside agency, an employer must comply with the federal Fair Credit Reporting Act. Advise applicants that they may be required to take a pre-employment drug test.

3. Establish personnel policies prohibiting threats, harassment, fighting and weapons in the workplace. Ensure that rules are enforced without exception. Consider instituting random or periodic drug testing.
4. Train employees to report suspicious, harassing or threatening behavior, since extreme violence is often preceded by lesser offenses.
5. Train supervisors how to detect early warning signs of potentially violent behavior and in conflict resolution methods. Require supervisors to immediately report all suspicious or inappropriate conduct.
6. Take all complaints seriously. Develop a complaint procedure and ensure that all complaints are investigated by individuals trained in investigative techniques. Take timely and appropriate remedial action.
7. Provide opportunities for employees to address concerns. Institute an open door policy to encourage better management /employee communications. Provide counseling opportunities through an employee assistance program.
8. Take steps to minimize job related stress. Workplace violence is less likely to occur when employees believe that their supervisor is fair and treats employees equally. Supervisors should treat employees with respect, while at the same time addressing performance and conduct issues in a direct and constructive manner.
9. Use law enforcement agencies and the courts where applicable. Immediately contact your local law enforcement agency when threatening behavior occurs. Use the Michigan stalking legislation and other laws to obtain a restraining order against employees engaging in disruptive behavior.
10. Make preventing workplace violence a priority. Establish a team of key employees to implement, communicate, enforce, monitor and review a comprehensive preventive program for a safe work environment.

## Sexual and other Harassment

Sexual harassment is a form of sexual discrimination that violates both Title VII of the Civil Rights Act of 1964 and the Michigan Elliott-Larsen Civil Rights Act (1976 PA 453, as amended, MCL 37.2101 et seq.). Both statutes also prohibit harassment based on any protected classification. Proactive handling of harassment issues in the workplace should be a foremost concern for employers. In order to assist employers with this process, the Equal Employment Opportunity Commission (EEOC) has issued guidelines addressing numerous issues pertinent to supervisor harassment, including action based on sex, race, color, religion, national origin, age, disability or protected activity. Additional information on liability for harassment for small employers is likewise available from the EEOC. These guidelines and other documents can be downloaded at www.eeoc.gov.

### EEOC Guidelines

The guidelines provide a comprehensive question and answer review of employer liability for supervisor harassment. The guidelines also set forth procedures, questions and factors to be used and considered when preparing an anti-harassment policy and investigating potential or existing harassment.

The following are suggested measures for municipalities as employers to consider when handling harassment issues:

*Anti-harassment policy.* Create and implement a strong and effective anti-harassment policy that candidly informs employees that harassment is both illegal and against the policy of the employer. The policy should emphasize that harassment by any manager, supervisor, employee, customer or third party will not be tolerated.

*Complaint procedure.* Establish a complaint procedure as part of the policy. The policy should notify employees that harassment complaints will be taken seriously, investigated and if harassment is found to exist, will result in discipline against the offender(s), possibly resulting in termination. The policy should contain a statement prohibiting retaliation against an employee who files a complaint. The policy should provide a contact in addition to the employee's supervisor.

*Distribution and communication.* Ensure that the policy is distributed and communicated to all employees. Explain during the distribution process that all employees must read the policy and if they have any questions or comments, they are to raise them with a designated individual. Employees should be required to sign a verification noting that they have read and understand the policy. Periodic redistribution of the policy is advised.

*Education.* The workforce should be educated about the types of behavior which are unacceptable. New employees should attend a workshop on harassment, with previously hired employees receiving periodic refresher information as well.

*Supervisor training.* Care in selecting individuals for supervisory and managerial level positions should be taken to ensure that the individuals selected will treat employees properly and will avoid inappropriate conduct. Further, additional training for supervisors should be provided to educate them about their important role in this area. Supervisors should be trained to recognize what conduct may create a hostile environment and to stop it at the onset. Supervisors should also be instructed to intervene when they see such conduct occurring and to advise the Human Resources Director or someone in a comparable position.

*Investigating a complaint.* Upon receipt of a complaint of harassment or when an employer has reason to believe that a potentially harassing situation has occurred or is occurring, the employer must act promptly. All complaints of harassment must be taken seriously. It is imperative that an employer investigate all complaints completely and objectively. In addition, an employee making a complaint should be notified as to the outcome of his or her complaint once a final decision has been made.

*Taking appropriate action.* If the investigation results in a finding that the behavior amounts to harassment, appropriate action must be taken so that the harassment is eliminated and does not reoccur. This may consist of both disciplinary action imposed on the harasser and remedial action for the victim of the harassment. Employers should treat like situations similarly in terms of the investigation process, the action taken, etc.

Recent court decisions illustrate the need for employers to elevate harassment, based on any factor, on their list of important workplace issues. Employers attuned to harassment issues and committed to eradicating workplace harassment of any kind can avoid or substantially reduce their legal risks.

## Overtime Considerations – Exempt and Non-exempt Employees

Both the federal Fair Labor Standards Act (FLSA) and a similar Michigan statute require that overtime be paid at 1.5 times a nonexempt 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.

Public employees may generally accrue up to 240 hours of FLSA comp time (160 hours of actual overtime work). However, employees who work in a public service, emergency response or seasonal activity may accumulate up to 480 hours of FLSA comp time (320 hours of actual overtime work). 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.

**Who is entitled to overtime pay?**
There are a number of positions that are exempt from the overtime requirements of the FLSA. The major exemptions relate to executive, administrative and professional employees, commonly referred to as the "white-collar" exemptions. To qualify for such an exemption, the employee must be paid on a salary basis (at least $455 per week) and perform certain duties.

**Executives** are those employees who manage an enterprise or department, or subdivision thereof, customarily and regularly direct two or more full-time employees or their equivalent, and have the authority to hire or fire employees (or have their recommendations be given particular weight). **Administrative** employees are individuals who perform office or non-manual work directly related to management policies or general business operations of the employer, and whose work requires the exercise of discretion and independent judgment with respect to matters of significance. **Professional** employees are those individuals who perform work requiring advanced training acquired by a prolonged course of specialized intellectual instruction, as distinguished from general academic education, apprenticeships or routine training and involving the exercise of discretion and judgment, or who perform original or creative work depending primarily on invention, imagination or talent in the recognized field of artistic endeavor.

**Salary Basis Test and Allowable Deductions**
In order to meet the salary basis test, an employee must regularly receive each pay period the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Thus, if an exempt employee is ready, willing and able to work, deductions may not be made for time when work is not available as long as the employee performed some work during that week. Under new regulations that went into effect in 2004, the deductions an employer can make from an employee's pay without violating the salary basis requirement have been expanded. For example, an employer can now suspend an exempt employee without pay for one or more full days for violating written work rules that apply to all employees. Unpaid full-day absences for personal reasons and in some cases for illness will also not affect an employee's exempt status.

**The new regulations contain a "safe harbor" provision for employers who make improper deductions. Impermissible deductions will not result in the loss of an employee's exempt status if the employer (1) has a clearly communicated policy prohibiting improper deductions, including a complaint mechanism, (2) reimburses employees for any improper deductions, and (3) makes a good faith commitment to comply in the future. This safe harbor provision does not apply, and the employer will lose the exemption, if the employer willfully continues to make improper deductions after receiving employee complaints.**

**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 one and one-half (1½) 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. Thus, for police and fire employees with a seven-day work period, overtime must be paid after 53 and 43 hours of work, respectively, under Section 207(k). An employer can agree by union contract, or otherwise, to pay overtime for fewer hours worked.

## Independent contractor or employee?

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. Relevant factors include the following:

*Instructions.* If the worker must follow instructions as to when, where and how to perform the job, this supports employee status.

*Training.* Requiring training supports employee status.

*Integration.* Integration of the worker's services into the business operations suggests employer control.

*Services rendered personally.* If services must be rendered personally by a specific worker, this suggests an employment relationship.

*Control of assistants.* Control by the municipality over hiring, supervision and pay of the worker's assistants implies employee status.

*Ongoing relationship.* A continuing relationship suggests an employer-employee relationship exists.

*Set hours of work.* The establishment of set hours by the municipality implies control.

*Full time work.* A person who must devote full working time to the municipality is subject to the municipality's control.

*Work on premises.* On-premises work may indicate employer control, especially when the work could be done elsewhere.

*Order or sequence.* Work that must be performed in an order or sequence established by the municipality suggests control.

*Reports to hirer.* A requirement that the worker submit regular oral or written reports to the municipality implies control.

*Payment method.* Payment by the hour, week, or month generally indicates an employer-employee relationship. Payment by the job or commission indicates independent contractor status.

*Payment of expenses.* Payment of the worker's business or travel expenses may suggest an employer-employee relationship.

*Furnishing tools, materials.* Providing tools, materials and other equipment shows an employer-employee relationship.

Factors indicative of an independent contractor:

*Significant investment.* Independent contractor status is implied if the individual invests in the facilities and/or equipment used for the work.

*Realization of profit or loss.* An individual who can realize a profit or suffer a loss as a result of providing services is usually an independent contractor.

*Serving more than one firm.* An individual who provides services to several unrelated firms at the same time generally is an independent contractor.

*Serving the public.* An individual whose services are regularly available to the general public is typically an independent contractor.

How these factors apply to a particular work arrangement will determine whether the person is an employee or independent contractor. No single factor is necessarily determinative in addressing this question.

## Family and Medical Leave Act

Eligible employees who work for a covered employer are entitled under the federal Family and Medical Leave Act of 1990 (FMLA) to 12 weeks unpaid leave during a 12-month period for a variety of reasons:

1. the birth of the employee's child and to care for the newborn child;
2. the placement of a child with the employee for adoption or foster care;
3. the care for the spouse, child or parent, of the employee, if the spouse, child or parent has a serious health condition; and
4. a serious health condition which results in the employee being unable to perform the functions of his or her job.

**Who is an eligible employee?**

In order to be eligible for leave, an employee must have been employed for at least 12 months (52 weeks) and have worked at least 1,250 hours the year before the leave is scheduled to begin. Paid time off does not count as hours worked. The 12 months do not have to be consecutive. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation), during which other benefits or compensation are provided (e.g., worker's compensation or group health plan benefits), the week counts as a week of employment.

**Employers subject to the FMLA**

Currently a private sector employer must employ 50 employees for each working day during at least 20 weeks in either the current or preceding calendar year to be subject to the FMLA. Legislation has been periodically proposed that would reduce this number to 25 employees. Public employers are covered without regard to the number of employees employed. However, 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.

The following factors are relevant when determining the number of employees:

1. Employees at the employer's workplace and employees employed by the same employer within 75 miles of the employee's workplace are counted.
2. Separate entities may be considered a part of a single employer depending on the degree of interrelationship of management, operations and ownership.
3. The 20 weeks do not have to be consecutive.
4. Part-time employees are included.

5. Employees on paid and unpaid leave are included if there is a reasonable likelihood they will return to work.
6. Leased employees employed through an employment agency may be included depending on the employer's degree of control and supervision of the workers.
7. The determination of whether the employer has the requisite number of employees is made at the time the employee requests the leave.

**Determining the 12-month Period**

Under regulations issued by the U.S. Department of Labor, employers may choose any one of four optional methods for determining the 12-month period during which the 12-weeks of FMLA leave may be taken. The only restriction is that the alternative chosen must be applied consistently and uniformly to all employees. The available options are:

1. the calendar year,
2. any fixed 12-month leave year (e.g. a fiscal year or a year starting on the employee's anniversary date),
3. the 12-month period measured forward from the date the employee's use of FMLA leave begins, or
4. a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

If an employer fails to select one of the available options, the option that provides the most beneficial outcome for the employee will be used.

Under the last alternative, each time an employee uses statutory leave, the remaining balance in his or her leave entitlement is equal to the unused portion of the 12-week leave entitlement that was not used during the preceding 12-month period. The "rolling" 12-month period is the only alternative that prevents the possibility of "stacking" one year's leave entitlement to that authorized for the following year. Therefore, this is the method that has generally been used by employers.

**Employee rights**

Upon returning to work from FMLA leave, an employee is entitled to be restored to his or her previous position, or to an "equivalent position." An equivalent position must have equivalent pay, benefits and other terms and conditions of employment. For a job to be equivalent it must involve the same or substantially the same duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority. A position that is merely comparable or similar is not enough.

The only exception is for qualifying employees who have been designated by their employer as "key employees." Such employee must be provided with a written notice regarding this designation, and the employer must be able to show that denial of restoration is necessary to prevent substantial and grievous economic injury to its operations.

An employee who is restored to his or her original position (or an equivalent position) is not entitled to accrual of any seniority or employment benefits during the period of leave, though any benefits accrued before the leave are unaffected. An employee is entitled to continuation of employer-paid health care coverage during the period he or she was on leave. However, under the Department of Labor's FMLA rules, a restored employee has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period. Thus, if an employee would have been laid off if he or she had not been on leave, the employee has no more entitlement to restoration than if he or she had been working at the time of the layoff.

## Terminating employees – Minimizing the risk

Terminating an employee is potentially risky business that may expose an organization to a variety of legal claims. For example, depending upon an employer's policies, whether the employer has a civil service system, or whether an employee has an employment contract, an employee may have a claim for breach of contract. In addition, a terminated employee may allege that his or her termination was due to illegal discrimination because of his or her status as a member of a protected classification. Discharged employees may also claim that their former employer defamed them by making false, disparaging comments about them to co-workers or other parties, treated them in a manner intended to cause emotional distress, invaded their privacy by improperly disclosing the reason for an involuntary termination, or terminated them in retaliation for exercising some legal right, such as engaging in so-called "whistle blowing" activity or reporting discriminatory or other unlawful employment practices. This section discusses a number of measures a municipality as an employer can take to minimize the risk of exposure.

Clearly establish the nature of the employment relationship at the beginning, either "at-will" or "for cause." An at-will employee can be terminated with or without cause, and with or without notice. Review applications, offer letters, personnel policies and employment contracts to ensure that proper at-will statements are included. If a "for cause" relationship is preferred, list examples of conduct or performance that can result in termination, while indicating that the list is not exhaustive. In addition, if progressive discipline is provided for, retain the flexibility to discharge immediately when circumstances warrant.

Before deciding whether to terminate an employee, conduct a thorough investigation of the events in question and get the affected employee's version or explanation.

Consider whether a neutral third party would believe that the misconduct or poor performance occurred and that the decision to terminate was fair under the circumstances. Does the "punishment fit the crime?"

Consider whether the decision to terminate is inconsistent with prior statements concerning an employee's good performance (such as in a job evaluation) or inconsistent with previous actions taken by the employer such as a recent promotion or pay increase.

Determine whether alternatives to termination exist, i.e., should the employee be given a "last chance" or be put under a "performance improvement plan"?

If the decision to terminate is made, retain all documents and work product supporting the decision and secure the employee's personnel file.

Ensure that all available appeal procedures to the employee, if any, are followed. Special procedures may exist for public sector employees – who have certain due process rights not accorded to private sector employees.

Briefly, if a public employee is determined to have a property interest in continued employment (e.g. if the employee is covered by an agreement or policy that states he or she can be terminated only for cause), due process requires at a minimum that the employee be given (a) written or oral notice of the charges against him, (b) an explanation of the employer's evidence, and (c) an opportunity to present his position, prior to termination. The employee may also be entitled to a post-termination hearing. This requirement can be satisfied by the grievance or arbitration provisions of a collective bargaining agreement.

In addition, the Michigan Veterans' Preference Act (VPA) provides some very important rights to "veterans" employed by the state, or any county, city, township or village. Under this law, a veteran employed by one of the listed governmental bodies may only be removed, suspended or transferred from his or her office or employment for certain specified reasons.

Furthermore, the removal, suspension or transfer may only occur after the veteran has been provided with a full hearing and advance written notice of the cause(s) for the action. The VPA contains exceptions for certain managerial and appointed positions (e.g. department heads and their first deputies). However, the law does not exclude employees on probationary status.

Ensure that members of a protected classification are treated the same as employees outside the protected classification who engaged in similar conduct, under similar circumstances (severity of conduct, prior offenses, length of employment, etc.).

Michigan and/or federal law prohibit employment discrimination on the basis of (among other characteristics) race, color, religion, sex, national origin, age, disability, height, weight and marital status.

Do not do anything to embarrass the employee during the termination process. When possible, avoid "escorting" the employee from the workplace in front of co-workers.

Consider providing outplacement services to the employee to aid in finding another job.

If any severance benefits are provided (severance pay, payment of medical insurance premium, outplacement counseling, etc.), consider making benefits conditioned on the employee signing a release. For a release to be effective against federal age discrimination claims (employees 40 or older), it must meet specific minimum requirements, including providing for 21 days of review and a seven-day revocation period after signing.

Be candid (but concise) when advising the employee of the reason for termination. Avoid the urge to either "sugarcoat" the reason in order to save the employee's feelings or over-explain why the decision to terminate was made.

After termination, advise only those employees, or others, who have a need to know, the reason for the termination, and advise them to not discuss the matter.

Do not make post termination statements in a termination notice, reference letter or responses to the state unemployment compensation office that are inconsistent with or contradict the reason for termination.

Finally, if you have any questions about how to proceed (and even if you don't), it is always prudent to consult with a knowledgeable and experienced employment attorney prior to and during the termination.

In most instances, the situation will be relatively straightforward and you will not encounter any difficulties. However, advance planning and paying attention to the "details" can help to avoid any subsequent legal problems – which, unfortunately, can often be very stressful, time-consuming and expensive for everyone concerned.

### About the author . . .

**Melvin J. Muskovitz** works in the Ann Arbor office of Dykema Gossett PLLC. Mr. Muskovitz, who represents management in labor and employment matters, has extensive experience in both the private and public sectors. He has represented businesses and governmental units in contract negotiations, arbitration and before federal and state administrative agencies throughout the country, including the Michigan Department of Civil Rights, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Michigan Employment Relations Commission and the U.S. and Michigan Departments of Labor. Mr. Muskovitz also represents employers in all types of employment litigation, including discrimination wrongful termination claims.

Mel Muskovitz devotes a substantial portion of his time assisting his clients in avoiding legal problems by preparing or reviewing employee handbooks and training manuals, advising on appropriate preventative measures and employee discipline and assisting with day to day employment issues including compliance with the Fair Labor Standards Act, the Family and Medical Leave Act, the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964.

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Section 3: Village Operations

# Chapter 16: Understanding municipal liability

## Knowledge can beat the fear of liability

Several years ago, the City of Lansing lost a case involving a person's death while in police custody. The jury awarded the plaintiff almost $14 million, the largest verdict ever against a member of the MML-sponsored Michigan Municipal Liability and Property Pool.

There certainly seems to be a trend towards larger and larger jury awards. 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 your 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 3,000 claims filed against our municipal members each year. Only 482, or 16 percent, 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, 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.

But as an elected village official, there are three things you should know.

First, know who your village attorney is, and utilize this person's expertise. We recommend that your village attorney be present at all council meetings, and that he or she is 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 village should have an acceptable insurance program. Know who in your village 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 village's liability insurance has adequate limits, and that

coverage is available for activities that may result in claims against the village.

For example, if you are a growing community with new development, you probably have one or more zoning variance requests each year. Make sure you are aware of how your insurance program responds to zoning and land use litigation before you make a decision on a zoning issue.

Last, use the services of your Michigan Municipal 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.
- A 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 Division has a staff of professionals who can assist you with most liability issues.
- A wealth of insurance information is available online at www.mml.org. This is the web site of the Michigan Municipal Liability and Property Pool, the League-sponsored and administered insurance program.
- The Risk Management Services Division publishes *Risk Management News* four times a year. Each issue is devoted to municipal risk management and insurance issues. A copy is mailed to all elected officials.
- The League's annual convention has a variety of concurrent sessions, exhibit booths and networking opportunities at which information can be obtained.
- If your village is already a member of the Liability and Property Pool, you already are taking advantage of comprehensive liability insurance designed for Michigan municipalities, and enjoying immediate access to the information resources mentioned above.

### Risk Management Services Division

The Risk Management Services Division administers two statewide municipal insurance programs: the Michigan Municipal League Workers' Compensation Fund and the Michigan Municipal League Liability and 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.

# Section 3: Village Operations

# Chapter 17: Environmental issues

Like other local governmental units, general law villages must grapple with a wide range of environmental protection and natural resource management issues. Municipalities deal daily with issues related to the delivery of safe supplies of public drinking water; the collection and treatment of wastewater from homes and businesses; the collection and proper disposal of solid wastes; the identification and cleanup of contaminated parcels of property; the protection and proper management of inland lakes and streams and wetlands; and the proper management of runoff from rain storms and melting snow.

All of these municipal activities are governed by a dizzying array of federal and state statutes and thousands of pages of administrative rules that regulate how municipalities deliver these public services.

In Michigan, the principle regulatory agency for environmental matters is the Michigan Department of Environmental Quality (DEQ). This Lansing-based agency of 3,000 employees is responsible for protecting drinking water supplies, ensuring that communities properly treat their waste waters, governing the management of solid and hazardous wastes, protecting air quality and ensuring the quality of surface and ground waters.

Overseeing the efforts of the state DEQ is the U.S. Environmental Protection Agency (EPA), a Washington, DC-based, sub-cabinet federal agency with thousands of employees and sweeping authority to enforce federal environmental statutes and rules.

## Sources of Information on public water supply issues

Laws governing public water supplies are both complex and voluminous. The principle statutes regulating drinking water are the Federal Safe Drinking Water Act (SDWA) and the Michigan companion statute, Chapter 325 of 1994 PA 451. In addition, there are literally hundreds of pages of federal and state regulations that implement the safe drinking water laws.

Information on the latest federal drinking water laws and rules can be obtained from the U.S. EPA Office of Water in Washington, D.C. The best way to access this helpful information is over the internet at www.epa.gov/safewater/.

The Michigan DEQ's Water Division in Lansing also has extensive information available online at www.michigan.gov/deq/.

Outside of the federal and state regulatory agencies, volumes of information on drinking water issues can be obtained from the American Water Works Association at www.awwa.org/.

For information and direct, one-on-one assistance on drinking water issues affecting small communities, contact the Michigan Rural Water Association in Harrison at 989-539-4111. They are on the internet at www.awwa.org/.

## Environmental management challenges

Depending on the level of public services the village provides, it can face a wide variety of environmental management challenges.

**Wastewater**

More and more villages across Michigan are abandoning the use of individual home septic systems in favor of public sewers and municipal-owned wastewater treatment facilities. While this step can yield positive results in terms of protecting public health and the local environment, it is a costly and complex process, with significant long-term management responsibilities.

The process of treating domestic sewage and disposing of treated waste waters (either to surface waters like rivers and lakes, or to groundwater) is governed by a very strict federal law known as the Clean Water Act (CWA) and its corresponding Michigan statute, parts 31, 44 and 88 of the Natural Resources and Environmental Protection Act, 1994 PA 451. Like other federal and state laws, there are literally thousands of pages of administrative rules that apply to local units of government that operate publicly-owned treatment works (POTWs).

Villages that discharge treated waste waters to lakes and streams or to groundwater do so under a complicated federal permitting system known as the National Pollution Discharge Elimination System (NPDES). The community applies to the DEQ for a NPDES permit which spells out in exact detail the volume of wastewater the community can discharge and the concentrations of pollutants the wastewater discharge may contain.

Minor violations of the terms and conditions of the NPDES permit bring fines up to several thousand dollars. Major violations or deliberate attempts by the municipality to circumvent federal or state regulations are a criminal violation of the Clean Water Act punishable by stiff fines and even prison terms.

There are many types of POTWs, ranging from a small, multi-stage lagoon system to a complex mechanical treatment plant. The vast majority of communities with wastewater collection and treatment systems own and operate their treatment systems, but a growing number of municipalities are privatizing their wastewater operations by contracting with private firms to manage their publicly-owned facilities.

**Sources of information on wastewater treatment issues**

The internet offers extensive sources of helpful information to municipal officials seeking assistance on wastewater treatment issues. These sources include**:**

- U.S. EPA Office of Water
  www.epa.gov/owm/
- Michigan Department of Environmental Quality Water Division
  Phone: 517-335-4176
  www.michigan.gov/deq
- Michigan Rural Water Association
  Phone: 989-539-4111
  www.mrwa.net/
- The Water Environment Federation
  Phone: 800-666-0206
  (WEF) www.wef.org/

**Storm water**

The Storm Water Phase II Program rules were published by the U.S. EPA in the Federal Register on December 8, 1999. By March 1, 2003, 120 cities and villages and an equal number of townships were required to have in place, as outlined in the rules, a valid permit to discharge storm water runoff to control pollutants from runoff to rivers, lakes and streams. For communities targeted by EPA as candidates for storm water permits, the new storm water pollution control rules and permitting requirements are not optional – they are mandatory.

**Solid waste**

Assuring the collection and proper disposal of household waste and yard wastes is another service that a growing number of villages choose to provide their residents. There is no statutory requirement that local units of government provide solid waste collection and disposal services. But, many villages have chosen one of three options to manage household waste within their communities:

1. **Village-operated service:** The village owns a fleet of trucks, operated by village employees, to collect and dispose of household waste. This service requires a separate contract with a permitted solid waste landfill or trash incinerator. In addition, many villages operate a separate service to collect and compost grass clippings, leaves and other yard waste.
2. **Contracted service:** The village contracts with a private waste hauler to collect and properly dispose of household wastes. In many instances, the contract includes yard waste collection and composting services.
3. **Ordinances:** The village, by ordinance, requires property owners to properly dispose of their household wastes on their own either by contracting with a private hauler or by taking their waste to a nearby landfill. The municipality simply enforces the provisions of the ordinance.

In addition, some communities own and operate their own landfills. Those that do must comply with a host of federal and state laws and regulations governing the siting, design, construction, operation, closure and post-closure monitoring of their landfill facilities.

As with other environmental matters, the collection and disposal of municipal solid waste is governed by a host of federal and state laws and regulations. Information on both state and federal regulatory requirements for solid waste disposal can be obtained from the DEQ's Waste and Hazardous Materials Division at www.michigan.gov/deq/0,1607,7-135-3306_28609---,00.html. 517-373-2730

For general information on solid waste management systems and municipal solid waste management practices, the best source of information is the Kansas City, Missouri-based American Public Works Association at www.apwa.net/

### About the author…

**MML Environmental Affairs Manager**
Based at the League's office in Lansing, the Environmental Affairs Manager advocates the municipal viewpoint on the myriad environmental and natural resources issues at the state capitol in Lansing and at the U.S. Capitol in Washington D.C. In addition, one-on-one assistance is available to MML member communities to help them comply with environmental regulations.

Section 4: Finance

# Chapter 18: Authority and Internal Controls

## Introduction

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

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

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

## Limitations on local authority

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

### State limitations

Municipal elected officials in Michigan 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 (i.e., 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 affect on certain financing authorities for future programs. The full effect of Proposal A is still unknown. Some believe it has had an inflationary effect on home values. Others believe that the reverse will be true in the future when new owners find the accumulated state equalized value (SEV) entered into the roll of taxable value for their payment of taxes. It also remains to be seen what its full impact will be on local units of government

**State statutes**

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

State statutes control almost every aspect of municipal finance. Appendix 1 of this handbook contains a comprehensive listing of controlling state statutes. Local officials should seek advice and counsel from their own local resources when embarking upon changes of policy and practices in the conduct of the financial affairs of their local government.

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

Additional municipal finance materials are available from the Michigan Municipal League (MML) Library. The Inquiry Service may be contacted at 734-662-3246 during office hours for assistance. There is also material available on the website.

**Case law**

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

a. The benefit derived from the improvement was a general benefit to the community and not a special benefit to homes in the subdivision and
b. Special assessments may only be levied for direct benefit (i.e., the street upon which the homes fronted) and such may not be levied for indirect benefits (for the major thoroughfare to which their frontage street connected). See *Johnson vs. Inkster,* 401 Mich 263 (1977).

A second example has had perhaps an even greater impact on municipal finance.

On December 28, 1998, the Michigan Supreme Court ruled unconstitutional the City of Lansing's stormwater service "fee," 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*, 459 Mich 152, 587 NW2d 264 (1998) could have significant implications for municipalities statewide. Bond counsel for cities and villages have expressed concern that the ruling could impact the security of revenue bonds backed by user fees.

**Local limitations**

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

**The GLV Act**

The GLV Act establishes millage limits, debt limits and the fiscal year. Also in the Act are budget requirements, audit requirements and reporting of financial conditions of the village on a regular basis. The Act assigns duties and responsibilities for financial management of the village.

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

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

**Village ordinances**

Ordinances are often necessary to implement state statutory requirements and those of the GLV Act to limit and regulate financial management in more detail than is permitted or desirable by the act. Ordinances

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

are more easily amended than the Act and greater detail can be accomplished.

Ordinances may deal with such trifles as administering blanket purchase orders, counter-signatures 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 beginner. And, a refresher reading by seasoned officials is suggested.

## Summary

By now you have probably concluded that those financial aspects of the tasks of local 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 products of a short-term budget crunch or a financial crisis with quick-fix solutions. The task is to make thoughtful policy decisions with a view toward continual improvements over a period of time.

Local officials should always seek advice and counsel from their 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.

## About the Authors…

**Lois Thibault** is retired Director of Field Operations for the Michigan Municipal League. Ms. Thibault joined the League staff in 1988, serving the members as director of Information Services from 1990 to 1998. Before that, she gained ten years of local government experience and expertise as manager in the Village of Ortonville. She also served as the Secretary/Treasurer to the Michigan Local Government Management Association.

Ms. Thibault completed her undergraduate work at Northern Michigan University, majoring in education. She earned a master's degree in public administration from Eastern Michigan University.

**A. Frank Gerstenecker** is a consultant for the Municipal Consulting Services Department, Michigan Municipal League. His city management experience spans 33 years: assistant city manager of Oshkosh, Wisconsin (1963-1965); city manager of Ishpeming, Michigan (1965-1970); and city manager of Troy, Michigan (1970-1996). Mr. Gerstenecker retired in 1996 and began consulting part-time.

He has served as president of the Michigan Local Government Management Association, midwest vice president of the International City/County Management Association and chairman of many special committees of these associations. He has served as adjunct professor of management at Walsh College of Business and Accountancy, and is a volunteer teacher in the Elected Officials Academy of the Michigan Municipal League. Mr. Gerstenecker is a member of the Board of Directors of the Michigan Municipal League Foundation.

Mr. Gerstenecker received a Masters Degree in Governmental Administration from the Wharton School, University of Pennsylvania and Bachelor of Arts degrees in government and economics from Southern Illinois University.

# 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 development process can be used as an important element in strategic planning to achieve the goals and objectives of the village. The resultant document and the implementing activities during the fiscal year serve the very purpose for which local governments exist – to provide for the safety and well being of citizens and their property.

### Pathways to financial priorities

Many municipal governments are turning to needs studies to help set priorities for allocating scarce resources and determine the financing preferences of their citizens, who are looked upon as customers. Needs studies include community-wide surveys, advisory task forces, citizen study committees, consultant studies and staff reports. Survey methods and techniques should be left to the experts if reliable results are expected.

Governing bodies sometimes hold goal-setting exercises. Some have study retreats. Use of facilitators to keep focused on the process is common. Participants in such exercises may include the governing body, the chief administrative officer, staff members, citizen advisory groups, task forces and possibly consultants.

After the governing body establishes a sense of priorities in a consensus-building exercise, the chief administrative officer is given the responsibility and authority to prepare the proposed budget for consideration by the governing body. This authority is assigned by the GLV Act and the Michigan Uniform Budgeting and Accounting Act, 1968 PA 2 (MCL 141.421-141.440a).

### 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.
- achieve balance between revenues and expenditures (Be balanced!).
- follow other requirements of the Uniform Budgeting and Accounting Act (1968 PA 2) and the GLV Act.

## The operating budget – A plan for day-to-day operation

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).

Specifically, the budget is the plan for revenues and expenses to assure the delivery of day-to-day services for the community. In preparing and examining this important policy document, local officials are urged to avoid the temptation of dwelling on that with which they may feel comfortable – line item details of paper clips, for example – thereby avoiding that which requires strategic planning, deliberation, compromise and possibly stressful relationships with others. In short, focus on policy, not paper clips.

**Types of operating budgets:**

- **Theline item budget:** Expenditures are divided into categories such as salaries, fringe benefits, contractual services, insurance, telephone, office supplies, printing, postage, etc. This type of budget is easy to prepare, but it is not goal- or program-oriented.
- **The program budget:** Expenditures are presented by program along with narrative descriptions of services to be provided. 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:** Attempts to show the relationship between dollars spent and units of service performed, based on cost per unit (e.g., cost per mile of street swept, etc.). This is the most complex of all types of budgets 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 helpful in productivity improvement programs where units of measure are practical and reasonable.
- **The zero-based budget:** This type usually follows the program or performance format. Each year the department or unit must defend every dollar requested. This includes defending existing programs and services as well as new ones. By its nature, it is goal-oriented, but it is very time consuming and costly to prepare.

Of the foregoing types of budgets, the program budget is the most useful and practical for local officials. It permits understanding of the purposes for which funds are being proposed and it encourages a policy-making approach to budgeting.

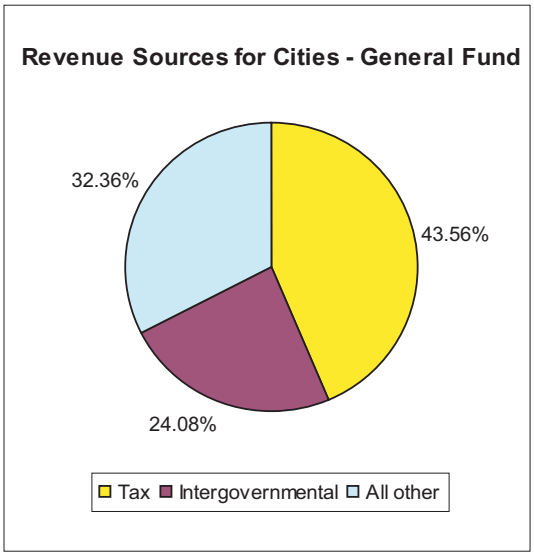
**Revenue sources:**

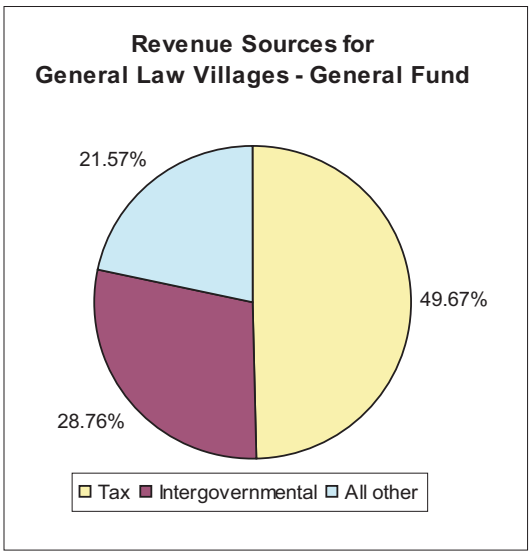
As described earlier in this chapter, state statute closely governs revenue sources for the operating budget. Special items of income vary among local units of government.

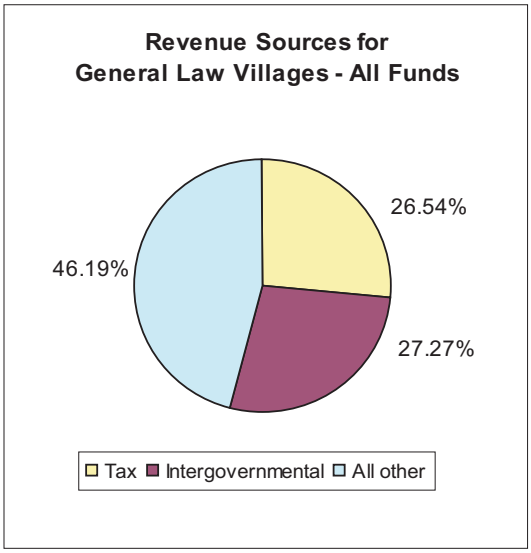
Revenue sources for general operating budget purposes:

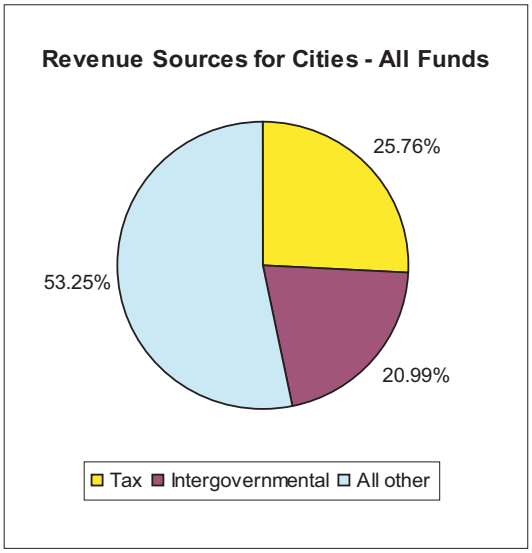
- property taxes (controlled by law);
- licenses and permits (building, plumbing, hearing, electrical, air conditioning, occupancy, amusements, etc., controlled by ordinance);
- intergovernmental revenues (state shared revenues, liquor licenses and grants such as CDBG);
- charges for sales and services (engineering review fees, duplication and photocopies, police reports, plan review fees, etc.);
- fines and forfeitures (drug forfeiture proceeds, library book fines and penal fines);
- interest income and
- miscellaneous.

For 2004, 171 general law villages filed the F-65 form with the state treasury department. The combined results indicate approximate revenues sources, as shown in the following charts:






Of those revenue sources, local officials have much discretionary authority in all except property taxes and intergovernmental revenue sources. Property taxes were discussed earlier. Intergovernmental or state shared revenues require added attention.

Revenue sharing to local governments consists of both constitutional and statutory payments. The constitutional portion allocates for cities, villages and townships, 15% of gross collections from the first 4% of the sales tax. This amount is then distributed on a population basis. This amount is fixed; in other words the legislature must appropriate whatever is calculated. It cannot reduce or increase the constitutional portion.

The statutory portion of revenue sharing has undergone dramatic changes. Today, the distribution formula calls for 21.3% of the first 4% of sales tax collections to be distributed in accordance with the formula set forth in Public Act 532 of 1998. Since state law sets the statutory portion, the governor and legislature have the ability to adjust the distributed amount; an ability they have used to the detriment of local units, especially during state revenue shortfalls. The actual formula has not been used in a few years.

According to available data filed by local units of government with the Department of Treasury in 2004, revenue sharing generally accounts for 19% of a city budget, 21% of a village budget and 35% of a township budget.

**Be careful of creative financing**

Because of decreasing revenue, the ever-increasing demands for added services, and the increasing costs of operations and facility upkeep, local officials may be inclined to reexamine the revenue side of the budget with an eye to creativity. One should approach creative financing with caution.

The International City/County Management Association (ICMA) in its *Handbook for Elected Officials* advises what approaches to increasing revenues should be avoided:

- overestimating revenues in the annual budget. Overly optimistic projections are great for balancing budgets, but they don't do much for end-of-the-year financial reports and fund balances.
- borrowing to cover operating expenses. Some day these borrowed funds have to be paid off. It may be necessary to take out short-term loans to cover seasonal cash shortages (property tax receipts only come in once a year but expenditures occur throughout). Officials must make sure these loans are paid off and accounted as such by the end of the fiscal year.
- changing revenue payment dates or changing the fiscal year for the purpose of realizing cash receipts for more than one fiscal year in the span of one. For example, quarterly paid state shared revenues could be manipulated to reflect five quarters of receipts in one fiscal year but only three quarterly payments would be realized the following year. The first year would be well financed but the following year could spell disaster.
- treating short-term revenue sources, such as "one shot" federal grants, as if they were continuing long-term commitments for funding.
- creating a new revenue source which increases revenues in the short-term, but provides disincentives and erodes the base of revenues in the long run. Here, one is reminded of the controversies over the Single Business Tax on the state level and property tax abatement on the local level.
- allowing all revenues to be spent as soon as they are received, leaving no opportunity for reserves to build up to within reasonable limits. Without reserves, local governments are unable to meet emergencies such as natural disasters, a time when citizens have nowhere else to turn for their critical needs. The size of your fund balance is should be a matter of local policy. It is recommended that you adopt a fund balance policy. In doing so, consider the local political climate; special plans and needs; potential liabilities, such as environmental mandates or legal challenges; cash flow; volatility of revenue sources; fiscal health for bond ratings, etc. Some common guidelines for fund balance minimums are five to twenty percent of annual budgeted expenditures or one month's operating expenditures.

The foregoing provides insight into the revenue side of the operating budget. Now let's examine the expense, or expenditure, side.

**Expenditures for the operating budget**

Expenditures provide for the day-to-day services to support the residents and businesses of the village. Expenditures for operations are re-occurring day after day and possibly year after year. All expenditures are to be for public purposes only. An abbreviated listing looks like this:

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

**Questions villages should ask themselves for compliance with appropriate budget requirements:**

- Does the person responsible for your accounting function use the state mandated uniform chart of accounts?
- Who is your chief administrative officer for budget purposes? 1968 PA 2 mandates a chief administrative officer to prepare and present the budget to the legislative body.
- Who is your fiscal officer for budget purposes? Per 1968 PA 2, this person is the official who prepares and administers the budget.

- Do you have an annual audit performed by a certified public accountant and file a copy with the state treasurer? NOTE: You have the option of a biannual audit if your population is less then 4,000. However, the biannual audit will cover two years. If you plan to issue bonds, you will need an audit for the most recently completed fiscal year on file with the Michigan Department of Treasury. Most villages find it more efficient to have audits conducted annually.
- Does your chief administrative officer prepare and present a budget to the council according to an appropriate time schedule, with adequate time for review, discussion and public input before the beginning of the new fiscal year?
- Do department heads provide necessary information to the chief administrative officer?
- Does the council get the information necessary for proper consideration of the recommended budget?
- Are three years of figures included: the most recent complete fiscal year, the current fiscal year estimates and the upcoming fiscal year?
- Is the budget balanced? (Total estimated expenditures shall not exceed total estimated revenues. (MCL 141.435))
- Do you hold a public hearing before budget adoption as required by 1963 PA 43, as amended (MCL 141.411 to 141.415)? Do you include millage information so you don't need to hold a separate truth in taxation hearing?
- Do you adopt the budget by indicating general appropriations by program, rather than by line item? Does the appropriations resolution or ordinance provide sufficient guidelines for the chief administrative officer and/or fiscal officer in administration of the budget?
- Do you adopt the budget prior to the start of the new fiscal year? If not, you have no authority for spending in the new fiscal year.
- Have you determined the millage you need to meet the liabilities for the coming fiscal year?

For samples of budgets, budget ordinances, investment policies, fund balance policies, purchasing ordinances and/or policies and other specific and general information on budgeting, contact the League's Library at 800-653-2483. Much of this information is also available on the Michigan Municipal League's web site at www.mml.org. A sample budget ordinance is in Appendix 9 of this handbook.

For copies of the Uniform Chart of Accounts, the Uniform Budgeting Manual for Local Units of Government, contact the Department of Treasury, Local Audit and Finance Division, State of Michigan, 517-373-3227 or download them from their website at www.michigan.gov/treasury.

For copies of public acts, as amended, go to www.legislature.mi.gov. This is a fairly user-friendly web site. The General Law Village Act is Act 3 of 1895.

## 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 village council, 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 and
- 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, tax increment financing authorities).
- 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 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 and keeping it running in the future. The need for additional employees, costs for heat, lighting, water, telephones, etc. are appropriate considerations.

## The capital improvement program (CIP)

The capital improvement program (CIP) is perhaps the most important policy-planning tool available to local budget makers.

The CIP usually extends three to five years beyond the current or proposed budget year. It provides a schedule of projects year-by-year into the future. The first year on the CIP should be considered the next 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 over a period of years for:

a) increases in operating costs for new facilities,
b) acquisition of rights-of-way,
c) contributions to other authorities,
d) special assessment projects and
e) bond issuance planning.

The CIP can be the keystone of a strategic plan.

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 CIP time span. 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.

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

| A *suggested* schedule for the budgeting process<br>**(assuming that your fiscal year begins March 1. If yours is different, adjust the schedule accordingly)** | |
|---|---|
| On or about | Step in the budget process |
| November 1 | Chief administrative officer or fiscal officer asks department heads to compile budget requests for the coming fiscal year |
| December 1 | Department heads submit budget requests for the coming fiscal year |
| January 1 | Chief administrative officer presents the proposed budget to the legislative body |
| February 1 | Council review completed; revisions made; union negotiations completed, etc. |
| February 7 | If necessary, council adopts a resolution on the proposed additional millage rate for the coming fiscal year |
| February 16 (Optional) | Public hearing on the millage rate if you take advantage of increased SEV or want to increase the millage rate (Note: If you hold this separate hearing for the millage rate, the notice must include requirements set forth in MCL 211.24(e).) |
| February 28 | Public hearing on budget, which may also include the millage rate information.<br>Budget adopted (no more than 10 days after public hearing) |
| May | Millage set after final SEV figures are received. Cannot be more than proposed in public hearing. |

### Bidding

How are goods and services obtained to implement the budget and capital improvement plan? Most villages do not have a policy in place for purchasing big ticket items, or for seeking professional services such as an engineering study or planning ordinance update.

There are no longer any state statutes requiring public bids on municipal contracts. 1993 PA 167 & PA 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.

The GLV Act does not address bidding practices. In order to follow bidding policy control mechanisms, general law villages must enact their own ordinances and/or policies. A bidding policy would contain a:

- designated individual responsible for purchasing function
- monetary threshold for which competitive sealed bids must be obtained;
- method for announcing, collecting and opening bids; and
- method for disposing of obsolete property

The MML has sample bidding policies in our library and on our web site.

### About the Authors…

**Lois Thibault** is retired Director of Field Operations for the Michigan Municipal League. Ms. Thibault joined the League staff in 1988, serving the members as director of Information Services from 1990 to 1998. Before that, she gained ten years of local government experience and expertise as manager in the Village of Ortonville. She also served as the Secretary/Treasurer to the Michigan Local Government Management Association.

Ms. Thibault completed her undergraduate work at Northern Michigan University, majoring in education. She earned a master's degree in public administration from Eastern Michigan University.

**A. Frank Gerstenecker** is a consultant for the Municipal Consulting Services Department, Michigan Municipal League. His city management experience spans 33 years: assistant city manager of Oshkosh, Wisconsin (1963-1965); city manager of Ishpeming, Michigan (1965-1970); and city manager of Troy, Michigan (1970-1996). Mr. Gerstenecker retired in 1996 and began consulting part-time.

He has served as president of the Michigan Local Government Management Association, midwest vice president of the International City/County Management Association and chairman of many special committees of these associations. He has served as adjunct professor of management at Walsh College of Business and Accountancy, and is a volunteer teacher in the Elected Officials Academy of the Michigan Municipal League. Mr. Gerstenecker is a member of the Board of Directors of the Michigan Municipal League Foundation.

Mr. Gerstenecker received a Masters Degree in Governmental Administration from the Wharton School, University of Pennsylvania and Bachelor of Arts degrees in government and economics from Southern Illinois University.

Section 4: Finance

# Chapter 20: 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. 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 at 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. (1975 PA 197, MCL 125.1651)
- **A tax increment finance authority (TIFA)**, available prior to 1989, has been replaced by the LDFA; its boundaries cannot be expanded. (1980 PA 450, MCL 125.1801)
- **A local development financing authority (LDFA)** may be created to encourage local development, to prevent conditions of unemployment and to promote growth. (1986 PA 281, MCL 125.2151)
- **A brownfield redevelopment authority (BRA)** may be created to clean up contaminated sites, thus allowing the property to revert to productive economic use. (1996 PA 381, MCL 125.2651)
- **A corridor improvement authority** may be created, which would allow cities and villages to create districts, similar to DDAs, for older commercial corridors along major traffic thoroughfares. (2005 PA 280, MCL 125.2871)

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. (1974 PA 338, MCL 125.1601)

- **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. (1961 PA 120, MCL 125.981)
- **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. (1961 PA 120 of, MCL 125.981)

## Tax abatement programs

The Michigan legislature in 1974 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.

1974 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.

## About the authors. . .

**Robert C. Bendzinski Sr.** is the chairman of Bendzinski & Co., Municipal Finance Advisors, established to provide financial advisory services to municipalities. Mr. Bendzinski's municipal experience includes serving as the Director of Finance, treasurer, assessor, and acting city manager/clerk on numerous occasions for the city of Grosse Pointe. Prior to this, he was employed at the city of East Detroit as an accountant.

Mr. Bendzinski holds a B.A. from the University of Detroit, with a major in accounting. Mr. Bedzinski was one of the founding members of the National Association of Independent Public Finance Advisors and served on its Board of Directors.

Portions of this chapter are adapted from materials prepared by A. Frank Gerstenecker.

**A. Frank Gerstenecker** has 33 years of city management experience. He served as assistant city manager of Oshkosh, Wisconsin (1963-1965); city manager of Ishpeming, Michigan (1965-1970); and city manager of Troy, Michigan (1970-1996). Mr. Gerstenecker retired in 1996 and began consulting part-time. He is a consultant for the Michigan Municipal League and a volunteer teacher in the Elected Officials Academy. Mr. Gerstenecker received a Masters Degree in Governmental Administration from the Wharton School, University of Pennsylvania and Bachelor of Arts degrees in government and economics from Southern Illinois University.

### Summary of Economic Development Tools

| | DDAs | TIFAs | LDFAs | BRAs | EDCs | PSDs | BIDs |
|---|---|---|---|---|---|---|---|
| Authorized municipalities | Cities, villages and townships | Cities | Cities, villages and urban townships | Cities, villages and townships | 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 | Commercial area with at least 10 retail businesses | Commercial or industrial area with boundaries established by city resolution |
| Requirements | Deterioratin g property values | Deterioratin g property values | Industrial area | Environme ntal contaminati on | Industrial or 501(c)(3) nonprofit | 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 | Environme ntal cleanup | Issue bonds for private industrial developme nt | Improve highways and walkways; promotion; parking, maintenanc e, security or operation | Improveme nt of highways and walkways; promotion; parking, maintenanc e, security or operation |
| Funding sources | TIF from District; millage | TIF from plan area | TIF on eligible property | TIF; Revenue Bonds | Tax exempt bonds | Bonds, special assessmen ts | Bonds, special assessmen ts, gifts, grants, city funds, other |

# Section 4: Finance

# Chapter 21: 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 illegal expenditures of public funds.

Generally, a municipal body is empowered to spend monies only through a specific delegation of power by the Michigan Constitution or state statute. The home rule acts also provide limited authority to cities and villages for spending. Regardless of the spending authority, however, it is generally agreed that municipalities have the power to expend funds only for a *public purpose*.

## What is a public purpose?

In *Hays v City of Kalamazoo,* 316 Mich 443, 453-454 (1947), the Michigan Supreme Court 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.

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 for which the municipality is legally authorized to provide?
4. Is the operation or service under the direct control of the city?

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)).

The Michigan Supreme Court has ruled that a city cannot give away funds or other property even for a public purpose without express statutory authority. *Sinas v City of Lansing*, 382 Mich 407 (1969). In *Sinas*, the City of Lansing had acquired certain real estate under the urban renewal statute. It donated part of the land to Lansing

Community College. The court held that the donation was valid since it was authorized by statute.

## 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).

See also *Kaplan v City of Huntington Woods,* 357 Mich 612 (1959), and *Moshier v City of Romulus,* 54 Mich App 65 (1974).

### 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 problem.

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 MML, 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 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 city council.

**Specific authorizations granted by law**
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 city or village attorney is the best resource for legal advice. You may also wish to consult the State of Michigan Department of Treasury web site (www.treas.state.mi.us/localgov/Audit/lawfulex.htm) for guidelines.

**Statutory authorizations for municipal expenditure**

Listed below are several specific statutory authorizations for public expenditures.

- Cultural activities. MCL 117.4k.
- Water supply authority. MCL 121.2.
- Public utility. MCL 123.391.
- Exhibition area. MCL 123.651.
- Memorial Day/centennial celebrations. MCL 123.851.
- Band. MCL 123.861.
- Advertising. MCL 123.881.
- Principal shopping district. MCL125.981.

## About the Author…

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Ms. Jeffers received her law degree in 1980 from Southern Illinois University School of Law, *summa cum laude*, and has an undergraduate degree from Ohio University, *summa cum laude*, from which she graduated *Phi Beta Kappa.*

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. Any assessment or user charge not properly imposed, however, MAY 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.

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 actually served. 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 test for user charges. In order to avoid classification as a tax, a user charge must "serve a regulatory purpose rather than a revenue-raising purpose." *Bolt v City of Lansing*, 459 Mich 152, 587 NW2d 264 (1998).

Rates and charges must also bear a direct relation to the cost of providing the service to the ratepayer. A fee designed to raise revenue for general public services in addition to covering the cost of providing the service which is the subject of the fee is actually a tax. A fee designed to raise revenue from a broad range of users of a system to pay the cost of an improvement to a discrete part of the system which will benefit only a smaller group of users may also be considered a tax.

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

## 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 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, 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 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 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:

Selected GLV Act special assessment provisions

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

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

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

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

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

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

1. petitions,
   2. hearings on necessity and the apportionment of the assessment, and
   3. notice
      - content
        - nature, location, cost of improvements
        - apportionment of cost
        - opportunity to object and appeal
      - 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, (1933 PA 94, MCL 141.101 et seq.) 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; and to provide for the debt service, if any, on bonds issued to finance the improvement providing the service.

Other statutes and local charters provide additional authority. 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 make a serious attempt, to relate the user charge to a regulatory scheme. 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. Various grantmaking and regulatory authorities may require the use of a particular form of rate ordinance as a condition for approval.

**Standards in ratemaking: The *Bolt Test***
The Michigan Supreme Court's decision in *Bolt v City of Lansing,* 459 Mich 152, 587 NW2d 264 (1998) turned ratemaking on its head. In *Bolt*, the court articulated a new three-part test for determining whether a charge is validly characterized as a fee:

1. it must serve a regulatory purpose,
2. it must be proportionate to the necessary costs of the service, and
3. 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, supra, 236 Mich App 141 (1999).*

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.

The method selected for calculating rates and charges must be reasonable and 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. It is appropriate to distinguish among different classes of users and to apply different rate schedules to each class.

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 392 Mich 30 (1974).*

**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.

## About the author . . .

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Ms. Van Dusen serves as a Director of the Citizens' Research Council of Michigan and as the Chairperson of the Board of Directors. She is a past member of the Ferndale Board of Education and continues to serve as a citizen member of the Finance Committee. She previously served on the Committee for the 21st Century for the City of Detroit.

# Appendix 1

# Michigan laws of interest to general law villages

For copies of public acts, go to www.legislature.mi.gov. Public Acts are now available for free on the Michigan Legislature web site.

For indexed copies of Act 3 of 1895, as amended, the General Law Village Act, go to www.mml.org/members/pdf/glv_index04.pdf It is highly recommended that each elected and appointed official have a current copy of the charter.

## Conflict of interest and incompatible public offices

**Conflict of Interest of Legislators and State Officers Act,** 1968 PA 318, MCL 15.301 et seq. Prohibits legislators and state officers from having an interest in any contract with the state or any political subdivision which would cause a substantial conflict of interest.

**Contract of Public Servants with Public Entities Act,** 1968 PA 317, as amended, MCL 15.321 et seq. Regulates contractual conflicts of interest.

**Incompatible Public Offices Act,** 1978 PA 566, MCL 15.181 et seq., as amended. Encourages the faithful performance of official duties by prescribing standards of conduct for public officers and employees and prohibiting the same person from holding incompatible offices simultaneously.

**Political Activities by Public Employees Act,** 1976 PA 169, MCL 15.401 et seq. Regulates political activity by public employees.

**Standards of Conduct and Ethics Act,** 1973 PA 196, MCL 15.341 et seq. Prescribes standards of conduct for public officers and employees.

## Economic development

**Development or Redevelopment of Principal Shopping Districts,** 1961 PA 120, as amended, MCL 125.981 et seq. Authorizes the creation of certain boards and the collection of revenue and bonding for the redevelopment of principal shopping areas and business improvement districts of certain cities.

**Downtown Development Authority,** 1975 PA 197, as amended, MCL 125.1651 et seq. Provides for creation of an authority to correct and prevent deterioration in business districts. The authority can capture tax increment revenue and levy a tax on property within the district.

**Local Development Financing Act,** 1986 PA 281, as amended, MCL 125.2151 et seq. Provides for creation of an authority to prevent conditions of unemployment and promote economic growth in the authority district. The authority can capture tax increment revenue.

**Plant Rehabilitation and Industrial Development Districts Act,** 1974 PA 198, as amended, MCL 207.551 et seq. Provides for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; provides for the exemption from certain taxes and levying of a specific tax and related matters.

**Tax Increment Finance Authority,** 1980 PA 450, as amended, MCL 125.1801 et seq. Provides for the creation of Tax Increment Finance Authorities (TIFAs) to capture tax increments which may be spent or pledged to make improvements within the TIFA district. Tax increment revenue is produced by applying existing tax levies to

the difference between the taxable value of property after improvements have been made in the TIFA district where the property is located over the taxable value of that property fixed on the date a tax increment financing plan is adopted. (After 1989, a new district could not be created or the boundaries expanded.)

**Technology Park Development Act,** 1984 PA 385, as amended, MCL 207.701 et seq. Provides for the establishment of technology park districts in local government units; provides for exemption from certain taxes and levying of specific tax on owners of certain facilities.

### Elections

**Michigan Election Law,** 1954 PA 116, as amended. MCL 168.1 et seq. Provides for the nomination, election, resignation, removal and recall of elected public officials. Act 116 provides a framework for filling vacancies in public office and governs the conduct of primary and general elections to guard against fraud. Section 381 of Act 116 (MCL 168.381) addresses the election of village officers. MCL 168.951 provides for the recall of elected officials.

## Environment

**Clean Air Act (CCA) 42 USC 7401 et seq., and Part 55 of the Natural Resources and Environmental Protection Act (NREPA),** MCL 324.5501 et seq. Regulates air quality including emissions from municipal activities such as wastewater treatment plants, incinerators and landfills.

**Fire Prevention and Protection of Persons and Property Act,** 1941 PA 207, MCL 29.1 et seq. Section 6p of the act empowers local fire chiefs to request from any employer covered under MIOSHA 1) a list of hazardous chemicals present in the workplace; 2) a material safety data sheet for each such chemical; and 3) a description of the quantity and location of each hazardous chemical.

**Goemaere-Anderson Wetland Protection Act,** 1979 PA 203, as amended, MCL 281.701 et seq., was repealed by 1995 PA 59 and replaced with substantially similar provisions in Part 303 of NREPA**,** MCL 324.30301 et seq. Part 303 defines wetlands and regulates activities in wetlands that are greater than five acres in size. Part 303 also permits local units of government to regulate wetland areas within their boundaries by ordinance. Local ordinances are supplemental to state regulation although they may regulate wetlands smaller than five acres. Local governments that adopt such regulations must notify the MDEQ.

**Inland Lakes and Streams Act,** 1972 PA 346, as amended, MCL 281.951 et seq. Protects riparian rights and the public trust in inland lakes and streams. Regulates the right to dredge, fill or construct structures on land below the ordinary high-water mark. Any activity that creates, enlarges, diminishes or connects to an inland lake or stream is regulated by this Act.

**Michigan Environmental Protection Act (MEPA),** MCL 324.1701 et seq. Provides a broadly worded statute which authorizes any person to bring an action for declaratory and equitable relief against any other person "for the protection of the air, water and other natural resources and the public trust in these resources from pollution, impairment, or destruction."

**Natural Resources and Environmental Protection Act (NREPA),** 1994 PA 451, as amended, MCL 324.101 et seq. Provides detailed pollution control standards to protect the environment.

**Parts 211, 213 and 215 of the Natural Resources and Environmental Protection Act (NREPA),** MCL 324.21101, et seq.; MCLA 324.21301, et seq.; MCLA 324.21501, et seq. Michigan's counterpart to the federal Resource Conservation and Recovery Act. These statutes require the owner of underground storage tanks (UST) which hold regulated substances to register the tanks with the MDEQ (Part 211); provide detailed procedures for reporting and addressing leaking underground storage tanks (LUST) (Part 213); and establish a fund (now insolvent) to assist owners with cleanup costs (MUSTFA) (Part 215).

**Part 31 of the Natural Resources and Environmental Protection Act (NREPA),** MCL 324.3101 et seq. Michigan's counterpart to the federal Clean Water Act. The act establishes pollution standards for lakes, rivers and streams and prohibits discharging waste or waste effluent (including stormwater) into the waters of the state unless the person first obtains a permit from the MDEQ.

**Solid Waste Management Act,** 1978 PA 641, as amended and recodified, MCL 324.11501 et seq. Implements federal mandates and regulates the transportation and disposal of non-hazardous solid waste.

## Finance

**Budget Hearings of Local Governments,** 1963 PA 42, (2nd ex sess), MCL 141.411 et seq. Requires public notice and hearing on annual proposed budget.

**General Property Tax Act**, 1893 PA 206, as amended, MCL 211.1 et seq. Provides the primary but not exclusive source of statutory law concerning property taxation. All property, except that which is expressly exempt, is taxable. The act also provides for collection of delinquent property taxes by providing for the sale and redemption to collect tax liens on such property.

**Local Development Financing Act,** 1986 PA 281, as amended, MCL 125.2151 et seq. Provides for the creation of Local Development Finance Authorities (LDFAs) to capture tax increments which may be spent or pledged to make improvements within the district.

**Local Improvement Revolving Fund,** 1957 PA 57, as amended, MCL 141.371 et seq. Authorizes cities and villages to raise money by taxes or bond issue within certain limits for the purpose of establishing a local improvement revolving fund.

**Municipal Finance Act,** 1943 PA 202, as amended, MCL 131.1 et seq. Establishes the municipal finance commission and imposes certain duties and obligations with respect to the issuance by municipalities of bonds, notes and certificates of indebtedness.

**The Revenue Bond Act of 1933,** 1933 PA 94, as amended, MCL 141.101 et seq. Provides for the issuance of revenue bonds to finance public improvement which are self-supporting through use or service charges.

**Surplus Funds Investment Pool Act,** 1982 PA 367, as amended, MCL 129. 111 et seq. Provides authority for the investment of surplus funds of a local unit in an investment pool by a financial institution.

**Tax Increment Finance Authority,** 1980 PA 450, as amended, MCL 125.1801 et seq. Provides for the creation of Tax Increment Finance Authorities (TIFAs) to capture tax increments which may be spent or pledged to make improvements within the TIFA district. Tax increment revenue is produced by applying existing tax levies to the difference between the taxable value of property after improvements have been made in the TIFA district where the property is located over the taxable value of that property fixed on the date a tax increment financing plan is adopted. (After 1989, a new district could not be created or the boundaries expanded.)

**Tax Tribunal Act,** 1973 PA 186, as amended, MCL 205.701 et seq. Creates the Michigan Tax Tribunal to hear appeals related to the assessment and collection of taxes.

**Truth in Budgeting Acts,** 1995 PA 40, as amended, MCL 141.412; 1995 PA 41, as amended, MCL 141.436 & 141.437; 1995 PA 42, as amended, MCL 211.24e. Permits a local unit of government to combine the "notice of public hearing" on the unit's budget with a notice stating that the property tax millage to be levied will be a subject of the hearing. This eliminates the need to publish a notice of increasing property taxes and hold a public hearing pursuant to the Truth in Taxation Act.

**Truth in Taxation Act,** 1982 PA 5, as amended, MCL 211.24e et seq. Provides that no local unit of government may levy an *ad valorem* property tax for operating purposes in excess of the base tax rate, as

defined in the act, without first holding a public hearing pursuant to notice which contains the proposed additional millage rate and percentage increase in operating revenue which would be generated from the levy. A truth in taxation hearing is not necessary if the local unit complies with section 16 of the Uniform Budgeting and Accounting Act.

**Uniform Budgeting and Accounting Act,** 1968 PA 2, MCL 141.421 et seq. Requires local governments to comply with the uniform charts of accounts prescribed by state treasurer, to file an annual financial report, to be audited periodically and to formulate and adopt an annual budget.

## Historic preservation

**Historic Districts, Sites and Structures Act,** 1970 PA 169, as amended, MCL 399.201 et seq. Provides for the establishment of historic districts and acquisition of resources for historic preservation purposes.

**Municipal Historical Commissions,** 1957 PA 213, as amended, MCL 399. 171 et seq. Authorizes cities, villages, townships and counties to create historical commissions and prescribes their functions, to issue revenue bonds and to appropriate money for activities and projects.

## Housing

**Allowances for Moving Personal Property from Acquired Real Property Act,** 1965 PA 40, as amended, MCL 213.351 et seq. Authorizes and requires public agencies to pay allowances for the expense of moving personal property from real property acquired for public purposes.

**Blighted Area Rehabilitation Act,** 1945 PA 344, as amended, MCL 125.71 et seq. Authorizes counties, cities, villages and townships to adopt plans to prevent blight and to adopt plans for the rehabilitation of blighted areas and authorizes assistance to acquire, improve and dispose of real property in blighted areas.

**General Property Tax Act**, 1893 PA 206, as amended, MCL 211.1 et seq. Provides the primary but not exclusive source of statutory law concerning property taxation. All property, except that which is expressly exempt, is taxable. The act also provides for collection of delinquent property taxes by providing for the sale and redemption to collect tax liens on such property.

**Housing Cooperation Law,** 1937 PA 293, as amended, MCL 125.601 et seq. Authorizes cities, villages and other public bodies to aid housing projects of housing authorities and the like by furnishing parks, playgrounds, streets and other improvements in facilities.

**Housing Facilities Act,** 1933 PA 18 (ex sess), as amended. MCL 125.651 et seq. Authorizes a city, village or other unit of government to purchase, acquire, maintain, and operate housing facilities, to eliminate detrimental housing conditions and to create a commission with power to effectuate such purposes.

**Housing Law of Michigan,** 1917 PA 167, as amended, MCL 125.401 et seq. Promotes health, safety and welfare by regulating the maintenance, safety and improvement of dwellings, establishes administrative requirements, prescribes procedures for maintenance and improvement of certain commercial buildings.

**Neighborhood Area Improvements Act,** 1949 PA 208, as amended, MCL 125.941 et seq. Authorizes cities, villages and townships to designate neighborhood areas for the purpose of planning and carrying out local public improvements for the prevention of blight, to carry out such plans by acquiring and disposing of real property and providing for the establishment of local assessment districts.

**State Housing Development Authority Act,** 1966 PA 346, as amended, MCL 125.1401 et seq. Creates a state housing development authority, defines the powers and duties of the authority, establishes a housing development revolving fund and

land acquisition and development fund and provides tax exemption.

**Uniform Condemnation Procedures Act,** 1980 PA 87, as amended, MCL 213.51 et seq. Provides procedures for condemnation of real or personal property by public agencies or private agencies.

**Utilization of Public Facilities by Physically Limited Persons,** 1966 PA 1, as amended, MCL 125.1351 et seq. Provides for the accessibility and utilization by physically limited persons of public facilities, creates the barrier for the design board with duties and powers, prescribes powers and duties of other state and local authorities.

## Intergovernmental relations

**Contracts for Assessing Services,** 1967 PA 37, as amended, MCL 123.621. Permits cities, villages and townships to contract for assessing services.

**Economic Development Projects (Act 425),** 1984 PA 425, as amended, MCL 124.21 et seq. Permits the conditional transfer of property by contract between certain local units of government, provides for permissive and mandatory provisions in the contract and conditions upon termination.

**Intergovernmental Contracts Between Municipal Corporations Act,** 1951 PA 35, as amended, MCL 124.1 et seq. Authorizes intergovernmental contracts between municipal corporations, contracts with a third party to furnish municipal services to property outside the corporate limits, contracts between municipal corporations and with certain non-profit public transportation corporations to form group self-insurance pools.

**Intergovernmental Transfers of Functions and Responsibilities,** 1967 PA 8 (ex sess), as amended, MCL 124.531 et seq. Provides for intergovernmental transfers of functions and responsibilities.

**Interlocal Tax Agreements,** 1995 PA 108, as amended, MCL 124.502 and 124.505a. Provides for interlocal agreements for sharing revenue derived by and for the benefit of local government units.

**Joint Public Building,** 1923 PA 150, as amended, MCL 123.921. Authorizes cities, villages and other units of local government to acquire, singly or jointly, public buildings for the purpose of housing governmental offices or any other public uses and purposes.

**Metropolitan Council Act,** 1989 PA 292, as amended, MCL 124.651 et seq. Authorizes local governmental units to create metropolitan councils, prescribes the powers and duties, and authorizes councils to levy a property tax.

**Municipal Emergency Services,** 1988 PA 57, as amended, MCL 124.601 et seq. Provides for the incorporation of an authority by municipalities (cities, villages & townships) for the purpose of providing police, fire or emergency services, provides for powers and duties of authorities and provides for the levy of property taxes for certain purposes.

**Mutual Police Assistance Agreements,** 1967 PA 236, as amended, MCL 123.811 et seq. Authorizes cities, villages and other units to enter into mutual police assistance agreements and provides for the compensation of units of local government entering into such agreements.

**Police and Fire Protection,** 1951 PA 33, as amended, MCL 41.801 et seq. Provides police and fire protection for cities, villages and other units, authorizes contracts for protection and purchase of equipment, authorizes creation of special assessment districts and creation of administrative boards and authorizes collection of fees for such services.

**Recreation and Playgrounds,** 1917 PA 156, as amended, MCL 123.51 et seq. Authorizes cities and villages and other units to operate systems of public recreation and playgrounds.

**Urban Cooperation Act of 1967,** 1967 PA 7 (ex sess), as amended, MCL 124.501 et seq. Provides for interlocal public agency agreements and permits allocation of certain taxes received from tax increment financing plans as revenues, permits tax sharing and

provides for additional approval for agreements.

## Local government powers, duties and responsibilities

**Allowances for Moving Personal Property from Acquired Real Property Act,** 1965 PA 40, as amended, MCL 213.351 et seq. Authorizes and requires public agencies to pay allowances for the expense of moving personal property from real property acquired for public purposes.

**Building Authorities,** 1948 PA 31, as amended, MCL 123.951 et seq. Provides for the incorporation of authorities to acquire and maintain buildings, parking lots, recreational facilities and stadiums for the use of local units of government and the issuance of bonds for such authorities.

**Charter Township Act,** 1947 PA 359, as amended, MCL 42.1 et seq. Authorizes the incorporation of charter townships, provides a municipal charter and prescribes the powers and functions.

**Compulsory Arbitration of Police and Fire Labor Disputes (Act 312),** 1969 PA 312, as amended, MCL 423.231 et seq. Provides for compulsory arbitration of labor disputes in municipal police and fire departments and prescribes procedures and authority.

**County Departments and Board of Public Works,** 1957 PA 185, as amended, MCL 123.731. Establishes the department and board of public works in counties and outlines the duties of municipalities subject to the act.

**Elliott-Larsen Civil Rights Act,** 1976 PA 453, as amended, MCL 37.2101 et seq. Defines civil rights, prohibits discriminatory practices and prescribes the powers and duties of the civil rights commission.

**Freedom of Information Act,** 1976 PA 442, as amended, MCL 15.231 et seq. Regulates and requires disclosure of public records to the public by all public bodies in the state.

**General Law Village Act,** 1895 PA 3, as amended, MCL 61.1 et seq. Provides for the government of certain villages (statutory charter for general law villages). Provides for powers and duties of village council and officers; the authority to levy tax, borrow money, issue bonds; alter boundaries by annexation or disconnection; and adopt ordinances and disincorporation.

**General Property Tax Act**, 1893 PA 206, as amended, MCL 211.1 et seq. Provides the primary but not exclusive source of statutory law concerning property taxation. All property, except that which is expressly exempt, is taxable. The act also provides for collection of delinquent property taxes by providing for the sale and redemption to collect tax liens on such property.

**Home Rule City Act,** 1909 PA 279, as amended, MCL 117.1 et seq. Provides for the incorporation of cities and for revising and amending their charters; provides for certain powers and duties; and provides for the levy and collection of taxes, borrowing of money and issuance of bonds.

**Home Rule Village Act,** 1909 PA 278, as amended, MCL 78.1 et seq. Provides for the incorporation of villages and for revising and amending their charters; provides for the levy and collection of taxes, borrowing of money and issuance of bonds.

**Incompatible Public Offices Act,** 1978 PA 566, MCL 15.181 et seq., as amended. Encourages the faithful performance of official duties by prescribing standards of conduct for public officers and employees and prohibiting the same person from holding incompatible offices simultaneously.

**Michigan Campaign Finance Act,** 1976 PA 388, as amended, MCL 169.201 et seq. Regulates political activity, campaign financing, campaign contributions and expenditures, campaign advertising and creates state campaign fund.

**Michigan Liquor Control Act,** 1933 PA 8, as amended, MCL 436.1 et seq. Creates liquor control commission and prescribes its powers, duties and limitations.

**Open Meetings Act,** 1976 PA 267, as amended, MCL 15.2621 et seq. Requires public bodies (legislative or governing body including boards, commissions, committees,

subcommittees, authorities or councils which are empowered to perform governmental or proprietary functions or a lessee thereof performing an essential public purpose pursuant to a lease) to conduct nearly all business at open meetings.

**Political Activities by Public Employees Act,** 1976 PA 169, MCL 15.401 et seq. Regulates political activity by public employees.

**Public Employment Relations Act,** 1947 PA 336, as amended, MCL 423.201 et seq. Prohibits strikes by certain public employees, provides review from disciplinary action, mediation of grievances and protects rights and privileges of public employees.

**Purchase of Lands and Property for Public Purpose,** 1933 PA 99, as amended, MCL 123.721 et seq. See also Municipal Finance Act, 1943 PA 202, as amended, MCL 133.1. Authorizes incorporated villages, townships and cities to enter into contracts for the purchase of lands, equipment for public purposes.

**State Boundary Commission Act,** 1968 PA 191, as amended, MCL 123.1001 et seq. Creates the State Boundary Commission and prescribes its powers and duties with respect to municipal incorporation, consolidation and annexation.

**Uniform Condemnation Procedures Act,** 1980 PA 87, as amended, MCL 213.51 et seq. Provides procedures for condemnation of real or personal property by public agencies or private agencies.

**Whistle Blowers Protection Act,** 1980 PA 469, as amended, MCL 15.361 et seq. Provides protection to employees who report a violation or suspected violation of state, local or federal law and also protection for employees who participate in hearings, investigations, etc.

## Miscellaneous

**Armistice, Independence and Memorial Day Expenditures,** 1905 PA 170, as amended, MCL 123.851 et seq. Authorizes townships, cities and villages to appropriate money to defray the expenses of observance of Armistice, Independence and Memorial Day or for the observance of a diamond jubilee or centennial.

**Bands,** 1923 PA 230, as amended, MCL 123.861 et seq. Authorizes villages and townships and cities with a population not exceeding 50,000 to levy a tax for the maintenance and employment of a band for musical purposes for the benefit of the public provided that a special question is subjected to the voters and agreed to by a majority vote.

**Bidders on Public Works,** 1933 PA 170, as amended, MCL 123.501 et seq. Regulates the practice of taking bids and awarding contracts on public work construction and maintenance (except public buildings).

**Fire Department Hours of Labor,** 1925 PA 125, as amended, MCL 123.841 et seq. Regulates the hours of labor of employees in fire departments of municipalities.

**Garbage Disposal Plants,** 1917 PA 298, as amended, MCL 123.261. Authorizes three mill garbage tax for cities and villages.

**Gifts from Municipal Utilities,** 1969 PA 301, as amended, MCL 123.391. Authorizes the giving of gifts or contributions from the operating revenues of any municipality owning or operating any public utility as determined by its governing board.

**Gifts of Property to Local Government,** 1913 PA 380, as amended, MCL 123.871 et seq. Regulates gifts of real and personal property to cities, villages, townships and counties.

**Municipal Water and Sewage System Liens,** 1939 PA 178, as amended, MCL 123.161 et seq. See also Revenue Bond Act, 1933 PA 94, as amended, MCL 141.121. Provides for the collection of water or sewage system rates and assessment charges, and provides for a lien for nonpayment for services furnished by municipalities.

**Preference in Employment (Veterans),** 1897 PA 205, as amended, MCL 35.401 et seq. Provides for preference of honorably discharged members of the

armed forces of the United States for public employment. Applicable to discipline public employees who are veterans.

**Prohibited Taxes by Cities and Villages,** 1964 PA 243, as amended, MCL 141.91. Prohibits the imposition, levy or collection of taxes other than ad valorem property taxes by cities and villages except as otherwise provided by law.

**Resignations, Vacancies and Removals,** R.S. 1846, ch. 15, as amended, MCL 201.1 et seq. Provides for procedures regarding resignations, vacancies and removals from public office and for filling vacancies.

**Special Tax for Advertising,** 1925 PA 359, as amended, MCL 123.881. Empowers the council or corporate authorities of any city or village to levy a special tax to be used for advertising the industrial, commercial, educational or recreational advantages of the city or village and to establish recreational and educational projects for the purpose of encouraging growth or trade of the city or village.

**Utilization of Public Facilities by Physically Limited Persons,** 1966 PA 1, as amended, MCL 125.1351 et seq. Provides for the accessibility and utilization by physically limited persons of public facilities, creates the barrier for the design board with duties and powers, prescribes powers and duties of other state and local authorities.

**Water Furnished Outside Territorial Limits,** 1917 PA 34, as amended, MCL 123.141 et seq. Authorizes municipal corporations having authority by law to furnish water outside their territorial limits, to sell water to other municipal corporations, contract with individuals, firms or corporations regarding the construction of water mains, sale of water, to construct water mains through the highways outside territorial limits with the consent of appropriate authorities.

**Youth Center,** 1967 PA 179, as amended, MCL 123.461. Authorizes tax levy of 1.5 mills for 20 years for operation of a youth center.

## Organization, governmental forms and dissolution

**Disconnection of Land from Cities and Villages,** 1949 PA 123, as amended, MCL 123.31 et seq. Provides a mechanism by which an owner of farmland may have it disconnected from a city or village if the land is: (1) 10 or more acres; (2) is not subdivided; (3) is located on a border or boundary and the disconnection will not isolate any part of the city or village from the remainder of the city or village; and shall have been used for only agricultural purposes for the three years preceding the filing of the petition to disconnect.

**General Law Village Act,** 1895 PA 3, MCL 61.1 et seq. Provides for the government of certain villages (statutory charter for General Law Villages). Provides for powers and duties of village council and officers, the authority to levy tax, borrow money, issue bonds, alter boundaries by annexation or disconnection, adopt ordinances and disincorporate.

**Home Rule City Act,** 1909 PA 279, as amended, MCL 117.1 et seq. Provides for the incorporation of cities and for revising and amending their charters; provides for certain powers and duties; and provides for the levy and collection of taxes, borrowing of money and issuance of bonds.

**Home Rule Village Act,** 1909 PA 278, MCL 78.1 et seq. or section 17 (MCL 78.17) with reference to the authority of general law villages to amend the statutory charter (1895 PA 3) locally.

## Planning and zoning

**Condominium Act,** 1978 PA 59, MCL 559.101 et seq. Provides for condominium projects; prescribes powers and duties of Department of Consumer and Industry Services; and provides protection for certain tenants, senior citizens, etc.

**Land Division Act (**formerly Subdivision Control Act of 1967)**,** 1967 PA 288, as amended, MCL 560.101 et seq. Regulates the division of land, provides for proper ingress to and egress from lots and parcels, establishes procedures for vacating,

correcting and revising plats, and related issues.

**Michigan Zoning Enabling Act,** 2006 PA 110, MCL 125.3101 et seq. Codifies the previously separate County Zoning Act, Township Zoning Act and City and Village Zoning Act into one act regulating the development and use of land; provides for the adoption of zoning ordinances; provides for the establishment in counties, townships, cities, and villages of zoning districts.

**Mobile Home Commission Act,** 1987 PA 96, as amended, MCL 125.2301 et seq. Creates a mobile home commission and prescribes its powers and duties in those of local governments; provides for mobile home code, licensure and regulation.

**Municipal Planning,** 1931 PA 285, as amended, MCL 125.31 et seq. Provides for city, village and municipal planning, the creation and powers and duties of planning commissions.

**Natural Beauty Roads,** 1970 PA 150, as amended, MCL 247.381 et seq. Designates certain roads as Michigan Natural Beauty Roads, provides certain powers and duties and also provides for the development of guidelines and procedures.

**Neighborhood Area Improvements Act,** 1949 PA 208, as amended, MCL 125.941 et seq. Authorizes cities, villages and townships to designate neighborhood areas for the purpose of planning and carrying out local public improvements for the prevention of blight, to carry out such plans by acquiring and disposing of real property and providing for the establishment of local assessment districts.

## Sunshine laws (right to know/open government)

**Bullard-Plawecki Employee Right to Know Act,** 1978 PA 397, MCL 423.501 et seq. Permits employees to review personnel records; provides criteria for review; and prescribes what information may be contained in personnel records.

**Freedom of Information Act,** 1976 PA 442, MCL 15.231 et seq. Regulates and requires disclosure of public records to the public by all public bodies in the state.

**Open Meetings Act,** 1976 PA 267, MCL 15.261 et seq. Requires public bodies (legislative or governing body including boards, commissions, committees, subcommittees, authorities or councils which are empowered to perform governmental or proprietary functions or a lessee performing an essential public purpose pursuant to a lease) to conduct nearly all business at open meetings.

**This section is a SUMMARY of the Michigan Open Meetings Act**

**The full text of this act may be downloaded from the web site of the Michigan Legislature at www.legislature.mi.gov**

# 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 meetings.

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.

### Individual notification of meetings by mail

Citizens can request that public bodies put them on a mailing list so that they are notified in advance of all meetings. Section 6 of the law states that:

"Upon the written request of an individual, organization, firm or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first-class mail, a copy of any notice required to be posted . . .".

In addition, upon written request, public bodies are required to send free notices of meetings to newspapers, radio and television stations at the same time that they are required to post those notices.

### 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;
- 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 except meetings held in the search process for a president of an institute of higher education under section 4, 5 or 6 of article VIII of the state constitution of 1963 that meet all the requirements of Section 8 (j) of the 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:

1. a statement of the time, date and place of the meeting;
2. the members present as well as absent;
3. a record of any decisions made at the meeting and a record of all roll call votes; and
4. 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.

**This section is a SUMMARY of the Michigan Freedom of Information Act**

**The full text of this act may be downloaded from the web site of the Michigan Legislature at www.legislature.mi.gov.**

# 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 subject to attorney-client privilege;
- information subject to other enunciated privileges such as physician-patient and those recognized by statute or court rule;
- pending public bids to enter into contracts;
- appraisals of real property to be acquired by a public body;
- test questions and answers, scoring keys and other examination instruments;
- 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;

- information which would reveal the location of archaeological sites;
- product testing data developed by agencies buying products where only one bidder meets the agency's specifications;
- 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.

### Availability of public records

Any person may make a written request to the Freedom of Information Act Coordinator of a public body to inspect, copy or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request.

As soon as practical, but not more than five business days after receiving a request, the public body must respond to a request for a public record. The public agency can, under unusual circumstances, notify the requester in writing and extend the time limit by 10 days.

A person also has the right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and is renewable.

The public body or agency has a responsibility to provide reasonable facilities so that persons making a request may examine and take notes from public records. The facilities must be available during the normal business hours of the public body.

### Salary records

Salary records of employees or other officials of institutions of higher education, school districts, intermediate school districts or community college districts must be made available to the public upon request and under certain conditions.

### Fees for public records

A government agency can charge a fee, but it must be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of the search, examination, review,

and the separation and deletion of exempt from nonexempt information.

A public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving information. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance.

The first $20 of work must be free for a person who is on welfare or presents facts showing inability to pay because of indigency.

### Denial of a record

If a request for a record is denied, written notice of the denial must be provided to the requester within five days, or within 15 days if an extension is requested for unusual circumstances. A failure to respond within the time limits, or a failure to respond at all, also amounts to a denial.

When a request is denied, the public body must provide the requester with a full explanation of the reasons for the denial and an explanation of the requester's right to either:

- seek judicial review or
- submit to the head of the public body a written appeal that states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

Notification of the right to judicial review must include notification of the right to receive attorney's fees and collect damages.

### Enforcement

A person has the right to commence action in circuit court to compel disclosure of public records which are denied.

The action may be brought in the county where the requester lives, the county where the requester does business, the county where the public document is located, or a county where the agency has an office.

### Penalties for violation of the act

If the circuit court finds that the public body has arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, award punitive damages of $500 to the person seeking the right to inspect or receive a copy of a public record.

# Appendix 4

# Rules of Procedure for general law village councils

Every general law village is required by the General Law Village Act, 1895 PA 3 as amended, to adopt "rules of its own proceedings." MCL 65.5. These rules of procedure help the council to run an efficient meeting and to deal with the public and the media in a positive manner.

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

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## Sample rules of procedure for a general law village council

### A. Regular and special meetings

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

***1. Regular meetings***

Regular meetings of the village council will be held on _____ of each month beginning at _____ p.m. at the village hall unless otherwise rescheduled by resolution of the council. Council meetings shall conclude no later than _____ p.m., subject to extension by the council.

***2. Special meetings***

A special meeting shall be called by the clerk upon the written request of the village president or any three members of the council on at least 24 hours' written notice to each member of the council served personally or left at the councilmember's usual place of residence. Special meeting notices shall state the purpose of the meeting. No official action shall be transacted at any special meeting of the council unless the item has been stated in the notice of such meeting.

***3. Posting requirements for regular and special meetings***

a. Within 10 days after the first meeting of the council following the March elections, a public notice stating the dates, times and places of the regular monthly council meetings will be posted at the village office. [Villages without a principal office must post in the county clerk's office.]
b. For a rescheduled regular or a special meeting of the council, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting at the 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 village's efforts in responding to the threat.

***4. Minutes of regular and special meetings***

The clerk shall attend the council meetings and record all the proceedings and resolutions of the council in accordance with Section 64.5 of the General Law Village Act of 1895 as amended and the Open Meetings Act. In the absence of the clerk, the council may appoint one of its own members or another person to temporarily perform the clerk's duties.

Within 15 days of a council meeting a synopsis showing the substance of each separate decision of the council or the entirety of the council proceedings shall be prepared by the clerk and shall indicate the vote of the trustees. After the president approves this document, it shall be published in a newspaper of general circulation in the village or posted in three public places in the village.

A copy of the minutes of each regular or special council meeting shall be available for public inspection at the village offices during regular business hours.

***5. Study sessions***

Upon the call of the village president or the council and with appropriate notice to the trustees and to the public, the council may convene a work session devoted exclusively to the exchange of information relating to municipal affairs. No votes shall be taken on any matters under discussion nor shall any 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 village council shall be open to the public, and citizens shall have a reasonable opportunity to be heard in accordance with such rules and regulations as the council may determine, except that the meetings

may be closed to the public and the media in accordance with the Open Meetings Act.

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

***2. Agenda preparation***

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

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

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

***3. Consent agenda***

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

***4. Agenda distribution***

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

***5. Quorum***

A majority of the entire elected or appointed and sworn members of the council shall constitute a quorum for the transaction of business at all council meetings. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date with appropriate public notice.

***6. Attendance at council meetings***

Election to the village council is a privilege freely sought by the nominee. It carries with it the responsibility to participate in council activities and represent the residents of the village. Attendance at council meetings is critical to fulfilling this responsibility. The village council is empowered by Section 65.5 of the General Law Village Act as amended to adjourn a meeting if a quorum is not present and compel attendance in a manner prescribed by its ordinance.

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.

***7. Presiding officer***

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

***8. Disorderly conduct***

The president may call to order any person who is being disorderly by speaking out of order or otherwise disrupting the proceedings, failing to be germane, speaking longer than the allotted time or speaking vulgarities. Such person shall be seated until the chair determines whether the person is in order.

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

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

## C. Closed meetings

***1. Purpose***

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

a. To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual agent if the named person requests a closed meeting (majority vote).
b. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing (majority vote).
c. To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained (2/3 roll call vote).
d. To consult with the village attorney or another attorney regarding trial or settlement strategy in connection with specific pending litigation, but only when an open meeting would have a detrimental financial effect on the litigating or settlement position of the council (2/3 roll call vote).
e. To review the specific contents of an application for employment or appointment to a public office if a candidate requests that the application remain confidential (2/3 roll call vote). However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting.
f. To consider material exempt from discussion or disclosure by state or federal statute (2/3 roll call vote).

***2. Calling closed meetings***

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

***3. Minutes of closed meetings***

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

## D. Discussion and voting

### *1. Rules of parliamentary procedure*

The rules of parliamentary practice as contained in the latest edition of *Roberts Rules of Order* shall govern the council in all cases to which they are applicable, provided that they are not in conflict with these rules, the ordinances of the Village of _____ or state statutes applicable to the Village of _____. The village president may appoint a parliamentarian.

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

Any member may appeal to the council a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state the reason for the appeal and the presiding officer may briefly state the ruling. There shall be no debate on the appeal and no other member shall participate in the discussion. The question shall be, "Shall the decision of the chair be sustained?" If the majority of the members present vote "aye," the ruling of the chair is sustained; otherwise it is overruled.

### *2. Conduct of discussion*

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

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

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

### *3. Ordinances and resolutions*

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

A vote on all ordinances and resolutions shall be taken by a roll call vote and entered in the minutes unless it is a unanimous vote. If the vote is unanimous, it shall be necessary only to so state in the minutes, unless a roll call vote is required by law 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 president voting last or the council may select another system.]

### *5. Duty to vote*

Election to a deliberative body carries with it the obligation to vote. Trustees present at a council meeting shall vote on every matter before the body, unless otherwise excused or prohibited from voting by law. A 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 village attorney shall be binding on the council with respect to the existence of a conflict of interest. A vote may be tabled, if necessary, to obtain the opinion of the village attorney.

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

***6. Results of voting***

In all cases where a vote is taken, the chair shall declare the result.

It shall be in order for any 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 village council during a council meeting or public hearing shall be limited to _____ minutes in length per individual presentation. The clerk will maintain the official time and notify the speakers when their time is up.

***3. Addressing the council***

When a person addresses the village council, he or she shall state his or her name. Remarks should be confined to the question at hand and addressed to the chair in a courteous tone. No person shall have the right to speak more than once on any particular subject until all other persons wishing to be heard on that subject have had the opportunity to speak.

## F. Miscellaneous

***1. Adoption and amendment of rules of procedure***

These rules of procedure of the village council will be placed on the agenda of the first meeting of the council following the seating of the newly elected trustees for review and adoption. A copy of the rules adopted shall be distributed to each 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 village council may be suspended for a specified portion of a meeting by an affirmative vote of two-thirds of the members present except that council actions shall conform to state statutes and to the Michigan and the United States Constitution.

***3. Bid awards***

Bids will be awarded by the village council during regular or special meetings. A bid award may be made at a special meeting of council if that action is announced in the notice of the special meeting.

***4. Committees***

*a. Standing and special committees of council*

The village shall have the following standing committees:

[Committees should be listed by name and with a definition of their purposes and scopes.]

Committee members will be appointed by the village president. They shall be members of the council. The president shall fill any committee vacancies. The committee member shall serve for a term of one year and may be re-appointed.

Special committees may be established for a specific period of time by the village president or by a resolution of the council which specifies the task of the special committee and the date of its dissolution.

*b. Citizen task forces*

Citizen task forces may be established by a resolution of the council which specifies the task to be accomplished and the date of its dissolution. Members of such committees will be appointed by the village president, subject to approval by a majority

vote of the village council and must be residents of the village. Vacancies will be filled by majority vote of the village council in the same way appointments are made.

***5. Authorization for contacting the village attorney***

The following village officials (by title) are authorized to contact the village attorney regarding village matters:

_____

_____

_____

# Appendix 5
# Sample ordinance to appoint a village manager

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

AN ORDINANCE establishing the office of village manager; providing for the appointment, compensation, and discharge of such official; specifying the branches of the village government and activities under the manager's control and defining the rights, powers and liabilities of the village manager.

**The Village of (Name of Village) ordains:**

**Section 1. Establishment of office**
In accordance with the authority for the appointment of a village manager granted to the village in section 2 of chapter II and section 8 of chapter V of 1895 PA 3 as amended, the office of village manager is established.

**Section 2. Appointment of village manager**
The president shall, with the concurrence of a majority of the council, appoint a village manager. The council may enter into an employment contract with a village manager for a period extending beyond the terms of the members of council but not exceeding six years. An employment contract with a manager shall be in writing and shall specify the compensation to be paid to the manager, any procedure for changing compensation, any fringe benefits and any other conditions of employment. The contract shall state that the manager serves at the pleasure of the council. The contract may provide for severance pay or other benefits in the event the employment of the manager is terminated by the council.

The manager shall serve at the pleasure of the council and may be removed by a majority of the council.

The manager shall be selected solely on the basis of administrative and executive abilities, with special reference to training and experience.

**Section 3. Acting village manager**
The president, with the concurrence of a majority of the trustees, shall appoint or designate an acting manager during a vacancy in the office of village manager and shall make a permanent appointment within 180 days from the effective date of the vacancy.

**Section 4. Compensation**
The village manager shall receive such compensation as the council shall determine by resolution or ordinance.

**Section 5. Duties**
The village manager shall be chief administrative officer of the village and shall be responsible to the village council for the efficient administration of all affairs of the village and shall exercise management supervision over all departments and over all public property belonging to the village.

The manager shall have the following functions and duties:

Attend and participate in all meetings of the village council and committees but shall not have a vote on such council or committees;

Be responsible for personnel management and shall issue, subject to council approval, personnel rules applicable to all village employees. The manager shall have the following responsibilities:

1. To appoint, suspend or remove all appointed administrative officers and department heads, subject to council approval. The manager shall recommend to the council the salary or wage for each such official.
2. To appoint, suspend or remove all other employees of the village. The manager shall determine the salary for each such employee.
3. Exercise supervisory control over all departments including the police department, the department of public works and the fire department.
4. Exercise supervisory responsibility over the accounting, budgeting, personnel, purchasing and related management functions of the village clerk and village treasurer.
5. Shall be authorized to attend all meetings of village boards and commissions including the village planning commission with the right to take part but shall not have a vote.
6. Prepare and administer the budget as provided for in the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, and any village ordinance that may be adopted.
7. Be the purchasing agent of the village.
8. Prepare and maintain written policies and procedures defining the duties and functions of the several officers and departments of the village, subject to the approval by the council.
9. Investigate all complaints concerning the administration of the village, and shall have authority at all times to inspect the books, records and papers of any agent, employee or officer of the village.
10. Make recommendations to the council for the adoption of such measures as may be deemed necessary or expedient for the improvement or betterment of the village; and
11. Perform other duties required from time to time by the village council.

**Section 6. Purchasing responsibilities**

The village manager shall act as purchasing agent for all village offices and departments. The manager may delegate some or all of the duties as purchasing agent to another officer or employee provided that such delegation shall not relieve the manager of the responsibility for the proper conduct of those duties.

The village manager shall have the authority to purchase any product or service the cost of which does not exceed $_____ provided that funds have been appropriated. The cost of the product or service shall not exceed the unencumbered balance of the appropriation for that account. Any product or service the cost of which exceeds the above dollar amount shall be purchased only if prior approval of the village council has been obtained. The village manager may promulgate rules governing the purchase of products or services.

The village manager shall have the authority to purchase any product or service regardless of its cost when such purchase is necessitated by an emergency condition. *Emergency condition* is defined to mean any event which presents an imminent threat to the public health or safety or any event which would result in the disruption of a village service which is essential to the public health or safety.

**Section 7. Dealing with employees**

Neither the council nor the village president shall attempt to influence the employment of any person by the village manager or in any way interfere in the management of departments under the jurisdiction of the manager. Except for the purpose of inquiry,

the president and council and its members shall deal with departments under the jurisdiction of the village manager through the manager.

**Section 8. Severability**
If any portion or section of this ordinance or its application to any person or circumstance shall be found to be invalid by a court, such invalidity shall not affect the validity of the remaining portions or applications.

**Section 9. Effective date**
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the acting village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general or special village election held on the question of whether the ordinance shall be approved. Notice of the delayed effect of this ordinance and the right of petition under this section shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

**Section 10. Adoption**
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

**Section 11. Publication**
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.
Yeas:
Nays:
Ordinance declared adopted

_____
Village Clerk

*[If the ordinance is passed, notice of the delayed effect of the ordinance and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]*

Sample of published notice of adoption of the ordinance

**Notice to the electors of the Village of (Name of Village):** Take notice that Village Ordinance No. _____, which provides for the establishment and appointment, compensation, and discharge of a village manager, was adopted pursuant to 1895 PA 3 as amended, on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period, in which case the ordinance will take effect upon the approval of an election held on the question.

# Appendix 6
# Sample ordinance to appoint the village clerk

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

AN ORDINANCE to provide for the appointment of the (Name of Village) village clerk.

**The Village of (Name of Village) ordains:**

**Section 1. Establishment of office**
As authorized by section 1(3) chapter II of the 1895 PA 3, as amended, the village clerk shall be chosen by nomination by the village president and appointment by a majority vote of the village council.

**Section 2. Term of office**
***Use one of the following:***
The term of office of the village clerk shall be two years, beginning November 20, after the clerk's election and qualification, if the regular village election is held at the general election.

**OR**

The term of office of the village clerk shall be two years, beginning October 1, after the clerk's election and qualification, if the village elected to hold its regular election at the September primary election.

**Section 3. Effective date**
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the acting village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general village or special village election held on the question of whether the ordinance shall be approved. Notice of the delayed effect of this ordinance and the right of petition under this section shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

**Section 4. Adoption**
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

**Section 5. Publication**
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.
Yeas:
Nays:
Ordinance declared adopted

_____
Village Clerk

*[If the ordinance is passed, notice of the delayed effect of the ordinances and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]*

**Sample of published notice of adoption of the ordinance**

**Notice to the electors of the Village of (Name of Village):** Take notice that Village Ordinance No. _____ which provides for the appointment of the village clerk was adopted pursuant to 1895 PA 3 as amended on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period in which case the ordinance will take effect upon the approval of an election held on the question.

# Appendix 7
# Sample ordinance to appoint the village treasurer

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

AN ORDINANCE to provide for the appointment of the (Name of Village) village treasurer.

**The Village of (Name of Village) ordains:**

**Section 1. Establishment of office**
As authorized by section 1(3), chapter II of the 1895 PA 3, as amended, the village treasurer shall be chosen by nomination by the village president and appointment by a majority vote of the village council.

**Section 2. Term of office**
***Use one of the following***:
The term of office of the village treasurer shall be two years, beginning November 20, after the treasurer's election and qualification, if the regular village election is held at the general election.

**OR**

The term of office of the village treasurer shall be two years, beginning October 1, after the treasurer's election and qualification, if the village elected to hold its regular election at the September primary election.

**Section 3. Effective date**
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general village or special village election held on the question of whether the ordinance shall be approved. Notice of the delayed effect of this ordinance and the right of petition under this section shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

**Section 4. Adoption**
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

**Section 5. Publication**
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.
Yeas:
Nays:
Ordinance declared adopted

_____
Village Clerk

*[If the ordinance is passed, notice of the delayed effect of the ordinance and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]*

**Sample of published notice of adoption of the ordinance**

**Notice to the electors of the Village of (Name of Village):** Take notice that Village Ordinance No. _____ which provides for the appointment of the village treasurer was adopted pursuant to 1895 PA 3 as amended on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period in which case the ordinance will take effect upon the approval of an election held on the question.

# Appendix 8
# Sample ordinance to reduce the number of trustees

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

AN ORDINANCE to provide for reduction in the number of trustees on village council.

**The Village of (Name of Village) ordains:**

**Section 1. Reduction of number of trustees on council**
As authorized by Section (2), Chapter II of 1895 PA 3, as amended, the number of trustees on the Village Council shall be reduced from six trustees to four trustees who, with the president, shall constitute the council.

**Section 2. Term of office**
***Use one of the following:***
*[If prior to the adoption of the ordinance reducing the size of council, three village trustees have been elected at each biennial village election for a term of four years each.]*

After the effective date of adoption of this ordinance, two village trustees shall be elected at each succeeding biennial village election. This ordinance shall not shorten the term of any incumbent trustee. Nor shall this ordinance shorten or eliminate a prospective term unless the nomination deadline for that term is not less than 30 days after the effective date of this ordinance.

**OR**

*[If prior to the adoption of the ordinance reducing the size of council, all six village trustees have been elected at each biennial village election for a term of two years each.]*

After the effective date of adoption of this ordinance, four village trustees shall be elected each succeeding biennial village election. This ordinance shall not shorten the term of any incumbent trustee. Nor shall this ordinance shorten or eliminate a prospective term unless the nomination deadline for that term is not less than 30 days after the effective date of this ordinance.

**Section 3. Effective date**
This ordinance shall take effect 45 days after the date of its adoption, unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk or village office within such 45 days.

If a petition is filed within such period of time, this ordinance shall then take effect only upon its approval at the next general village or special village election held on the question of whether the ordinance shall be approved. Notice of any delayed effect of this ordinance and the right of petition under this section shall be published separately at the same time and in the same manner as the ordinance or a notice of the ordinance is published in a local newspaper of general circulation.

**Section 4. Adoption**
This ordinance shall be adopted by an affirmative vote of at least two-thirds of the members of the village council.

**Section 5. Publication**
The village clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.
Yeas:
Nays:
Ordinance Declared Adopted

_____
Village Clerk

*[If the ordinance is passed, notice of the delayed effect of the ordinance and the right of petition must be published separately at the same time and in the same manner as the ordinance is published. Below is a sample of such a notice.]*

**Sample of published notice of adoption of the ordinance**

**Notice to the electors of the Village of (Name of Village):** Take notice that Village Ordinance No. _____ which provides for the reduction of the number of village trustees (from six to four) was adopted pursuant to 1895 PA 3 as amended on (date of adoption) and will take effect 45 days after the date of adoption unless a petition signed by not less than ten percent of the registered electors of the village is filed with the village clerk within the 45-day period in which case the ordinance will take effect upon the approval of an election held on the question.

# Appendix 9
# Sample budget ordinance

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

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

**The Council of the Village of (Name of Village) ordains:**

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

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

**Section 3. Chief administrative officer and fiscal officer**
*[If the* village *has a manager, the following language can be used.]*

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

*[If the village does not have a manager, the following language can be used.]*

The village president shall be the chief administrative officer referred to in this ordinance and shall be responsible for the performance of the duties of that officer enumerated in this ordinance. The president may appoint a fiscal officer and delegate to that officer any or all of the budgeting duties specified in sections 5 through 8. The fiscal officer shall be responsible to the chief administrative officer for the performance of budgetary duties.

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

**Section 5. Budget estimates required**
Any officers, elected or appointed, departments, commissions and boards of the village financed in whole or in part by the village shall, on or before (date) of each year, transmit to the chief administrative officer their estimates of the amounts of money required for each activity in their agencies for the ensuring fiscal year. They shall also submit any other information

deemed relevant by the chief administrative officer.

**Section 6. Budget forms**
The chief administrative officer shall prescribe forms to be used in submitting budget estimates and shall prescribe the procedures deemed necessary for the guidance of officials in preparing such budget estimates. The chief administrative officer may also require a statement of the purposes of any proposed expenditure and a justification of the services financed by any expenditure.

**Section 7. Department budget review**
The chief administrative officer shall review the department estimates with a representative from each department. The purpose of the review shall be to clarify the estimates, ensure their accuracy, and determine their adherence to the policies enumerated by the chief administrative officer pursuant to Section 4.

**Section 8. The budget document**
The chief administrative officer shall prepare a budget, which shall present a complete financial plan for the ensuing year, utilizing those estimates received from the various agencies. The budget will be prepared in such a manner that shall assure that the total of estimated expenditures including an accrued deficit in any fund does not exceed the total of expected revenues including an unappropriated surplus.

The budget shall consist of the following parts:

a. Detailed estimates of all proposed expenditures for the ensuing fiscal year for each department and office of the village showing the expenditures for corresponding items for the current and last preceding fiscal year.
b. Statements of the bonded and other indebtedness of the village, showing the debt redemption and interest requirements, the debt authorized and unissued, and the condition of sinking funds, if any.
c. An estimate of the amount of surplus expected in the current fiscal year.
d. An estimate of all anticipated revenues of the village which will be necessary to meet the proposed expenditures and commitments during the ensuing fiscal year. This should include:
    1. sources other than taxes,
    2. income from borrowing,
    3. current and delinquent taxes and
    4. bond issues.

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

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

a. A draft resolution for adoption by the council, consistent with the budget, which shall set forth the anticipated revenue and requested expenditure authority for the ensuing fiscal year in such form and in such detail deemed appropriate by the chief administrative officer, provided that it is consistent with the uniform chart of accounts prescribed by the State of Michigan. No budget resolution shall be submitted to the council in which estimated total expenditures, including an accrued

deficit, exceed estimated total revenues, including an available surplus.

b. A budget message which shall explain the reason for increases or decreases in budgeted items compared with the current fiscal year, the policy of the chief administrative officer as it relates to important budgetary items, and any other information that the chief administrative officer determines to be useful to the council in its consideration of the proposed budget.

**Section 10. Consideration of budget by council**

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

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

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

**Section 11. Passage of the budget resolution**

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

The council may authorize transfers between appropriation items by the chief administrative officer within limits stated in the resolution. In no case, however, may such limits stated in the resolution or motion exceed those provided for in section 16 of this ordinance.

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

**Section 12. Procedure for disbursements**

No money shall be drawn from the village treasury unless the council has approved the annual budget.

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

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

**Section 13. Limit on obligations and payments**

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

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

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

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

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

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

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

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

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

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

**Section 18. Penalties**
Any violation of sections 12, 13, 14, 15, 16 or 17 may be cause for removal of any elected or appointed officer in the manner prescribed by the village council for the removal of such officer or employee.
Yeas:
Nays:
Ordinance Declared Adopted

_____
Village Clerk

Effective Date_____

# Appendix 10
# Frequently asked questions

## Compensation

**Q1 Currently the council gets paid per meeting. How do we change to a monthly pay period?**

Section 64.21 of the GLV Act states that the president and each trustees shall receive compensation only as provided for by ordinance. The ordinance shall specify how the compensation is determined and how it is paid.

Amend your ordinance to a monthly pay period.

**Q2 The council voted to increase its compensation in April. However, our compensation ordinance states that councilmembers cannot get pay increases during their terms. Can we retroactively pay these councilmembers their raise to coincide with the beginning of their term?**

Section 64.21 of the GLV charter states that compensation shall be determined by ordinance. If your ordinance states that councilmembers cannot get pay increases during their terms, then the pay increase will have to take effect after the next election.

## Consultants

**Q3 How do we find a consultant?**

The Municipal Yellow Pages, in which consultants can advertise, are currently online at:
www.mml.org/library/publications/yellowpages.php

The *Directory of Michigan Municipal Officials*, published semi-annually by the Michigan Municipal League also contains the Municipal Yellow Pages section in the July issue. In addition, consultants also advertise in the *Michigan Municipal Review*. Through its Municipal Consulting Services, the league offers a wide range of management consulting projects with a primary focus on human resources. Specifically, we offer classification and compensation systems, benefits analysis, personnel policies review and development, HR systems audits, performance evaluation systems, and executive search services.

You can also consult the MML Directory for the list of Michigan organizations, which includes the names of representatives of all the League's affiliates. These representatives can help you find a consultant in their area. For example, the Michigan Chapter of the American Planning Association publishes a brochure on "How to Select a Planning Consultant."

Ask other municipalities of a similar size in your region if they are using a consultant in the field in which you are looking. Or, post a question to the glv listserv. Find out what others experience has been with consultants.

**Q4 I've never written a Request for Proposal (RFP). How do I begin?**

Check with the League's Inquiry service. The League library has many examples. And, ask your neighboring local governments if they have RFPs they have used, or post a question to the glv listserv.

## Elections - Filling vacant seats

**Q5 How are vacancies on the council filled?**

According to section 62.13, the council appoints a person to fill a vacancy occurring in the office of president, trustee, or any other elective office. The appointee serves until the next regularly scheduled election. If the appointee is serving in the first year or two of a four year term, the next regularly scheduled election should include a council position for two years, to fill the remainder of the four year term.

All vacancies in any other office shall be filled by the president, by and with the consent of the council.

**Q6 Does council need to declare the office vacant before it appoints a new trustee?**
It would be prudent to make a resolution stating findings of fact such as the reason why a trustee's office was vacated (due to moving out of the village, death, recall etc.). The resolution can end with the statement, "Council declares the office vacant."

**Q7 A trustee is moving to another state. When does he have to resign?**
Section 62.11 of the GLV Act states that "If any officer shall cease to be a resident of the village during his or her term of office, the office shall be thereby vacated." Consequently the trustee vacates the office on the day he moves out of the village even if he hasn't changed his voter registration yet. Consult your attorney if there is a question about whether the trustee has made a permanent change of residence.

**Q8 Are officials appointed to fill a vacancy in an elected office subject to recall?**
The state election law applies to both elected officials and those appointed to fill a vacancy in an elected office. MCL 168.951 states that a person cannot be recalled in the first six months of taking office (from the time she is sworn in) nor the last six months of office, but can be recalled at any time between.

## Elections - Officially taking office

**Q9 How do village officers take office after being elected?**
Village officers elected by the voters must have their election certified by the county clerk and they must take the oath of office within 30 days of receiving their notice of election. The oath is usually administered by the village clerk, but it may be given by the county or township clerk, a judge, or by a notary public. A copy of their oath should be filed with the village clerk. If they are required to be bonded, they must arrange for that prior to taking office.

**Q10 Our clerk resigned. Who can give the oath of office to our newly elected officials?**
Any notary public can swear in an official. Most banks and legal offices have notary publics. In fact, if an official is out of town and won't be back within 30 days of receiving notice of his election, he can get sworn in by a notary public in his area and fax the paperwork to the village clerk.

**Q11 We cannot get hold of a newly elected trustee. What happens if she isn't sworn in?**
The GLV Act was revised from requiring officers to be sworn in within 10 days of receiving notice of the elections to 30 days. If she does not take the oath of office within 30 days of receiving notice of the office, the office is considered declined. (MCL 62.7(3))

## Elections - Recalls

**Q12 What is the process for recall?**
The GLV Act does not provide for the impeachment of village officials. Recalls are handled by the county clerk, under provisions of the state election law.

**Q13 Can our village attorney represent trustees in a recall election? If not, can the village pay for the defense of trustees in a recall election?**
No. There is an Attorney General Opinion, #6704, on the use of public funds to pay the expenses of city councilmembers who are the subject of a recall petition. It includes the following language:

> "the expenditure of [city] funds for the purpose of paying [city commissioner] expenses incurred in opposing a recall petition 'might be contrary to the desire and even subject to the disapproval of a large portion of the…taxpayers….' The municipality clearly lacks authority to expend money for this purpose."

## Elections - Referendums and initiatives

**Q14 What is the difference between a referendum and an initiative?**
Initiatives are electoral processes to petition or initiate legislation. Referendums are held when petitions are filed requesting a vote by the electorate on legislation passed by the council.

**Q15 A citizen's group has filed a valid referendum petition on an ordinance council wanted to adopt. Do we have to hold a special election or can we have the referendum on the next regular election ballot?**
The GLV Act states in section 63.3 that "the question of adoption of the ordinance shall be submitted at the next general or special election." It does not state that a special election must be called. However, if one is held for another purpose, it must be on that ballot.

**Q16 Who pays for an election initiated by a citizen petition?**
The village pays for the election.

## Elections - Running for office while in office or employed by village

**Q17 Does a trustee have to resign from council in order to run for president?**
No. If the trustee wins the president's seat, then the trustee position must be filled by appointment until the next election.

**Q18 A village employee wants to run for president. Does he have to resign first?**
An employee does not have to resign to run for president. However, if the employee wins the election, consult with your attorney to find out if a conflict of interest exists and how to remedy the situation.

## Environmental Issues

**Q19 Can we prohibit the open burning of grass clippings or leaves?**
Yes. The Solid Waste Management Act (PA 641 of 1979, MCL 324.11522) prohibits the open burning of yard clippings in municipalities with a population greater than 7,500. Municipalities under 7,500 must pass an ordinance to prohibit open burning, otherwise open burning is allowed. Yard clippings is defined as leaves, grass clippings, vegetables or other garden debris, shrubbery, or bush or tree trimmings less than 4 feet in length and 2 inches in diameter. For more information contact your local Department of Environmental Quality (DEQ) District Office.

**Q20 Can we put grass clippings and leaves in our landfill?**
The Solid Waste Management Act (PA 641 of 1979, MCL 324.11521) prohibits the owner or operator of a landfill or municipal solid waste incinerator from accepting yard clippings (see above definition) unless they are diseased or infested. For more information contact your local DEQ District Office.

## Finance - Bonds and other financing

**Q21 Can sewer revenues be used to retire sewer bonds?**
Yes, however, the municipality should call its bond counsel to find out if there are any penalties or other requirements.

## Finance - Budgets

**Q22 What budget procedures should we have in place?**
The budget process is a complicated and involved procedure. A chapter of this handbook is devoted exclusively to financial management and budgeting details. The Uniform Budgeting and Accounting Act, 1968 PA 2, as amended spells out the procedures and requirements of the budgeting process and the accounting function for municipalities. (MCL 141.421 et seq.)

A public hearing is required prior to adopting the budget. (1963 PA 43, MCL 141.411 et seq.) Remember that someone must be responsible for budget preparation and execution. In a general law village, much of this responsibility falls to the

president, or to the manager, if there is one employed by the village.

The legislative body must annually adopt a budget (spending and revenue plan) for the village and must make amendments when necessary. Proper procedures must be followed in setting the millages.

A sample budget ordinance is included Appendix 9 of this handbook.

**Q23 Is there a "rule of thumb" for a fund balance amount?**
According to Girard Miller's *Elected Official's Guide to Government Finance*, the answer is no. Operating fund balances should be maintained at levels sufficient to absorb unpredictable revenue shortfalls and to insure desired cash flow levels. Local officials must balance financial stability against an excessive fund balance. You should adopt a policy regardless of the amount that you decide is necessary. A typical policy is one to three months operating expenditures or five to twenty percent of annual budgeted expenditures.

**Q24 What is the state law regarding a budget public hearing?**
1963 PA 43 (MCL 141.411) requires a local unit of government to hold a public hearing on its proposed budget. 1978 PA 621 (MCL 141.421a) requires a "Truth in Taxation" hearing before the adoption of the millage. These two can be combined with proper notice (see Q29).

**Q25 How long before the hearing does the notice need to be published?**
At least six days prior to the hearing.

**Q26 Is a public hearing necessary to amend the budget?**
No. However, the budget should be amended before you overspend, not after.

**Q27 Is a quorum required to allocate funds for the village?**
Yes, a quorum is required to allocate funds.

**Q28 Does the council need to approve the budget of the DDA?**
Yes, the council must approve the DDA improvement plan and DDA financing plan in addition to the annual budget.

**Q29 Do we have to have a truth in taxation hearing?**
Truth in taxation requires municipalities to advertise any increase in the dollar amount of taxes from the prior year. 1995 PA 40 (MCL 141.412) amended the Uniform Budgeting and Accounting Act to allow a truth in taxation hearing and a budget hearing to occur at the same time. In order to avoid a separate truth in taxation hearing, a municipality must include the following statement in its budget hearing notice: "The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing." This statement must also be published in the newspaper advertisement for the budget hearing in 11 point bold typeface.

The combined hearing, however, presents some practical problems. In most GLVs, the fiscal year begins March 1st. At that time, the final SEV figures are not available (not until sometime in May). Consequently, a truth-in-taxation public hearing can't be held until May or June. And, if you haven't held the budget public hearing and adopted your budget by March 1st, you don't have an authorized spending plan.

**Q30 We would like to start a capital project in five years and add a little to our reserves every year until we have enough to fund the project. How do we budget for this?**
For five years, you should have excess revenues over expenditures. The excess revenue should end up in your fund balance. The year that you incur expenses on the capital project, you will need to use your fund balance to offset your capital project expenditures in order to balance the budget.

## Finance - Donations

**Q31 Can the village make donations to local service organizations or for local celebrations?**
Under Article 7, Section 26 of the Michigan Constitution, municipalities can't use public funds for anything but public purposes, unless specifically provided for in the Constitution. Michigan courts have ruled that gifts or donations of money or property are a violation of the Constitution. The MML One-Pager Plus on Municipal Expenditures may be requested from the Municipal Resource Center at 800-653-2483, or downloaded at http://www.mml.org/members/pdf/opp/Contributions.PDF; http://www.mml.org/members/pdf/opp/lawful_expenditures.pdf; and http://www.mml.org/members/pdf/opp/municipal_expenditures.pdf. (password required)

**Q32 Can we donate to the local Little League for the construction of a park?**
No, this would be considered an improper expenditure. A municipality cannot make gifts or donations of money or property for a private purpose because it violates Article 7, Section 26 of the 1963 Michigan Constitution. The municipality can own a park and rent it to the Little League. The Little League could donate money to the municipality for construction of facilities.

**Q33 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. MCL 397.210 provides for the establishment of a free public library by villages or townships. The budget should not show this 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. For example, it might hire a non-profit social service agency to operate a soup kitchen.

## Finance - Expenditures

**Q34 May municipalities use credit cards?**
1995 PA 266 (MCL 129.241) allows municipalities to use credit cards for procurement and 1995 PA 280 (MCL 129.221) authorizes municipalities to accept credit card payments. Both require formal action by the local legislative body. To use credit cards for procurement, both an ordinance and a policy are required. The act lists what must be included in the policy. An authorizing resolution is required to accept payment by credit cards. Other requirements and restrictions apply as well.

## Finance - Income tax

**Q35 Can a village pass an income tax?**
No. The City Income Tax Act, 1964 PA 284, MCL 141.502 applies to cities only.

## Finance - Payment in lieu of taxes

**Q36 Can the village require payments in lieu of taxes 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 - Property taxes

**Q37 Can unpaid garbage pick-up bills be added to tax bills as a lien against the property?**
1978 PA 345 (MCL 123.261) allows the village to collect unpaid garbage taxes by putting a lien on the property. 1992 PA 305 (MCL 141.03) which amended the Revenue Bond Act, states that charges for services for a public improvement may be a lien on the property. The act defines public improvement and includes, but is not limited to, housing, garbage disposal plants, rubbish disposal plants, incinerators, transportation systems, sewage disposal systems, storm water systems, water supply, utility systems, cable television systems, telephone systems, and automobile parking facilities. In addition, the village may discontinue water, stormwater and sewage disposal services for unpaid bills.

**Q38 Which Michigan statutes allow for a property tax lien for unpaid water bills?**
MCL 123.161 et seq. and MCL 141.121 et seq.

**Q39 What penalties can we charge for late payment of personal property taxes?**
Chapter 9, section 18 of the GLV Act (MCL 69.18) states that interest shall be assessed according to 1893 PA 206 (MCL 211.59). PA 206 states that interest shall be charged at one percent per month or fraction of a month from March 1st after the taxes were assessed. If those taxes remain unpaid by October 1st of the same year, an additional $10 fee shall be charged for expenses and the taxes and penalty will become a lien on the land.

**Q40 Can we collect taxes from someone who has sent us a bankruptcy notice?**
Filing bankruptcy does not necessarily prevent the village from collecting back taxes. Your village attorney will need to help you actively pursue your claim.

**Q41 Can we collect our property taxes monthly?**
A few home rule cities do collect property taxes on a quarterly basis. However, a general law village is not empowered to do so. It is doubtful that a general law village can amend its charter to allow monthly collection.

**Q42 Do village businesses pay township personal property tax?**
Yes. As residents of the township as well as the village, they pay township property taxes, both real and personal. This is a basic difference between a village and a city. Incorporation as a city, however, removes an area from township government.

**Q43 Is computer software taxed as personal property?**
1987 PA 260 (MCL 205.92) addresses this question. According to the State Tax Commission, canned software is tangible personal property. However, custom programming is considered primarily labor and is not tangible personal property.

**Q44 Can we have an agreement with the mobile home park developer that makes him pay for services such as fire, police and school bonds.**
The developer might be willing to voluntarily work with the village to help pay for infrastructure but there is no statutory authority to force mobile home park owners to pay for such services.

**Q45 What taxes can we collect from manufactured homes in a mobile home park?**
Each home in the park is subject to a $3 monthly vehicle registration fee regardless of the value of the home. $2.00 is apportioned to the schools, $.50 to the county and $.50 to the city or township. The village receives no revenue. The homeowner also pays a six percent sales tax fee when the home is purchased. Some of the sales tax revenue is returned to the municipality through state revenue sharing. Park owners also pay commercial property taxes based on the value of the park, including improvements such as roads and utilities.

Garages that are attached or detached are taxable as personal property of the homeowner (as an improvement to leased land).

**Q46 Can we place a special assessment on a mobile home development for future sewer and water capital outlays based on the assessed value of the homes?**
Manufactured homes in a mobile home park have no assessed value. In order to place a special assessment, you will need to assess the owner of the development, probably on the number of units in the development.

## Finance - Revenues

**Q47 Can a municipality use Act 51 local street dollars for sidewalk construction?**
According to the Michigan Department of Transportation (MDOT), municipalities cannot use local street dollars for sidewalk

construction but can use them for sidewalk repair and replacement if necessitated by street work.

**Q48 Are we supposed to match Act 51 local street dollars for local street construction?**
Yes. Local road construction must have matching dollars from the general fund to use Act 51 dollars but matching funds are not needed for routine maintenance.

## Finance - Selling village property

**Q49 How do we sell a piece of property that is not a park?**
The GLV Act requires a majority vote of council to sell real property. Selling a public park still requires a vote of the electorate. For more information, read the League's One-Pager Plus titled "Sale of General Law Village Real Property." It is available at www.mml.org/members/pdf/opp/opp_sale_glv.pdf (password required), or call the League at 800-653-2483.

**Q50 Do we have to get bids on village property for sale?**
Section 4 of Chapter VII provides that real property must be sold by public sale unless it is authorized by ordinance to sell at a private sale. The term "public sale" is not defined by the act. However, the Michigan Supreme Court has held that a "public sale" is synonymous with "public auction." The Attorney General has approved language appearing in a federal court decision defining a public sale of village property as that which meets the criteria: "[t]hat all persons shall have the right to come in and bid, that the bids shall not be held open, except with the bidder's consent, and that notice shall be given publicly at which all bids are invited." OAG No 275, 1947-1948. Presumably, a public sale by sealed bids would meet such definition.

**Q51 Does the ordinance have to be specific to the property being sold?**
Yes.

**Q52 Can we go into a closed meeting in order to discuss selling a piece of property?**
No. This is not permitted under the Michigan Open Meetings Act. (See Appendix 2 for closed meetings regulations)

## Finance - Special assessments

**Q53 In a special assessment district, are tax-exempt properties subject to special assessment?**
Federal and state governmental entities are exempt from special assessment districts. School districts can agree to pay assessments (MCL 380.1141). According to the Citizens Research Council, the courts have consistently ruled that other property normally exempt from property taxes (such as that owned by religious and charitable organizations) is not exempt from special assessments.

**Q54 Can we levy a special assessment based on the value of a property?**
Special assessments are levied only on real property, based on some measure of how that real property benefits from the special assessment, such as front footage for sidewalks. There are a few special assessments that statutorily authorize ad valorem special assessments such as the Township Police and Fire Protection Act, 1951 PA 33 (MCL 41.801 and 41.851).

**Q55 Are special assessments subject to the Headlee amendment?**
Special assessments are not subject to constitutional and statutory general ad valorem property tax restrictions such as the Headlee Amendment and Proposal A of 1994.

**Q56 Must we hold a hearing on a special assessment?**
According to the GLV Act, chapter 8, section 32 (MCL 68.32), the procedure for special assessments is set by local ordinance, including determining when a hearing is required. Most municipalities set

two public hearings. The first is known as a *hearing of necessity* to determine if the improvement is needed. However, this hearing usually ends up being a hearing to determine how the benefits are to be apportioned. The second hearing is a confirmation of the assessment rolls. The notice required for these hearings is set out in 1962 PA 162 (MCL 211.741 et seq). See Chapter 21 of this handbook, "Special Assessments."

## Finance - Treasurer

**Q57 Can the elected treasurer take materials home for long periods of time – records, tax documents, etc.?**
The books and other records need to be made available to others, including the village president who is charged with supervision over the affairs of the village according to Chapter 4, section 1 of the GLV Act (MCL 64.1). Many of the records are subject to freedom of information requests as well and need to be available for compliance with statutory requirements in fulfilling such requests. Safekeeping procedures must also be taken into consideration.

## Intergovernmental agreements

**Q58 How can I find out more about intergovernmental agreements in my area?**
Check with your regional planning commission for information. Telephone numbers for the regional planning commissions are listed in the *Directory of Michigan Municipal Officials*, published semi-annually by the League, along with information on the Michigan Association of Regions. These listings are found in the section on Michigan organizations.

**Q59 How can I find out about intergovernmental agreements in Michigan?**
The Michigan Municipal League library has extensive information on intergovernmental agreements within the state and nation. The League is also continually adding to the information available on its web site, www.mml.org.

## Meetings

**Q60 Can a trustee call a meeting? Would it be a closed session?**
According to section 65.4 of the GLV Act, the president or three members of council can call a special meeting. A closed session can only be called for specific criteria, which are enumerated in the Open Meetings Act.

**Q61 Do we have to post a special meeting of the village council?**
Yes. Section 5(3) of the Open Meetings Act states that all special meetings need to be posted at least 18 hours in advance.

**Q62 Tonight is our first regularly scheduled meeting following the election. New trustees have not yet been sworn in. Do "old" members convene the meeting?**
Yes.

**Q63 Can we tape our meetings?**
Yes. The tapes are then public records and subject to the Freedom of Information Act. However, under an approved record retention schedule, the tapes can be disposed of after the minutes are transcribed and approved.

**Q64 When a vote requires a majority of council, is that a majority of those present?**
According to the GLV Act, "in all votes for which not less than a majority vote of council is required, the calculation of the number of votes required shall be based on the maximum number that constitutes council." (MCL 62.1) Consequently, a majority is four for a seven-member council and three for a five-member council even if a trustee position is vacant.

**Q65 Does the president count in a quorum? What is a two-thirds majority?**
The president and trustees together constitute the village council (MCL 62.1).

The president is counted as part of the quorum. For a council of seven, four members constitute a quorum. If a village adopts an ordinance reducing the number of trustees to five, then three trustees would constitute a quorum. A two-thirds majority of a council of seven is five. A two-thirds majority of a council of five is four.

**Q66 I am the president, and I can't make it to the next council meeting. How do I cancel a meeting?**

The role of the president pro tempore is to take over the functions of the presidency when the president is unavailable. The president pro tem can run the meeting. If there is no quorum, the meeting can be adjourned, then postponed to a later date.

**Q67 Do council meeting minutes have to be published?**

Yes. The following quote is taken directly from the GLV Act (MCL 65.5). "Within 15 days after a meeting of the council, a synopsis or the entirety of the proceedings, including the vote of the members, prepared by the clerk and approved by the president showing the substance of each separate decision of the council shall be published in a newspaper of general circulation in the village or posted in 3 public places in the village."

**Q68 What can we discuss in a closed meeting?**

Every councilmember should be familiar with Michigan's Open Meetings Act, 1976 PA 267, as amended. The intent is to conduct the public's business in the open. There are only a few circumstances where a closed meeting is allowed. These include discussing an employee or officer discipline, etc. when the employee or officer requests a closed meeting, to consider purchase of property, to consult with the village attorney on pending litigation and to review employment applications when the applicant requests it. The statute states how to go into closed session and how to record proceedings. You cannot conduct interviews in closed session. You cannot go into closed session because you don't want to discuss an issue in front of village residents. (MCL 15.261 et seq.

In all instances, the council must vote to go into closed session. See Appendix 2 of this Handbook, "Overview of the Open Meetings Act."

**Q69 Our committees usually consist of three trustees. If a fourth trustee attends, are we in violation of the Open Meetings Act?**

You may be in violation if the meeting was not posted in compliance with the Open Meetings Act, especially if a quorum of the village council was present. It depends on what takes place and what decisions are made during the committee meeting. It is a good idea, however, to publish notice of the meetings even if the Open Meetings Act does not apply.

Committees should not take action. They gather information. When the committee takes information back to the council, the council must take care to deliberate on the committee information in an open meeting held in compliance with the Open Meetings Act to ensure that decisions were not made at the committee level. In some communities, the council meets as a committee of the whole on a regular basis to study issues.

It is better to be safe than sorry. We routinely suggest to our members that notices of committee meetings be posted.

**Q70 What can be done about a trustee not attending meetings?**

Section 65.5 of the Act authorizes the council to adopt rules of procedure. The same section authorizes adoption of an ordinance compelling attendance at council meetings. The trick is in enforcing such an ordinance. Sometimes an open discussion is all that is needed. The person's resignation can be suggested/requested. Pressure can be exerted through the media. An extreme measure is citizen recall. Sometimes you just have to wait out the term until a more responsible trustee can be elected. For more guidance, please refer to *Appendix 4: Rules*

*of Procedure for General Law Village Councils, section B-6.*

**Q71 Our council gets bogged down with minutia and petty bickering. Everyone seems to have his or her own agenda. How can we get out of this rut and be more productive?**
Every elected trustee needs to polish his or her skills in team building, decision making, goal setting and dealing with special interest groups. A local government is not a "club;" it is a public body. The council, not the individual members, is the authority. If your council is not working as a team, perhaps you should consider an objective facilitator for a goal-setting session, or attend one of the League's educational programs on effective governing. Establish council rules of procedure. (See Appendix 4 for a sample.) Be willing to listen. Express yourself clearly. Establish a council code of ethics and conduct. Keep an open mind. Commit to openness and trust as you govern. Keep your sense of humor and enjoy your term of office.

## Office

**Q72 What are the qualifications for holding office?**
A candidate must be a village elector who is not in default to the village.

**Q73 If an official sells his house but has not moved out yet, can he still hold office?**
Yes. He can as long as he continues to live in the village. He does not have to be a property owner.

**Q74 What does it mean to be "in default"?**
The GLV Act states that a person is in default if the person's taxes remain unpaid after the last day of February in the year following the year in which they were levied, unless the taxes are subject to an appeal; or if the person owes another debt to the village which remains unpaid 90 days after the due date unless subject to an administrative appeal or contested court case. (MCL 62.7) See "Default: Elected/Appointed Officials" at http://www.mml.org/members/pdf/opp/opp_default_elected.pdf (password required), or call the Inquiry Service at 800-653-2483 for a copy.

**Q75 Can a husband and wife both serve on council?**
Yes—there is no prohibition in the general law village act. This is not uncommon, due to the generally smaller populations in villages and number of residents interested in serving on council.

## Roles and responsibilities

**Q76 Should the village president vote on issues before the village council?**
Yes. The GLV Act, specifically states that "the president is a voting member of the council." Earlier language that specified the president only voted to break a tie has been deleted from the act. Some villages have adopted a policy that, in a roll call vote, the president always votes last. Their rationale, right or wrong, is that the president, being the presiding officer, should not unduly influence the vote.

**Q77 Are the positions of deputy treasurer and deputy clerk required? Who appoints them? Can one person hold both positions?**
No, there is no requirement for a general law village to provide for either position. Section 64.5 of the Act (MCL 64.5) allows the council to appoint a temporary clerk when necessary.

If the council chooses to create the position, then the council appoints the deputy. Section 62.2 (MCL 62.2) allows for appointment of the council by ordinance or resolution of other officers the council considers necessary. This would include deputy clerk and/or deputy treasurer. The ordinance should stipulate the powers and duties of these officers.

The attorney general has ruled that the positions of village clerk and village treasurer are incompatible because their

separate duties provide a check and balance system. As a consequence, if the deputy positions mirror the responsibilities of the clerk and treasurer, they could be perceived as incompatible. Some general law villages have combined the clerk and treasurer positions by local charter amendment.

**Q78 Which village positions can be combined? Which positions cannot be combined?**
The incompatible offices statute, 1978 PA 566, prohibits a public officer from holding two or more incompatible offices at the same time. This act was amended by 1992 PA 10, to permit the governing body of a municipality with a population less than 25,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government. Although PA 10 has provided some flexibility from the strict standards of incompatibility (based upon the criteria in PA 566 of 1978) the issue is not always so clear. Specific questions about compatibility should be referred to your village attorney. (MCL 15.181 et seq.) See the OPP "Incompatible Public Offices" at www.mml.org/members/pdf/opp/opp_incompatibe.pdf (password required) or call the Inquiry Service at 800-653-2483 for a copy.

**Q79 Can village presidents perform marriage ceremonies?**
No, only mayors of cities may perform marriage ceremonies.

**Q80 The president has taken on too much authority. What can be done about it?**
Sections 64.1-64.4 of the GLV Act address the duties and authority of the president. This is an issue that needs to be resolved internally, by the entire council.

**Q81 If the president vacates the office, does the president pro tempore automatically become president?**
No, the council appoints someone to fill the vacancy until the next general election.

**Q82 Can the president enter into contracts without council approval?**
This is a legal question that needs to be addressed by your village attorney. The GLV Act, section 65.5 gives the council authority over disbursements.

**Q83 Can council vote for president by secret ballot?**
No, it can't – not for president or any other vote. The Open Meetings Act requires **all votes** of a public body to be made in public.

**Q84 I think the council as a body is operating under questionable legal and ethical practices. Is there an organization or agency that has oversight over the council?**
No, there is no oversight agency. The village attorney should be alerted to questionable legal or ethical practices. As a trustee, you might suggest the council attend training seminars on the Open Meetings Act, the Freedom of Information Act or other seminars that the MML offers. In addition, materials on ethics can be requested from the League's inquiry service or downloaded from our website.

We have included a chapter on Ethics in this Handbook—See Chapter 8.

**Q85 As a trustee, I fill in for the clerk when the clerk is out of town. The clerk will not be here for tonight's meeting. Can I take minutes and still vote as a trustee?**
Yes, you may still vote. MCL 64.5 addresses absences of the clerk. If the clerk is unable to discharge his/her duties, the council may appoint a trustee, or some other person, to perform the duties of the clerk for the time being.

**Q86 Does the street administrator have to be a councilmember? (or CAN the street administrator be a councilmember?)**
Any qualified person can be the street administrator. A trustee can perform this job if council approves, per 1992 PA 10.

## Ordinances

**Q87 What is the procedure for adopting a village ordinance?**

The council determines that an ordinance is needed or desired. It decides what regulations are needed and the benefits of the regulations. A draft is prepared. It is a good idea to present a rough draft to the village attorney for review. The council then reviews the ordinance draft, and either adopts it, rejects it or sends it back to the attorney for changes.

Most ordinances, including those appropriating money, creating an office, vacating public property, purchasing real estate or ordering a public improvement, can be adopted by a majority of votes of the council present. However, there are exceptions. A two-thirds vote of all the members (five votes on a seven person council or four votes on a five person council) is required to reduce the number of trustees from 6 to 4 (MCL 62.1(2)), appoint (rather than elect) the clerk and/or treasurer (MCL 62.1(3)), and increase a tax or impose a special assessment (MCL 65.5 (2)).

Within 15 days of adoption, the entire ordinance, or a synopsis of the ordinance, must be published in a newspaper circulated in the village. (MCL 66.4) We have added an ordinance chapter to this handbook—see Chapter 7 "Local Ordinances."

## Boundaries

**Q88 How does a general law village annex property from a township?**

Section 74.6 of the General Law Village Act outlines the boundary changing procedures. General law village annexations are decided by the county board of commissioners. With some exceptions, charter township territory is exempt from annexation by a village if the charter township complies with certain statutory requirements (SEV, population density, and the provision of specific municipal services). Territory can be annexed from a charter township to a village by action of both the village council and township board, by voter approval and by petition and voter approval if all of the statutory conditions are met. (MCL 117.9)

**Q89 There is a group in our community advocating village disincorporation. What should we do?**

A number of Michigan villages have dealt with this issue, including Roscommon and Caledonia. More recently, in 2005, the villages of New Haven and Fruitport had ballot proposals on disincorporation. These attempts at disincorporation were all unsuccessful. Officials in these villages can give first-hand advice and insight.

Sections 74.18(a)-74.22 of the general law village act outline the disincorporation process.

**Q90 Can a village amend its general law village charter or must all changes be made by the state legislature and be uniform for all villages?**

Each village can amend its charter individually. MCL 74.24 gives authority for a general law village to amend its charter by using the provision for amendment in the Home Rule Village Act (MCL 78.1-78.28).

The process begins with revisions being proposed by resolution of a two-thirds vote of the council or by a petition containing a number of signatures not less than 20% of those voting in the last presidential election. The resolution must be submitted to the governor's office for review. There are waiting and publication requirements before the question is put before the voters. If the voters approve the amendments, copies must be filed with the Secretary of State and the county clerk. For sample resolutions and ballot language for amendments, you can contact the League's Inquiry Service.

# Appendix 11
# For more information

## Structure of local government in Michigan

**Annexation.** Reference Packet, Michigan Municipal League, compiled 2006.

**Charter Database.** Michigan Municipal League. Contact the Inquiry Service for information. (800-653-2483).

***Impact of Changing from a Village to a City.*** (MMR Article) Michigan Municipal League, 2004, available at www.mml.org/members/library/information/incorporation.htm. (password required)

**Incorporation As a Village.** Reference Packet, Michigan Municipal League, compiled 2006.

**Incorporation As a City.** Reference Packet, Michigan Municipal League, compiled 2006, available at www.mml.org/members/library/information/incorporation.htm. (password required)

***Introduction to Municipal Government and Administration.*** (2nd Ed.), by Arthur W. Bromage, Appleton-Century Crofts, Inc. 1950. A classic in its field, this book provides an introduction to the roles and functions of municipal government, based on the experiences and knowledge of Dr. Bromage, long-time professor of political science and public administration at the University of Michigan and a former Ann Arbor councilmember. (Because this edition is a signed copy, it is not available for circulation, but may be used in the library as a reference.)

***Nature and Purpose of a Home Rule Charter.*** Revised and updated by William L. Steude, Of Counsel, Michigan Municipal League and Daniel C. Matson, City Attorney, Dewitt, MI. Published jointly by Citizens Research Council of Michigan, Michigan Municipal League, Michigan Association of Municipal Attorneys. September 1993.

**Office of the Great Seal.** (Depository for official government documents). State Department, State of Michigan. (517-373-2531).

***Organization of City and Village Government in Michigan.*** (Municipal Report). Michigan Municipal League. 1994, 2005, available at www.mml.org/members/pdf/mr/mr-organization-city-village-gvt.pdf. (password required)

## Roles and responsibilities of general law village officials

***Calling Closed Meetings.*** One-Pager *Plus*, Michigan Municipal League, April 2006.

***Closed Meeting Minutes.*** One-Pager *Plus*, Michigan Municipal League, February 1999.

***Elected/Appointed Official – in Default.*** One-Pager *Plus*, Michigan Municipal League, January 2000.

***Freedom of Information Act – General Questions; Policy and Definitions; Responding to Requests; Statutory Exemptions.*** (One-Pagers *Plus*), Michigan Municipal League, March, 1999.

***Meetings: Agendas and Minutes.*** Rev. Ed. A guide to recording minutes and organizing meetings. Michigan Municipal League E-book, 2005, available at www.mml.org/members/pdf/meetings/book.pdf.mml.org. (password required).

**Michigan Association of Municipal Attorneys.** The League works collaboratively with the Michigan Association of Municipal Attorneys (MAMA), the only chartered section of MML, to provide training institutes and seminars for member municipal attorneys. In addition, there are numerous publications of the MML and MAMA, including a treatise on municipal practice – *Local Government*

*Law and Practice in Michigan* – and the newsletter *Municipal Legal Briefs*, both designed to assist new and veteran municipal attorneys. Contact: William C. Mathewson, 800-653-2483.

**Michigan Association of Municipal Clerks.** Look in the white pages in the MML Directory of Michigan Municipal Officials for the phone number of the current president of the Michigan Association of Municipal Clerks (MAMC).

***Misconduct in Office by Public Officers.*** One-Pager *Plus*, Michigan Municipal League, January 2000.

**MML Legal Defense Fund.** The Michigan Municipal League's Legal Defense Fund and its resources are available in legal disputes, typically a court case, involving a city or village which significantly affect Michigan municipalities. Assistance is extended in cases which would have a considerable inpact on Michigan municipal law or positively affect the organization, operation, powers, duties or financing of Michigan's cities and villages.

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 Fund is financed by voluntary dues of member cities and villages, and is governed by a board of municipal attorneys, the MML president and the MML executive director.

Fund resources and services are available to League members which are also members of the Fund. Dues are based on member population and range from $100 to $1,000. Requests for assistance are by resolution of the governing body.

Contact: William C. Mathewson, 800-653-2483.

***Open Meetings Act – Definitions and Requirements for Meetings.*** One-Pager *Plus*, Michigan Municipal League, March 1999.

***Robert's Rules of Order Newly Revised*** 10th edition, 2000. Perseus Publishing.

**State of Michigan, State Department, Bureau of Elections.** 517-373-2540.

### Organizing for delivery of service (including intergovernmental cooperation, authorities, contracting)

***Act 425 Conditional Land Transfers.*** One-Pager *Plus*, Michigan Municipal League, March 1999.

***Buying and Selling Fire Protection.*** Harvey, Lynn R. Staff paper 94-4, Department of Agricultural Economics, Michigan State University, East Lansing, MI, January 1994.

**How to Select a Planning Consultant.** A Service from Planners in Private Practice. Michigan Chapter American Planning Association. 1999.

### Operation of village government

**Finance**

***Adopting the Budget.*** One-Pager *Plus*, Michigan Municipal League, June 1999.

**Economic Development Reference Packets.** Compiled by the Michigan Municipal League, 1999.

DDAs. (Downtown Development Authorities)

EDCs. (Economic Development Corporations)

LDFAs. (Local Development Finance Authorities)

PSDs. (Principal Shopping Districts)

***Economic Development Tools.*** One-Pager *Plus*, Michigan Municipal League, March 1999.

***Funding Your Downtown Organization.*** HyettPalma, Inc., 1999

***Investment Policies for Surplus Funds.*** One-Pager *Plus*, Michigan Municipal League, February 2000.

***Michigan Department of Treasury Manuals:*** (available at www.michigan.gov/treasury)

***Bulletin for Audits of Local Units of Government.*** 2001.

***Uniform Accounting Procedures Manual.*** Michigan Department of Treasury, Local Audit & Finance Division, Bureau of Local Government Services, 2002.

***Uniform Budget Manual for Local Units of Government in Michigan.*** Michigan Department of Treasury, Local Audit & Finance Division, Bureau of Local Government Services, 2001.

***Uniform Chart of Accounts for Counties and Local Units of Government,*** Michigan Department of Treasury, Local Audit & Finance Division, Bureau of Local Government Services, 2002.

***Uniform Reporting Format for Financial Statements for Counties and Local Units of Government in Michigan.*** Michigan Department of Treasury, Local Audit Division, Bureau of Local Government Services, 2002.

***Municipal Expenditures.*** One-Pager *Plus*, Michigan Municipal League, June 2000.

***Outline of the Michigan Tax System, 20th edition.*** The Citizens Research Council of Michigan, Detroit, MI. 1999. Updated biennially. (available at: www.crcmich.org/taxoutline/index.html.)

***Sale of General Law Village Real Property.*** One-Pager *Plus*, Michigan Municipal League, February 1999.

***Revenue Sharing Calculator.*** http://calculator.crcmich.org/.

**Labor relations**

***Negotiations Handbook for Municipal Officials***, Joseph Fremont, Retired MML Labor Relations Director, Michigan Municipal League Ebook, 2005, available at www.mml.org/members/pdf/lr/book.pdf. (password required)

**Risk management**

***Risk Management News.*** Newsletter published six times a year. Michigan Municipal League's Risk Management Services Division.

**www.mmlpool.org;**
**www.mmlfund.org**
Michigan Municipal League Risk Management Services.

**www.michigan.gov/uia**
Bureau of Workers' Disability Compensation.

**www.michigan.gov/cis/**
Michigan Insurance Bureau.

**www.primacentral.org**
Public Risk Management Association (PRIMA).

## Environmental concerns

If you have a question about an environmental issue, or if your community is having difficulty complying with an environmental mandate, contact:

**Michigan Municipal League**
Joe Fivas, Assistant Director of State Affairs
320 N. Washington Square, Suite 110,
Lansing, MI 48933
517-485-1314 Fax: 517-372-7476
Email: jfivas@mml.org

In addition to contacting the League, for more information on municipal wastewater collection and treatment options, questions or problems with your drinking systems, contact:

**Michigan Rural Water Association**
Tom Segall, Executive Director
P.O. Box 960, Harrison, MI 48625
517-539-4111 www.awwa.org

For more information on municipal wastewater collection and treatment options, contact:

**Michigan Water Environment Association** www.mi-wea.org

Also, check these related web sites:

- **www.mi-water.org**
  American Waterworks Association.
- **www.michigan.gov/dnr/**
  Department of Natural Resources.
- **www.epa.gov**
  United States Environmental Protection Agency.
- **www.glc.org**
  Great Lakes Commission.
- **www.michigan.gov/deq/**
  Michigan Department of Environmental Quality.
- **www.wef.org**
  Water Environment Federation.

## Additional information

**Websites**

- **www.mml.org.**
  Michigan Municipal League.
- **www.nlc.org**
  National League of Cities.
- **www.michigan.gov**
  State of Michigan.
- **www.legislature.mi.gov**
  Michigan Legislature.
- **www.localgov.org**
  Provides information for city, county and state governments.
- **www.ig.org**
  Innovation Groups, an information exchange and links to other government sites.
- **www.census.gov**
  U.S. Census Bureau.

**Michigan Municipal League publications:**

***Legal Briefs.*** Newsletter published bi-monthly. Free to municipal attorneys in MML member municipalities. Summaries of cases involving local governments in Michigan.

***Michigan Municipal 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 officials of Michigan cities and villages.

***Risk Management News.*** Newsletter published six times a year. Free to officials in MML member municipalities and members of the MML insurance programs.

***The Directory of Michigan Municipal Officials.*** Published twice a year and distributed to your village office.

**One-Pagers *Plus.*** One-page summaries on a variety of municipal topics, many with a "plus" attached – sample ordinances, resolutions, policies, forms, etc. These may be downloaded from www.mml.org. (password required) Hard copies are also available from the MML Resource Center at 800-653-2483.

- *Act 425 Conditional Land Transfers*
- *Adopting the Budget*
- *Adoption by Reference of Michigan Vehicle Code*
- *Calling Closed Meetings*
- *Civil Infractions (Including Municipal Civil Infractions)*
- *Closed Meeting Minutes*
- *Contracts of Public Servants with Public Entities*
- *Default: Elected/Appointed Officials*
- *Earned Income Tax Credit*
- *Economic Development Tools*
- *Election Consolidation Act*
- *E-mail and Retention of Records*
- *Freedom of Information – Statutory Exemptions*
- *Freedom of Information Act – General Questions*
- *Freedom of Information Act – Policy and Definitions*
- *Freedom of Information Act – Responding to Requests*
- *Fuel Excise Tax*
- *General Law Village: Commonly Asked Procedural Questions*
- *General Law Village Annexation*
- *Headlee Rollback and Headlee Override*
- *Incompatible Public Offices*
- *Investment Policies for Surplus Funds*
- *The Land Division Act*
- *Misconduct in Office by Public Officers*
- *Municipal Expenditures*
- *Municipal Liens*
- *Nonconforming Buildings and Uses*
- *Open Meetings Act – Definitions and Requirements for Meetings:*One-Pager Plus
- *Property Maintenance Code*
- *Public Hearings*
- *The Residency Act*
- *Residency Requirements and the Planning Commission*
- *Sale of General Law Village Real Property*
- *Social Security Number Privacy Act*
- *State Construction Code*

- *The Use of Work Sessions by Legislative Bodies*
- *Updating the Master Plan - Mastering the Process*
- *Updating the Master Plan - 5 Year Review*
- *Zoning: Basic Questions*

**Organizations affiliated with MML –** Check your MML Directory of Michigan Municipal Officials for the current contact person and phone numbers for these organizations.

- Code Officers' Conference of Michigan
- Michigan Assessors Association
- Michigan Association of Code Enforcement Officers
- Michigan Association of Chiefs of Police
- Michigan Association of Fire Chiefs
- Michigan Association of Housing Officials
- Michigan Association of Mayors
- Michigan Association of Municipal Attorneys
- Michigan Association of Municipal Cemeteries
- Michigan Association of Municipal Clerks
- Michigan Association of Planning
- Michigan Chapter, American Public Works Association
- Michigan Fire Inspectors Society
- Michigan Government Finance Officers Association
- Michigan Local Government Management Association
- Michigan Municipal Communicators
- Michigan Municipal Electric Association
- Michigan Municipal Treasurers Association
- Michigan Public Employer Labor Relations Association, Inc.
- Michigan Public Purchasing Officers Association
- Michigan Public Risk Management Association
- Michigan Recreation and Park Association
- Michigan Section, American Water Works Association
- Michigan and the World Coalition
- Michigan Water Environment Association
- Michigan Women in Municipal Government
- Northern Michigan Public Service Academy

# Appendix 12
# 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. 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.

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

- two or more cities or villages,
- a city and one or more villages; or
- 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 citizens 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, MCL 123.1001 et seq., the Home Rule Village Act, MCL 78.1 et seq. and the Home Rule City Act, MCL 117.1 et seq. from:

a. unincorporated territory; or
b. one village or city and contiguous unincorporated territory; or
c. an incorporated village without change of boundaries.

**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.

**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 general law 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 and the like.

**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 in which it became law.

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

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

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

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

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

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

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

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

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

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

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

**Tax increment financing –** A tax incentive designed to attract business investment by the dedication of property tax revenue from the redevelopment of an area (tax increment district) to finance development-related

costs in that district. Tax increment financing divides tax revenue from the area into two categories:

1. taxes on the predevelopment value of the tax base that are kept by each taxing body; and
2. taxes from increased property values resulting from redevelopment that are deposited by some taxing entities in a tax increment fund and are used to finance public improvements in the redevelopment area.

In Michigan, there are four different types of authorities with tax increment financing powers:

1. tax increment finance authority (no longer available as an option for a new authority),
2. downtown development authority,
3. local development financing authority, and
4. brownfield redevelopment authority.

**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 nature and use.

***Sources:*** *Local Government Law and Practice in Michigan*, The Michigan Municipal League (pub.), 1999; *Michigan Municipal Law*, The Institute of Continuing Legal Education (pub.), 1980; Rhyne, *The Law of Local Government Operations*, 1980; and McQuillin, *The Law of Municipal Corporations*, 1999.

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