Fundamentals of Organization:
What’s a City (or Village) and What Does It Do?

Elected Officials Essentials Workshop

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Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the powers of the State as may be entrusted to them.... The number, nature, and duration of the powers rests in the absolute discretion of the State.... The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.... The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it.”

-- Hunter v. City of Pittsburgh, 207 U.S. 161, 178-79 (1907)
“The legislative power, under the Constitution of the state, is as broad, comprehensive, absolute, and unlimited as that of the Parliament of England, subject only to the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the state itself.”

-- Young v City of Ann Arbor, 267 Mich 241 (1934)
The Great Debate

So much for State power
... how much do the *locals* have?

- Do local units have some *inherent* or *permanent* attributes?
- Or are local units merely instrumentalities?
Same Debate in 2017

- May Legislature replace elected City Council with “Emergency Manager”?
- May Legislature combine local units?
- May Legislature pre-empt local ordinances?

Who are the advocates?
Dillon and Cooley

"A municipal corporation possesses only powers *expressly* granted, *necessarily* implied, or *essential* to the accomplishment of the declared objects." - "Dillon's Rule"

- Clinton v Cedar Rapids and the Missouri River Railroad, 24 Iowa 455 (1868)

“Local government is a matter of absolute right; and the State *cannot* take it away.”
- People v Hurlbut,
  24 Mich 44 (1871)
So -- Dillon wins, right?

“Local governments have no inherent jurisdiction to make laws or adopt regulations of government; they are governments of enumerated powers, acting by a delegated authority; so that while the State legislature may exercise such powers of government ... as are not expressly or impliedly prohibited, the local authorities can exercise those only which are expressly or impliedly conferred.”

- City of Taylor v Detroit Edison, MI Supreme Court, 2006
But Cooley hangs in there for a rematch ...  

“Our system has matured to one of general grant of rights and powers, subject only to certain enumerated restrictions instead of the earlier method of granting enumerated rights and powers definitely specified.”

-- GE Property & Casualty v Detroit Edison, MI Ct of Appeals, 2006
And gets in a nice punch for Home Rule in 2016

"Under our current Constitution, there is simply no room for doubt about the expanded scope of authority of Michigan’s cities and villages. . . *these powers over municipal concerns, property and government are to be liberally construed.*"

-- *Associated Builders and Contractors v Lansing, MI S Ct, 2016*
So, What Has The State “Conferred”?

Laws that *empower* us to do things:

- Home Rule Cities Act (City Charters)
- General Law/Home Rule Village Act
- Zoning Act
- Police & Fire laws
- Road laws
- Economic development laws
- Water & sewer laws
- Finance laws
What The Has State Conferred, p. 2.

Laws that *require* us to do things:

- Open Meetings Act (OMA)
- Freedom of Information Act (FOIA)
- Labor Laws (PERA, PA 312)
- Public Health Code
- Construction Code
- Uniform Budget Act ("Act 2")
- And many more!
The Home Rule Charter Acts

- **Cities:** PA 279 of 1909
  - City Charters
  - Three parts:
    - What you *must* include
    - What you *may* include
    - What you *may not* include

- **Villages:** PA 278 of 1909: “Home Rule” Villages
- PA 3 of 1895: “General Law” Villages
Charter

The *Charter* is the key governing document for a local unit of government
What **Must** The Charter Include?

- Election of Mayor
- Election of Council or Commission
- Clerk, Treasurer, Assessor, Board of Review, Other Officers
- Nominations and Elections
- Qualifications, Duties, Compensation* of Officers
- Tax Rate (not to exceed 20 mills – more later)
- Appropriations
- Public Peace, Health, Safety
- Ordinance Adoption
- OMA
- English Language Written Legislative Record
- System of Accounts
What *May* The Charter Include?

- Borrow Money
- Install Sewer, Water, Electric
- Public Utilities
- Special Assessments
- Acquire Property; Condemnation
- Franchises
- Public Transportation
- Regulation of Streets and Public Ways
- Licensing and Regulation
- Appropriation of Funds to Nonprofits
- Civil Infractions
- Public Nonprofit Medical Facilities
What **Must Not** The Charter Include?

- Increase charter taxation to more than 20 mills*
- Submit a charter more often than once every two years
- Call more than 2 special elections per year
- Amend charter, except as provided by HRCA
- Issue bonds, except as provided by law
- Enter into a contract, or give an office to, one who is in default to the city

(* There are a few taxes outside charter – more later)
City or Village Council

- Policy-making body for local unit of government

- Responsible for long- and short-term goal setting

- Responsible for passing budget and any capital improvement plan

- May only act as a body, through resolutions and ordinances
City or Village Manager

– Appointed by and responsible to council (in strong mayor form, there could be a chief city administrator appointed by the mayor)

– Responsible for implementing policy to achieve council goals and reporting status

– Generally responsible for day-to-day operations
City or Village Council

• Acts as a body

• Legislates through ordinances (force of law) and resolutions (motions)

• Elected officials may not exceed the scope of authority as a legislative body, as provided in the charter and state statutes.
Meetings/Public Hearings

- Council can adopt rules and procedures
  - Attendance and absences of council members
  - Times and length of public comment
  - Voting responsibility
  - Access to attorney (who is authorized)
  - Can adopt *Robert’s Rules of Order*
Meetings: General Responsibilities

• Arrive on time; be prepared and informed

• Get recognition of presiding officer before speaking

• Have basic knowledge of parliamentary procedures adopted by council

• Manager participates in discussion, does not vote
Responsibilities of Presiding Officer

- Acknowledge members wishing to speak
- Be courteous to members of council and to public
- Enforce fairly the rules of council
- Enforce fairly the public comment portion of meetings
Your Legislation: Ordinances

- What’s an “ordinance”? • An act regulating others’ conduct
- What’s a “resolution”? • An action in the performance of the city’s or village’s business
- The city or village only speaks through actions of the legislative body!
- Ordinances collected in “Code of Ordinances”
Public Control: Initiative and Referendum

- Ordinances, like state laws adopted by the Legislature, typically are subject to referendum – the power to stop ... i.e., check the legislature (council or commission)

- The public may be able to enact its own ordinances through initiative

- Charter will set out signature requirements and other terms
What Do Other Units Do?

- **Counties**

  - Created by MI Constitution
  - **Must** have: Sheriff, Clerk, Treasurer, Register of Deeds, Prosecuting Attorney
  - Tasks: Courts, Jail, Elections, Vital Records, Tax Collection, Real Estate
  - Also Water/Sewer – Drain Commissioner
  - Roads – Road Commission
  - Composed of Townships
  - The original “intergovernmental cooperation” unit
What Do Other Units Do?

- **Townships**
  - Created by MI Constitution
  - Must have: Supervisor, Clerk, Treasurer
  - Tasks: General municipal functions
  - Since 1947: “Charter” Townships
What Do Other Units Do?

- Special Districts
  - DDAs, TIFAs, LDFAs, Brownfield Authorities, Building Authorities, Library Boards, Water & Sewer Authorities, Fire Districts, Police Districts, etc etc etc
  - Each has its own statute
  - Tasks: Specific functions
Questions?

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Steven Mann is a senior principal with Miller, Canfield, Paddock and Stone, P.L.C. practicing in the area of public finance and municipal law. Steve specializes in the area of municipal finance, representing public agencies as bond counsel. His practice covers all facets of infrastructure financing, special assessments, tax increment finance and economic development. Steve also specializes in complex issues related to the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA).

Steve co-authored the *Sunshine Laws and Local Government* (OMA/FOIA) chapter of the *Michigan Municipal Law* handbook published by the Institute for Continued Legal Education. Steve has authored several *amicus curiae* briefs in both the Michigan Court of Appeals and the Michigan Supreme Court arguing on behalf of the Michigan Municipal League, the Michigan Townships Association, the Public Corporations Section of the State Bar of Michigan, and other municipal associations and their constituents.

Steve served twelve years elective office on the Charter Township of Plymouth Board of Trustees (2000-2012), including one term as Township Supervisor and two terms as Trustee, and one additional year as an appointed trustee (2015-2016).

He serves as the city attorney for the City of Milan, as general counsel for the Huron-Clinton Metroparks, and was recently elected to the Board of Directors of the Michigan Association of Municipal Attorneys (2016-2019).

He received his law degree, *cum laude*, from Thomas M. Cooley Law School in Lansing, and his B.B.A., *summa cum laude*, from Cleary University.