

## 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](http://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—Successful 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 20<sup>th</sup> 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/library/information/interim\\_management.htm](http://www.mml.org/library/information/interim_management.htm), 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](http://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 financial 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.