

Duties of city & village officials

Sources of Authority

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

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

Mandatory charter provisions

(HRCA, MCL 117.3; HRVA, MCL 78.23)

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

Permissive charter provisions

(HRCA, MCL 117.4; HRVA, MCL 78.24)

Both acts list many provisions which may be included in the charter to require council action. Some of these include provisions for streets, utilities, planning, establishment of special assessment districts, and penalties for ordinance violations.

Prohibited powers

(HRCA, MCL 117.5; HRVA, MCL 74.25)

In addition, both acts prohibit cities and villages from taking certain actions in their charter. No city may exceed the tax limits established by law or the charter, call more than two special elections a year, sell certain land or issue certain bonds except by the vote of the people.

Power and duties of the council

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

Does this mean that as a council you may take any action you deem appropriate as long as it is “for the benefit” of your community? Probably not. Cities and villages operate as governments of law within a system of constitutional federalism and a complex network of federal and state laws and regulations.

Foremost are the guarantees and restraints found in the U.S. Constitution and federal legislation and regulations. Next are Michigan’s constitution, statutes and regulations. The next level of regulation is local, and includes your charter, municipal ordinances and policies.

Ordinances, resolutions and motions

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

- **Ordinances** are formal actions by the council and constitute local legislation. If the council wants to change a duly adopted ordinance, it must amend, repeal or rescind the ordinance. (See Chapter 7: Local Ordinances). 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.
- **Resolutions** are less formal than an ordinance, and are often used for short-term matters, such as adopting the annual budget. A resolution may be used to state the council's position, such as to support or oppose a piece of state or federal legislation. When the council wishes to commend a citizen or commemorate an occasion, it acts by resolution. Resolutions are a part of the permanent record of the municipality.
- **Motions** are used to introduce a subject or propose an action to the council. For example, a trustee might say "I move the ordinance (or resolution) be adopted." Once a motion is made and seconded, the matter can be discussed and acted upon. (See Chapter 6: Successful Meetings).

The League Resource Center maintains a collection of sample ordinances. You may call the League offices in Ann Arbor, at 800-653-2483, to request them. Your municipal attorney should review all ordinances, including samples you receive from the League, to provide you with guidance on the language, the relevance of state statutory requirements, and the application of case and constitutional law, as well as consistency with previous ordinances.

Some actions, such as a zoning ordinance, require that a public hearing be held

prior to enactment. In other instances it may be politically wise to hold a public hearing, even though it may not be mandatory.

A 2/3 majority of the council is required to pass certain types of ordinances. The village or city attorney should be consulted about which ordinances require this type of super-majority.

Some villages and cities require an ordinance to be "read" several times before it is adopted. This may be a full reading of the entire ordinance – which can be quite lengthy – or only a synopsis. The introduction of the ordinance is usually considered the first reading, and a second reading occurs at a subsequent meeting when the ordinance is actively considered. These readings are not required by state statute, but they do provide an opportunity for public awareness and input. Your charter or council rules of procedure may provide for such readings and may authorize the suspension of one or more readings to avoid verbatim readings of lengthy measures or emergency actions.

Operating in the sunshine

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

The State of Michigan has established that the public is entitled to full and complete information regarding the affairs of government and the actions of those who represent them. In 1976 the legislature enacted the "Sunshine Laws." The Open Meetings Act (OMA), and the Freedom of Information Act (FOIA) provided for the people's right to know and set limits and parameters on a council's actions. (See Appendix 5: Overview of the Open Meetings Act and Appendix 4: Overview of the Freedom of Information Act).

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.

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all public bodies in the

state. FOIA states that all persons, except those in prison, upon written request have a reasonable opportunity to inspect, copy or receive copies of the requested public record of the public body.

This sounds easy – however, the problem arises in the definition of terms. For example:

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

The answer is, “It depends.”

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 Resource Center. However, when specific circumstances arise that make you question the appropriateness of a closed session or the necessity to post a meeting or whether or not to release a document, the safest course of action is to follow the guidance of your municipal attorney. Based on a professional understanding of the law and the interrelationships of various levels of the law, your municipal attorney will be able to assist you in determining which laws are applicable and how they apply to your village or city and to your role as council member.

Citizen participation in council meetings

An important part of serving your community as an elected representative is providing

the citizens with an opportunity to communicate with the council – not only on a one-to-one basis with you as they meeting you on the street, but also in a more formal public forum. Townships may hold an annual town meeting where citizens may participate and vote. This is not an option for cities and villages. Only the mayor or president, member of the council or a staff member (depending on your local charter and rules) may introduce an agenda item. Only members of the council (including the president or mayor under most charters) may vote on matters brought for action.

Meet with citizen groups

From time to time, council members 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.

Relationships with municipal staff

Work with the manager

If your city or 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 charter and appropriate state and federal laws and court decisions, formulate policy by which the municipality is to be run. The manager and staff execute this policy; they do not determine the policy. The council, on the other hand, should not wander through city hall, making sure that tasks are performed or that directives are carried out.

In actual practice, a clear-cut separation is more difficult. Councils do direct the manager from time-to-time to follow certain administrative practices, and the manager does, at times, formulate or 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 council should make the decisions with as much help from citizens, the manager and the staff as they can secure.

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

Respect the relationship with municipal 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 four-part chore may require the assistance of other professionals. A process by which the council can evaluate the man-

ager and/or department heads 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. They have training, experience and information the council does not – and need not – have. Remember to show your appreciation for a staff member's time and effort. A smile, a nod, a "thank you" or a compliment will go a long way in establishing a good working relationship with the staff.

Powers and duties of elected and appointed officials

Mayor/president

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

Mayor/president pro tempore

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

City/village manager

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

Municipal attorney

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

- drafting ordinances,

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

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

The League Resource Center and Legal Affairs Division do not give legal advice or render legal opinions (and in fact, are not allowed to by law). However, the legal staff will confer with your attorney on legal issues in your community.

The Resource Center can assist by providing sample ordinances and policies as a starting point for drafting ordinances or policies for your city or village. Many of these are available on the League's web site at www.mml.org.

City/village clerk

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

Traditionally, the municipal clerk was an elected official. As the requirements for this position become more technical, it is becoming much more common for this to be an appointed office. Certain specific duties of the clerk will be outlined in the charter. Additional duties may be assigned by the council and/or the manager.

Michigan election law (MCL 168.1 et seq.) dictates that the village clerk will manage village elections. The city clerk will

manage, in addition to city elections, state and federal elections under the direction of the Bureau of Elections in the secretary of state's office.

In a small city or village, the office of clerk can be the most controversial, and perhaps most misunderstood position. Several steps can be taken to help resolve or avoid 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.
- The clerk and council should network with other municipal officials. The Michigan Association of Municipal Clerks offers support for clerks. Help is often just a phone call or click (online at www.michiganclerks.org) away. By the same token, offer to assist new clerks in your area who may be having difficulty identifying roles and responsibilities.
- The clerk and council should attend educational programs about the roles and responsibilities of officials, teamwork and local government.

City/village treasurer

Appointment of the treasurer by the council allows for the requirement of specific job skills and experience for the position, makes the treasurer accountable to the council and provides greater job security and continuity. In 36 cities the treasurer is an elected position. As a general rule, the treasurer:

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

Changing your charter

The charter for your city or village can be changed following the procedures outlined in the Home Rule Village Act, 1909 PA 278

as amended (MCL 78.1- 78.28) or the Home Rule City Act, 1909 PA 279 (MCL 117.21-117.26). An amendment must be approved by the council, submitted to the governor's office for review, and approved by the electors. The Home Rule City Act provides for amendment to the charter to be instituted by petition; the Home Rule Village Act does not.

Municipalities interested in amending their charters should work with their municipal attorney to assure that the procedure required in the relevant state statute is followed.

A detailed account of charter amendment and revision can be found in Chapter Three: Charter Revision & Amendment.

Words of wisdom

The following suggestions have been provided by experienced municipal officials:

- Realize you cannot solve every problem quickly. Looking at problems from the inside lends a different perspective when you are forced to look at all aspects. *Manager*
- You have information citizens do not and you are charged with educating as well as listening to citizens. *Manager*

- Get involved. Know what is going on. Communicate with other council members. Review your meeting material prior to the night of the meeting. *Councilmember*
- When first elected, listen and observe. Don't challenge existing staff or practices in public until you have done your homework and know what you are talking about. It boils down to good manners. Often, "jumping the gun" on an issue causes it to be magnified in the media. *Clerk*
- Show respect to other officials, including those appointed rather than elected. Our clerk and treasurer are now appointed by the council. They are still officials. Don't treat them like they are your private secretaries. *Clerk*
- Be professional. Don't turn municipal issues into personal issues. Communication and cooperation are the key. *Councilmember*

About the authors . . .

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.