

Questions and Answers

Budgets and Budgeting

Q1 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.

A public hearing is required prior to adopting the budget. (1963 PA 43). Remember that someone must be responsible for budget preparation and execution. The legislative body must annually adopt a budget (spending and revenue plan) for the city or village and must make amendments when necessary. Proper procedures must be followed in setting the millages. (See CH 19: Budgeting, for further information.)

Q2 Do we need to have a public hearing before adopting the budget?

Yes, according to the Budget Hearings of Local Governments Act (1963 PA 43), which requires all local units to hold a public hearing on a proposed budget. Notice must be published at least six days prior to the hearing in a “newspaper of general circulation” and must include a statement, printed in 11-point boldfaced type, stating **“The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing.”** Budget hearings held in accordance with the provisions of the local charter and/or ordinance will meet this requirement. This hearing will also fulfill the requirement for a “truth in taxation” hearing.

Q3 Is a public hearing necessary to amend the budget?

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

Q4 If our city has not adopted a budget and the new fiscal year has begun, is it legal to pass a monthly appropriation bill to pay the bills?

Your city charter may address this issue. Some charters provide for an “interim authority” stating that if the council fails to adopt a budget ordinance before each new fiscal year, the council, on written request of the mayor, may make an appropriation for a department’s current expenses in an amount sufficient to cover the minimum necessary expenses of the affected department(s) until the appropriation ordinance is in force.

Q5 Is there a “rule of thumb” for a fund balance amount?

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.

Q6 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. You may want to place the excess revenue in a restricted “capital improvement fund” to avoid the temptation to use the funds to

cover budget shortfalls while you are saving for your capital project. 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.

Consultants

Q7 How do we find a consultant and/or other services and products for municipalities?

The Municipal Yellow Pages, in which consultants can advertise, are currently online at 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.

In addition, there is an online directory of more than 120 companies enrolled in the League’s Business Alliance Program (BAP). Go to mml.org and on the home page, left bottom column—click Business Alliance. Companies are listed alphabetically or by service category (See also Chapter 17: *Selecting and Working with Consultants*).

Q8 What is the maximum amount for which we can write a contract without going out for public bids under state law?

There is no state law requiring public bids on municipal contracts. However, many cities and home rule villages have such a requirement written into their charter and

other cities and villages have ordinances or policies establishing a threshold amount over which contracts must be bid. Even if your municipality does not have such a requirement, it is often prudent to solicit bids on large projects.

Council/Staff Relationships

Q9 What constitutes appropriate contact between individual councilmembers and city staff? Some of our councilmembers ask staff (other than the city manager) directly for information they desire. This causes problems because information may be given to one council member and not to others, thus putting the manager in an awkward position.

Direction on appropriate council action with respect to city staff can be incorporated into council rules or ethics policies. Manistee covers the issue in their council rules and encourages council members to work through their city managers for information from city staff.

Downtown Development Authorities

Q10 Does the DDA budget have to go to the city council for approval?

Yes. MCL 125.1678 (1975 PA 197) states “Before the budget may be adopted by the board it shall be approved by the governing body of the municipality.”

Email

Q 11 Is email a public record?

Email messages are public records if they are created or received as part of performing a public employee’s official duties.

The Michigan Freedom of Information Act (FOIA) (1976 PA 442, as amended) defines a public record as “a writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time it is created.”

Q 12 I sometimes use my home computer and personal email account to conduct government business. Am I creating public records?

Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer resources.

Q13 Does all email have the same retention period?

No. Just like paper records, email records are used to support a variety of business processes. Email messages must be evaluated for their content and purpose to determine the length of time the message must be retained in accordance with the appropriate Retention and Disposal Schedule.

Elections

Q14 How many home rule cities and home rule villages have non-partisan elections?

A check of the MML charter database shows an overwhelming majority (over 90 percent) of home rule cities conduct elections on a non-partisan basis. The Election Consolidation Act of 2005 required all village elections to be non-partisan.

Q12 Our clerk administers the oath of office to the mayor, commission members and appointed officials. Who swears in a new city or village clerk?

The county clerk or any notary public can administer the oath of office to a newly elected or appointed clerk.

Q15 Our council has voted to place a millage increase on the ballot at the next election. We understand there has been a change in the required ballot wording. What additional information do we need to include?

Previously, state law required only that the “ballot state the amount of the millage

increase proposed and...an estimate of the revenue increase the taxing unit will collect...during the first calendar year.” 1999 PA 248 amends section 24f of the General Property Tax Act (MCL 211.24f) to require that the following information be provided on the ballot:

1. the millage rate to be authorized,
2. the estimated amount of revenue that will be collected in the first year that the millage is authorized and levied,
3. the duration of the millage in years,
4. a clear statement of the purpose for the millage, and
5. a clear statement indicating whether the proposed millage is a renewal of a previously authorized millage or the authorization of a new additional millage.

Fortunately, this is not quite as complicated as it sounds and could be something as simple as:

Shall the [municipality] continue to levy a total of [one] mill (\$[1.00] per \$1,000.00) on taxable value of property located in the [municipality] for [five] years beginning with the [2000] tax levy year and running through [2004] tax levy year (inclusive), which will raise in the first year of such levy an estimated revenue of [twenty thousand two hundred fifty six dollars (\$20,256.00)] to be used for the specific purpose of [operation, maintenance and/or improvements of the Community Center building and grounds]? If approved this would be a renewal of a previously authorized millage.

Q16 Are there any new requirements for ballot language authorizing the issuance of bonds?

Yes. MCL 211.24f of the General Property Tax Act also requires a ballot to state:

1. the principal amount to be borrowed,
2. the maximum number of years the bonds may be outstanding, exclusive of any refunding, and
3. a clear statement of the purpose for which the bonds proceeds will be used.

If the bonds are to be paid from a separate revenue source or from taxes levied in less than the whole city or village, you must indicate the estimated millage to be levied for the bonds in the first year and an estimated annual millage required to retire the debt, as well as the source of revenue to be used to pay off the indebtedness.

Q17 Is a councilmember who was appointed to fill a vacancy subject to a recall?

Yes. This is still an elected position even though the trustee was appointed. According to the State Elections Bureau, MCL 168.951 of the state elections statute applies to all officials in elected positions. It states that a person cannot be recalled in the first six months of office (from the time he or she is sworn-in) nor in the last six months of office, but can be recalled at any time in between. In fact, except under truly extraordinary circumstances, this is the only way to remove an elected official from office.

Fees and Permits

Q18 One of the churches in our community is preparing to add a new wing to its building. This will require not only a building permit, but also a special use permit. I know churches are tax exempt, but are they exempt from fees also?

Churches are exempt only from ad valorem and sales tax. They are still required to pay for permits and fees.

Finance - Bonds

Q19 Can sewer revenues be used to retire sewer bonds?

Yes, however, the municipality should call its bond counsel to find out if there are any penalties or other requirements.

Finance- Expenditures

Q20 Can the village/city make donations to local service organizations?

Under Michigan law, municipalities have the power to expend public funds only for public purposes. Authorized by the Michigan constitutions or by statute, Michigan courts have ruled that gifts or donation of money or property is a violation of state law. (Chapter 26 of this book covers the topic of municipal expenditures).

Q21 Can a city or village use public funds for employee picnics, retirement dinners, flowers for sick employees, etc.?

It is quite difficult to meet the standard of “public purpose” for these expenditures. The Michigan Supreme Court has held that an improper “lending of credit” occurs when a municipality gives something of value without getting something of specific value in return. For more information, see CH 23: Limits on Municipal Expenditures.

Q22 Our library asked for a donation in order to match outside funding but we told them that we couldn’t contribute to a private nonprofit organization.

A public library is not a private nonprofit organization. Chapter 397 of the Michigan compiled laws, sets out the forms of libraries, including city and village libraries. If a library is established, the budget should not show a disbursement as a donation but as a line item like any other department. A municipality can hire a private nonprofit agency to perform a service that it might otherwise have performed.

Finance - Payment in lieu of taxes

Q23 Can a municipality require payments in lieu of taxes from state and county government agencies?

No. You cannot require payment in lieu of taxes, but you can try to negotiate an agreement with them.

Finance - Purchasing

Q24 Can municipalities use credit cards?

There are two public acts that allow municipalities to use credit cards for procurement (1995 PA 266, MCL 129.241 et seq.) and for accepting payments (1995 PA 280, MCL 129.221 et seq.). Both require some type of action by the local legislative body. To use credit cards for procurement, a written policy is required. The Act lists what must be included in the policy. An authorizing resolution is required to accept payments by credit cards. There are other requirements and restrictions as well. Sample policies are available on our website, mml.org.

Finance - Revenues

Q25 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.

Q26 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 in order to use Act 51 dollars. However, matching funds are not required for the use of Act 51 funds for routine maintenance.

Finance - Special Assessments

Q27 In a special assessment district, are tax-exempt properties subject to special assessment?

Federal and state governmental entities are exempt from special assessment districts. School districts can agree to pay assessments (MCL 380.1141). According to the Citizens Research Council, the courts have consistently ruled that property normally exempt from property taxes (such as that owned by religious and charitable

organizations) is not exempt from special assessments.

Q28 Can we levy a special assessment based on the value of a property?

Special assessments are levied only on real property, based on some measure of how that real property benefits from the special assessment, such as front footage for sidewalks. There are a few special assessments that statutorily authorize ad valorem special assessments such as the Police and Fire Protection Act, 1951 PA 33 (MCL 41.801 and 41.851).

Q29 Are special assessments subject to the Headlee amendment?

Special assessments are not subject to constitutional and statutory general ad valorem property tax restrictions such as the Headlee Amendment and Proposal A of 1994.

Q30 Must we hold a hearing on a special assessment?

You will need to check your charter. Many charter provisions require public hearings for special assessments. The procedure can also be set by ordinance.

Legislation

Q31 I am interested in receiving copies of new bills introduced in the legislature. Is there any way to get on the legislature's mailing list?

The Michigan legislature maintains an interactive, user friendly website: michiganlegislature.org. You can search for a bill by number, by sponsor or by text. The website is updated frequently and gives the current language of the bill, as well as its current status. If you don't have Internet access at home, your local library may have computers available.

Meetings, Minutes, etc.

Q32 Can a councilmember abstain from voting without disclosing the reason? Is the abstention counted as a yea or nay?

It depends. State law does not require village or city councilmembers to declare the reason for an abstention. However, many charters require the councilmember to do so. An abstention is neither a yea or nay vote, and therefore, not counted. It upholds the will of the majority. If the member does not leave the council chamber, they are included in the quorum count.

Q33 How does one go about making changes to minutes?

The Michigan Open Meetings Act (1976 PA 267, MCL 15.261 et seq.) requires that corrections in the minutes must be made no later than the next meeting to which the minutes refer. Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Q34 What is the difference between a public hearing and a special meeting?

A *public hearing* is that portion of a meeting designed specifically to receive input from the public on a single issue. It may be required by ordinance or statute. The time, place, and subject of the hearing must be posted as required by the ordinance or statute and only the posted subject can be discussed. The hearing may be before, during or after a regular meeting or may be at a special meeting called specifically for that purpose.

A *special meeting* is any meeting of the governing body other than those called for by the charter. It may be a meeting of the full body or just a subcommittee. Your charter will outline the process for calling a special meeting and the Open Meetings Act requires the date, time, and place of the meeting be posted at least 18 hours before the meeting.

Q35 Can the council discuss an item not on the agenda?

There is no law prohibiting discussion of an item not on the agenda. The Open Meetings Act outlines the time required for proper notice of regular and special meetings. Although it specifies that the name, address and telephone number of the public body be included in the notice, it does not require a listing of specific items to be discussed. However, a number of cities and villages, either through their charter or their council rules, have agreed that items not on the agenda may not be considered by the council. Some permit the agenda to be amended during the meeting. Your city clerk and/or your city attorney will be able to guide you as to your requirements.

Q36 How long can the public speak during the public comment portion of a council meeting?

It is up to the council to determine the policy. Some communities limit each person to two minutes; in other communities the limit is five minutes. Some municipalities set aside a total of 15 minutes for proponents, and 15 minutes for opponents on a specific issue. One community even sets a timer, and when it goes off, the citizen must quit speaking. The length of time for public commentary should be established in your council rules.

Q37 Do council meeting minutes have to be published?

Check your charter for your municipality's requirements. Some examples of the differing charter requirements are: within 15 days of the meetings, within 20 days of the meeting, and another requires within 45 days after the meeting.

Q38 Is there a requirement regarding the length of time a public hearing has to be kept open? We often hold a public hearing during the regular council meeting. If no one appears to speak at the scheduled time, how long must we wait before proceeding with the remainder of our agenda?

Unless you have something established in your council rules or charter, we know of nothing in state law that sets a specific amount of time. Normally the mayor gavels the public hearing open and asks if there is anyone who wishes to speak. If no one does, the hearing is declared closed. Public hearings are often held during council meetings. You do need to make sure the hearing is open at the time advertised. Again, you need to check your charter and any rules the council may have adopted.

Q39 What can be done about a councilmember not attending meetings?

If you want to deal with council absences, you can enact a provision in your council rules to address it or amend your city (or home rule village) charter to address it. The policy can say something like this:

A. Council Rules

No city councilmember shall miss three (3) consecutive, unexcused regular meetings in a twelve (12) month period. Any violation of this provision shall result in the matter being reviewed by the Board of Ethics for appropriate action, including but not limited to removal from the city council. This provision recognizes the duty of city councilmembers to be in attendance to represent the citizens in matters concerning the city. An absence shall be excused only upon a quorum vote by the present city council.

B. Charters

Most city charters contain a provision dealing with council absences. The most common is: four unexcused absences or missing 25 percent of meetings in a year results in a councilmember getting removed

from office. Variations include three consecutive absences or 25 percent; 30 percent in a year; or seven consecutive meetings in a year. The League’s charter database has a listing of all the city charters and what method they use. It is available at mml.org.

Q 40 Is it possible for a councilmember to participate in a council meeting by phone or Skype?

The Open Meetings Act (OMA) regulates meetings of public bodies in Michigan. Most Michigan cities and villages do not allow councilmembers to vote unless they are physically present at council meetings. The Legislature proposed adding an amendment to the OMA to specifically prohibit participation in a council meeting by Skype or teleconferencing. However, this legislation while passing the House, is still in committee as of this writing. Please seek the advice of your municipal attorney on using Skype or teleconferencing to participate in meetings. [In *Goode v. Michigan Department of Social Services*, 143 Mich App 756 (1985), teleconferencing of social services hearings were found to comply with the OMA; and Michigan Attorney General Opinion #6835 of 1995 concluded that an intermediate school district representative could participate in a meeting through interactive television and comply with the Open Meetings Act.]

Q41 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 municipal attorney should be alerted to questionable legal or ethical practices. As a councilmember, 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.

Open Meetings Act

Q42 Is it a requirement to post a schedule of the regular meetings of the council?

Yes, according to Michigan’s Open Meetings Act, (1976 PA 267, MCL 15.261 et seq.). MCL 15.265 (2) provides, “For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, time, and places of its regular meetings.” If there is a change in the schedule, the changes must be posted within three days after the meeting at which the change is made.

Q43 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. However, you can go into closed session to consider purchase or lease of real property up to the time an option to purchase or lease that property is obtained.

Q44 What can we discuss in a closed meeting?

Every councilmember should be familiar with the Michigan Open Meetings Act. The intent of the Act is for a public body to conduct its business in the open. There are only a few circumstances where a closed meeting is allowed. These include discussion of employee or officer discipline, etc. when the employee or officer requests a closed meeting; consideration of purchase of property; consultation with the municipal attorney on pending litigation and review of an employment application upon request of the applicant. The statute states how to go into closed session and how to record the proceedings. You cannot conduct interviews in closed session. You cannot go into closed session to avoid discussing issues in front of citizens.

Q45 Our village would like to have a joint meeting with the adjacent township. Is there anything to prevent us from holding this meeting outside the village limits?

There is nothing in the Open Meetings Act that prevents your council from meeting outside the corporate limits. However, don’t forget the posting requirements. This type of meeting, close to the village boundaries, should pose no political problems because the citizens can easily attend if they so desire. But, if your council ever considers a meeting at a remote location from the village, you’ll need to factor in the reactions of the village constituents. There are benefits and drawbacks to meetings like this and all aspects need to be considered, not just the legal aspects.

Training and conferences

Q46 Can appointed clerks and treasurers participate in the Elected Officials Academy?

They are welcome to attend the classes, but they are not eligible to graduate from the different levels. However, *elected* clerks and treasurers may earn credits and graduate from the Academy levels. If a person is appointed to fill an elected position, then he/she is eligible to participate in the Elected Officials Academy. See the Education Calendar section of our website for a list of upcoming classes and check the program descriptions for details of Elected Officials Academy credits.

Uniform Traffic Code

Q47 We note a new Uniform Traffic Code has been promulgated. Do we need to adopt a new traffic ordinance?

Probably. As a matter of fact, unless you have adopted the Michigan Vehicle Code (MVC) as your primary code, you will need to adopt that first. The League has a One Pager *Plus* Fact Sheet with a sample ordinance adopting the MVC by reference and a sample ordinance adopting the Uniform Traffic Code (UTC) by reference. You can obtain copies from either the MML

website at mml.org or by emailing info@mml.org.

Utilities

Q48 Our city is in the process of setting water and sewer rates. Can we use rates from neighboring communities as the basis for our rates?

The setting of utility rates is a complicated matter that needs to include substantial input from your city attorney, engineer and your water and sewer department. In the past, many municipalities set their water and sewer rates based on the rates charged by their neighbors and/or other comparable communities. However, in *Bolt v. City of Lansing* 459 Mich. 152 (1998), the Michigan Supreme Court ruled that there are legal differences between a tax and a fee. The Court said that a fee must serve a regulatory purpose, be proportionate to the necessary cost of the service and be voluntary.

As a result, the methods used by many municipalities prior to the *Bolt* decision (i.e. determining rates based on comparable rates in other cities and villages) may no longer be valid. Because of the potential impact on any municipality's utility revenues, most rate ordinances should be reviewed by your municipal attorney for legal compliance with *Bolt*. (See Chapter 22: Special Assessment and User Charges for further discussion on *Bolt*).

Q49 Do any municipalities have an ordinance providing for multiple water meters – for instance, to measure water used for lawn sprinkling separately from water used indoors?

Hancock provides separate water meters for a supply of water that will not be discharged into the sanitary sewer system. This includes lawn and garden sprinkling, commercial bottling of beverages and flooding of ice rinks. Tecumseh permits separate water metering systems for residential lawn sprinkling only under certain conditions, including the residential property owner being responsible for installation costs.

Q50 Can unpaid utility bills be added to tax bills as a lien against the property?

1939 PA 178 (MCL 123.161 et seq.) as security for collection of water or sewage system rates, assessments, charges, or rentals and states, provides for a lien for water or sewage system charges which accrues to the property at the time the service is furnished by municipalities.

Weddings

Q51 Our mayor has been asked to perform several wedding ceremonies this summer. Who decides how much the mayor should charge?

The law giving a mayor the authority to perform marriage ceremonies (MCL 551.7(3)) states the mayor shall charge and collect a fee. The amount is to be determined by the city council and paid to the city treasurer to be deposited in the general fund of the city at the end of the month. In general, a fee of \$25-50 has been approved in many cities.