

## Appendix 10

# Frequently Asked Question

### Boundaries

#### **Q1 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.

#### **Q2 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.

Sections 74.18(a)-74.22 of the General Law Village Act outline the disincorporation process.

### Compensation

#### **Q3 Currently the council gets paid per meeting. How do we change to a monthly pay period?**

You will need to amend your ordinance to specify a monthly pay period. Section 64.21 of the GLV Act states that the president and each trustee shall receive compensation only as provided for by ordinance. The ordinance shall specify how the compensation is determined and how it is paid.

#### **Q4 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

#### **Q5 How do we find a consultant?**

The Municipal Yellow Pages, in which consultants can advertise, are currently online at [mml.org](http://mml.org).

The *Directory of Michigan Municipal Officials*, published annually by the League also contains the Municipal Yellow Pages. In addition, consultants also advertise in the League's magazine, *The 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 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 village listserv. Find out what others' experience has been with consultants.

#### **Q6 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 sample RFPs. And, ask your neighboring local governments if they have RFPs they have used, or post a question to the village listserv.

### Elections—Filling Vacant Seats

#### **Q7 How are vacancies on 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, with the consent of the council.

**Q8 Does council need to declare the office vacant before it appoints a new trustee?**

It would be prudent to pass 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, default, etc.). The resolution can end with the statement, "Council declares the office vacant."

**Q9 A trustee is moving to another state. When does the trustee 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/she moves out of the village even if the trustee hasn't changed his/her voter registration yet. Consult your attorney if there is a question about whether the trustee has made a permanent change of residence. Of course, if the trustee resigns prior to moving, the resignation date becomes the effective date.

**Q10 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 he/she is sworn in), nor the last six months of office, but can be recalled at any time between.

**Elections—Officially Taking Office**

**Q11 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 their term begins on November 20 (MCL 62.4). 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.

**Q12 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 deliver the paperwork to the village clerk.

**Elections—Recalls**

**Q13 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.

**Q14 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—Initiatives and Referendums**

**Q15 What's the difference between an initiative and a referendum?**

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. The GLV Act does not provide for citizen initiated legislation. It does provide for referendums on specific ordinances (see Q16)

**Q16 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 allows for referendums on these four types of ordinances: reducing the number of trustees from six to four; changing the clerk’s position from elected to appointed; changing the treasurer’s position from elected to appointed; and assigning duties of other officials to a manager. The language for all such ordinance referendums states “that if a petition signed by not less than 10% of the registered electors of the village is filed with the village clerk within the 45-day period, the ordinance shall not become effective until after the ordinance is approved at an election held on the question.” 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.

**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.

**Finance—Budgets**

**Q19 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.

**Q20 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.

**Q21 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 Q26).

**Q22 How long before the hearing does the notice need to be published?**

At least six days prior to the hearing.

**Q23 Is a public hearing necessary to amend the budget?**

No. However, the budget should be amended before you overspend, not after.

**Q24 Is a quorum required to allocate funds for the village?**

Yes, a quorum is required to allocate funds.

**Q25 Does the council need to approve the budget of the Downtown Development Authority (DDA)?**

Yes, the council must approve the DDA improvement plan and DDA financing plan in addition to the annual budget.

**Q26 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 GLVs the fiscal year begins March 1<sup>st</sup> unless the council changed it by ordinance. 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 1<sup>st</sup>, you don’t have an authorized spending plan.

**Q27 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. You may designate these as “reserve” funds to assure they are indeed reserved for this purpose.

**Finance—Donations**

**Q28 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. Chapter 21 of this book is dedicated to Municipal Expenditures. In addition, the League’s One-Pager *Plus* Fact Sheet on Municipal Expenditures may be downloaded at [mml.org](http://mml.org).

**Finance—Expenditures**

**Q29 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. The League has sample credit card policies on its website at [mml.org](http://mml.org).

**Finance—Income tax**

**Q30 Can a village pass an income tax?**

No. The City Income Tax Act, 1964 PA 284, MCL 141.502 applies to cities only.

**Finance—Property Taxes**

**Q31 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.

**Q32 Which Michigan statutes allow for a property tax lien for unpaid water bills?**

MCL 123.161 et seq. and MCL 141.121 et seq.

**Q33 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 1<sup>st</sup> after the taxes were assessed. If those taxes remain unpaid by October 1<sup>st</sup> 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.

**Q34 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.

**Q35 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.

**Q36 Can we have an agreement with the mobile home park developer that requires him to 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.

**Finance—Revenues**

**Q37 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.

**Q38 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**

**Q39 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* Fact Sheet titled "Sale of General Law Village Real Property," available at [mml.org](http://mml.org) or email [info@mml.org](mailto:info@mml.org) to request a copy.

**Q40 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)

**Meetings**

**Q41 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.

**Q42 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. A court decision also determined that the posting must be in a

place accessible to the public during the 18 hour period.

**Q43 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.

**Q44 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.

**Q45 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 or one or more trustees are absent.

**Q46 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.

**Q47 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.

**Q48 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.” However, the Open Meetings Act requires a draft of the minutes be available for public inspection within 8 business days of the meeting and that the approved minutes be available within 5 business days after the meeting at which they are approved. (MCL 15.269)

**Q49 What can we discuss in a closed meeting?**

Every councilmember should be familiar with Michigan’s Open Meetings Act (OMA), 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.”

**Q50 Our committees usually consist of three trustees. If a fourth trustee attends, are we in violation of the Open Meetings Act?**

First, all meetings of a committee created by the council are subject to the Open Meetings Act. MCL 15.262 includes committees and subcommittees in the definition of a public body.

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.

**Q51 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*.

**Q52 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. The GLV Act requires the adoption of 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**

**Q53 What are the qualifications for holding office?**

A candidate must be a qualified elector (i.e. a resident who is eligible to register to vote) who is not in default to the village.

**Q54 If an official sells his house but has not moved out yet, can he still hold office?**

Yes. An individual can hold an elected office as long as he/she continues to live in the village. Being a property owner is not a requirement.

**Q55 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 the League's One Pager *Plus* Fact Sheet "Default: Elected/Appointed Officials" at [mml.org](http://mml.org).

**Q56 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**

**Q57 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. The rationale is that the president, being the presiding officer, should not unduly influence the vote.

**Q58 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 GLV Act (MCL 64.5) allows the council to appoint a temporary clerk when necessary.

If the council chooses to create either 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 changing some of the reporting responsibilities.

**Q59 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 League's One Pager *Plus* Fact Sheet "Incompatible Public Offices" at [mml.org](http://mml.org).

**Q60 Can village presidents perform marriage ceremonies?**

No, only mayors of cities may perform marriage ceremonies.

**Q61 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.

**Q62 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.

**Q63 Can council vote to fill a vacancy in the office of 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.

**Q64 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.

**Q65 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 League 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.

**Q66 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.

**Q67 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**

### **Q68 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) (See Chapter 7 Local Ordinances.)