

the official magazine of the michigan municipal league

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FISCAL RESPONSIBILITY

the review

The official magazine of the Michigan Municipal League

Features

6
Welcome to the League
By Anthony Minghine

8
Campaigning with a Purpose:
Public Employees/Officials
Support of Ballot Proposals
By Christopher Trebilcock



12
Fiscal Responsibility
"Accounting Procedures
Manual for Local Units of
Government in Michigan"
Excerpt

15
**Local Marijuana
Ballot Proposals**
By Rick Haglund

On the Cover:

The city of Harbor Beach's dredging project was voted by its peers as the winner of the 2014 Community Excellence Awards. Great Lakes waterfront communities were in a predicament—alarmingly low water levels and danger



28 Cover Story

Cover photo by Ashley Wehner, Memories by Ashley

18
Bolt vs City of Lansing:
A Taxing Question for
Michigan's Local Governments
By Mark Nettleton

20
Becoming the City of Jonesville
By Jeff Gray and Tim McLean

28
**Harbor Beach DIY
Dredging Project**
By Elizabeth Philips Foley

32
Financing Improvements 101
By Thomas Traciak

35
Heart of Downtown:
Farmington's Sundquist Pavilion
By League Staff



Columns

5 **Executive Director's Message**
38 **Northern Field Report**
41 **Legal Spotlight**
46 **Municipal Q&A**





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michigan municipal league

the review

The official magazine of the Michigan Municipal League

Volume 88, Number 1

Better Communities. Better Michigan.

The Michigan Municipal League is the one clear voice for Michigan communities. Our goals are to aid them in creating desirable and unique places through legislative and judicial advocacy; to provide educational opportunities for elected and appointed officials; and to assist municipal leaders in administering community services. Our mission is that of a nonprofit, but we act with the fervor of entrepreneurs to passionately push change for better communities and a better Michigan.

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Election and League News

It's a new year for Michigan. We've got a host of newly elected officials to welcome into the fold. Are we ready for what lies ahead? Back in May 2014, the nonpartisan Center for Michigan's fourth annual report said Michigan residents wanted four main things from their leaders: make college more affordable, fix our roads and bridges, improve education and job training, and do something about poverty.


Fast-forward to November 2014. Republicans added seats in both houses and Gov. Rick Snyder won reelection, consolidating GOP power in Lansing. In one stroke of the governor's pen, the MPlace Partnership Initiative suddenly gave placemaking the power and priority of an executive action directly from the governor's office. That empowered the Michigan State Housing Development Authority, the League, and other key partners to charge full-steam ahead on place-based strategies designed to create more jobs, raise incomes, and restore prosperity in Michigan communities. And that's exactly what we've done.

PlacePlans put consultants directly into communities to work on specific place-based projects. PlaceMarket case studies provide hard economic data and other evidence-based support for the effectiveness of place-based strategies. The MPlace website and the League's own placemaking.mml.org provide news and resources to educate and enable placemaking efforts across the state and beyond. In late 2013, the League's Partnership for Place set forth a bipartisan policy agenda in the key areas of municipal funding, multi-modal transportation, talent attraction and retention, and infrastructure and development.

In October 2014, the League rolled out *The Economics of Place: The Art of Building Great Communities*, a follow-up to our 2011 book that provides an in-depth look into placemaking successes around the state.

Now a new year is dawning, and there's no looking back. The League's lobbying team is gearing up for everything that could happen in the first few months of the new Legislature, from road repairs to term limits and a whole slew of issues regarding our schools. If it's something that impacts Michigan communities, we'll be there in Lansing to meet it head-on.

So if this is your first issue of *The Review* as a newly elected official, we hope you'll like what you see. In these pages you'll read about financing capital projects, a League placemaking case study, a review of recreational marijuana ballot initiatives, and a field report on the new Shore-to-Shore equestrian trail that's blazing a whole new path for Michigan's non-motorized trail network. You'll also learn how the city of Harbor Beach won our 2014 Community Excellence Award with a do-it-yourself dredging project that saved the city's harbor as well as its economic future. By the time you're done, we hope you'll feel informed, inspired, and empowered to face all the unique challenges ahead.

Welcome to the future. We'll be there with you all the way. 

New Economics of Place Book

This year, the League wrote a new book to expand on the discussion of the importance of "place." In *The Economics of Place: The Art of Building Great Communities*, we go beyond placemaking as a concept, to offer real-world examples of economic drivers and agents of social and cultural change in Michigan's own backyard. The book is available at economicsofplace.com.



Daniel P. Gilmartin
League executive director and CEO
734-669-6302; dpg@mml.org



Welcome to the League

By Anthony Minghine

Your municipality's membership in the League provides you with a number of services that will help you to understand your new role and responsibilities. For more than 100 years, the League has provided advocacy, education, and assistance to local officials to help them provide improved services and administration.



Our Mission:

Better communities. Better Michigan.

The League is the one clear voice for Michigan communities. Through advocacy at the state and federal level, we proactively represent municipalities to help them sustain highly livable, desirable, and unique places within the state. We create and offer our members services and events that range from traditional to cutting edge, in order to help educate and inspire them to remain focused on their passion for the community they represent. We are a nonprofit, but we act with the fervor of entrepreneurs; our people are dynamic, energetic and highly approachable, passionately and aggressively pushing change for better communities.



Place Matters

If we had said those two words a few years ago, most would have had no idea what we were talking about. Today, the terms "place" and "placemaking" are part of the everyday vernacular. Investing in our communities is key to Michigan competing in the 21st century. Our State of Your League report shows how we're spreading this placemaking message and it also provides a snapshot of who we are and how we work for League members.



Advocacy: Partnership for Place

In 2013, the League recognized a need to develop a strong plan of action that would create and support the thriving communities so essential to Michigan's long-term success and sustainability.

The Partnership for Place policy agenda is designed to encourage economic growth and the development of vibrant places that can attract and retain the highly mobile and educated workforce of the 21st century.

The agenda proposes a series of strategic actions in the key areas of municipal funding, multi-modal transportation, talent attraction and retention, and infrastructure and development.

This past year the League's advocacy team has scored many victories that will help create strong and sustainable communities including: angled parking on state trunklines, crowdfunding for creative economic development, and a 4.8 percent increase in statutory revenue sharing. In the coming year our Lansing staff will strive for similar legislative victories as outlined in the Partnership for Place.

Mlplace Partnership Initiative

The Mlplace Partnership Initiative is a groundbreaking effort to provide coordinated state support for place-based economic development. Members include the Michigan State Housing Development Authority, the League, and many other leadership organizations. Mlplace works to educate both the public and private sector on place-based strategies and why they're important to economic development. Programs include Mlplace online resources, case studies that provide evidence-based lessons in successful placemaking, and PlacePlans to help communities design and plan for transformative placemaking projects. Four PlacePlans were developed in 2013, and eight more in 2014.

Placemaking

Investing in communities is critical to long-term economic development, and Michigan's future depends on its ability to attract and retain active, diverse, and engaged residents. Local governments must foster the dynamics of place to become thriving communities in the 21st century. Placemaking capitalizes on the distinctive assets of a community to integrate a mixture of uses that connect people and places on a human scale. It is a scalable strategy to create adaptable, economically competitive communities worth caring about.

Through forums, research, and education, the League identified eight assets Michigan's communities need to grow and strengthen for our state to sustain and prosper in coming years: physical design & walkability, green initiatives, cultural economic development, entrepreneurship, messaging & technology, transit, education, and being welcoming to all. Helping Michigan's leaders grow these assets in their own communities is the focus of the League's placemaking efforts. Visit placemaking.mml.org for comprehensive resources and solutions.

Who Makes up the League?

521 CITIES, VILLAGES, & TOWNSHIPS;

271 Cities, **242 VILLAGES**, 3 Urban Townships,

5 Non-Voting Members, **31 AFFILIATE ORGANIZATIONS**, **74 BUSINESS ALLIANCE PROGRAM**

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151 Zoning Administrators, **336 FIRE CHIEFS**, 302 Police Chiefs, **61 PUBLIC SAFETY**

DIRECTORS

Educating Our Members

From EVIP compliance to the latest economic development tools, the League's education programs and events can answer your questions and supply the knowledge you need to lead your community into the future. How we deliver those services is also evolving to reflect the changing needs of today's work world. A growing number of webinars, onsite trainings, and Twitter Talks have been added to our regular line-up of Capital Conference in the spring, Annual Convention in the fall, and a year-round schedule of trainings.

We Are Your Resource

We answer thousands of questions each year through personal research assistance and direct contact with our members each day. We supply critical information on core topics to our members and serve as an information clearing-house, helping steer communities through the complexities of local governance. As communities are forced to do more with less, League services help fill the gap. We offer databases, extensive sample ordinances, policies, contracts, handbooks, tool kits, fact sheets, and a myriad of other resources. If you can think to ask it, we can help find the answer! 

Anthony Minghine is the Associate Executive Director & COO for the League. You may contact him at 734-669-6360 or aminghine@mml.org.



CAMPAIGNING WITH A PURPOSE

Public Employees/
Officials Support
of Ballot Proposals

By Christopher Trebilcock

On August 5, 2014, Oakland County saw 45 ballot proposals, primarily for millage renewals or increases. Ten proposals failed to pass. Ingham County had ten ballot proposals. Two failed to pass, including the Fowlerville School Millage by one vote out of the reported 13 cast. In Kent County, voters cast ballots on 13 different proposals. All 13 proposals passed.

In general, ballot proposals are more likely to succeed if there is an

active campaign within the community voicing strong support for the measure. These campaigns typically include the traditional “yard sign” wars, direct mailers, and other direct voter contact. Often, leading public officials in the community who are supporting the proposal are asked or seek to take all steps necessary to ensure the passage of the proposal. When this happens, any public employee or official must proceed cautiously to ensure that he or she does not violate the Michigan Campaign Finance Act.

Until 1995, there were no statutes that expressly prohibited using public funds to support or oppose ballot proposals or candidates. Without statutory guidance, questions related to the use of public funds in election proposals were often referred to the attorney general of the state of Michigan. In 1987, the attorney general issued an opinion addressing a series of questions regarding the permissible interactions between a school district and independent political ballot or candidate committees relating to election proposals.¹ The following

year, the attorney general opined that a governmental unit “can expend public funds to inform their electors in a fair and objective manner of the facts surrounding an upcoming ballot proposal.”²

LEGISLATURE ADDRESSES PUBLIC CAMPAIGNING

In 1995, the Michigan Legislature amended the Campaign Finance Act to prohibit a public body from using public funds or resources to make a contribution to an individual candidate or a ballot question campaign. In 1996, the statute was amended to clarify what is permissible under the law by adding a list of activities that can be done without violating the Campaign Finance Act.

In essence, these Campaign Finance Act amendments codified much of the content of the old attorney general opinions. Section 57 of the Campaign Finance Act prohibits public employees from using funds, personnel, office space, computers, or other public resources to make a contribution or expenditure for political purposes. This prohibition, however, explicitly exempts opinions of public employees with policy making duties, the production of factual information regarding city services and



“...public officials can generally issue communications to voters using public dollars if the communications contain factual information regarding the election, the proposal, and what impact either its passage or defeat will have on the public body.”

functions, the leasing or use of public space by candidates provided that all candidates are given equal treatment, and public employees who engage in political activities during his or her personal time. To encourage compliance, Section 57 imposes significant fines and criminal penalties to individuals and public bodies for violations.

At first blush, the language above suggests that public officials are virtually banned from most campaign activities. However, public officials seeking to advocate for a proposal can find solace in the fact that “specifically excluded from the definition of expenditure is any expenditure on a communication on a subject or issue if the communication does not support or oppose a ballot question by name or clear inference.” MCL 169.206(2)(b). The secretary of state has consistently reaffirmed that it is required to “apply the express advocacy test to communications financed by public bodies.” *Interpretive Statement to David Morley* (Oct. 31, 2005). Under this test, com-

munications are outside the reach of regulation by the secretary of state unless it urges votes to “vote yes,” “vote no,” “elect,” “defeat,” “support,” or “oppose” a ballot question. The secretary of state will look solely at the substance of the communication and not examine the broader context or implication of the communication.

DOS AND DON'TS

Public officials can generally issue communications to voters using public dollars if the communications contain factual information regarding the election, the proposal, and what impact either its passage or defeat will have on the public body. Moreover, the prohibition on using public monies to support or defeat a ballot proposal does not prevent certain high level officers and employees from expressing their opinions. For example, nothing prevents a city council member or city manager from standing up at a public meeting and telling the gathering that, in his or her opinion, the city needs to ask for a




millage increase and the voters need to support it.

Although there are opportunities to carefully use public time and money to further educate the electorate on a proposal, public employees and officials should also keep the following additional guidelines in mind:

- A** Non-policy making staff may not take “official” time (i.e., time away from their regular jobs) to participate in campaign committee activities, as this would constitute an inappropriate expenditure of public funds. Nothing would restrict the ability of these individuals to work in any way on the campaign on their own time.
- B** The public body may provide information to individuals and/or a campaign committee which is publicly available in the same manner as it would

provide information to anyone else requesting the information.

- C** The campaign committees may meet at public facilities only to the extent that and on the same terms as any other group could use the same facilities. If the public body incurs any expense in providing meeting space to the committee, the committee must reimburse the public for that expense.
- D** The public body should not place links to campaign-related websites on its website. 

Christopher Trebilcock is a principal attorney with Miller Canfield. You may contact him at 313-496-7647 or trebilcock@millercanfield.com.

- 1 OAG Opinion No. 6423 (February 24, 1987).
- 2 OAG Opinion No. 6531 (August 8, 1988).



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Oversight of financial affairs is the responsibility of municipal elected officials. Inadequate oversight can lead to abuses such as embezzlement, and misuse of and/or misappropriation of funds. The following will help you understand your financial responsibilities and requirements.



Fiscal Responsibility

Internal controls are the policies and procedures by which you maintain your financial records and engage in financial transactions on a daily basis. Simply put, internal control consists of all the measures taken by the local government for the purpose of:

- **Protecting resources against waste, misappropriation, and inefficiency;**
- **Ensuring accuracy, timeliness, and reliability in accounting and operating data;**
- **Maintaining compliance with applicable laws and regulations (local, state, and federal);**
- **Evaluating the level of performance of departments and personnel.**

Examples of internal control include job descriptions, purchasing procedures, reconciliation of bank accounts, etc. Safeguarding cash and other assets of the local government and ensuring that funds are expended properly take on greater significance in the public sector. Under law, elected and appointed officials have both the authority and the responsibility to manage the resources for the greater public good.

Internal control is a continuum and there is no objective method to measure "adequate" internal control. State law requires an audit annually for local units over 4,000 in population; biennially for local units under 4,000 in population,

(MCL 141.425). An audit requires the external auditor to perform a study and evaluate internal control, and it also requires the auditor to report any significant deficiencies to the governing body. The Department of Treasury expects any reportable conditions to be addressed by the local unit by either correcting the deficiency or documenting why it is in disagreement.

State Requirements

Public Act 2 of 1968 and Public Act 71 of 1919 require the state treasurer to develop uniform accounting procedures to be followed by all local units of government. The required financial policies that must be passed by local governing bodies are: investment, credit card, and automated clearing house (ACH).

Investment Policy

The Investment of Surplus Funds of Political Subdivision Act, an investment policy required by Public Act 20 of 1943, as amended, addresses investment objectives, scope, diversity, delegation of authority, allowable instruments, safekeeping and custody, and prudence.

Credit Card Policy

Public Act 266 of 1995 (entitled "Credit Card Transactions") and Public Act 280 of 1995 (entitled "Financial Transaction Device Payments") requires the governing body to approve a

policy for the use of credit cards prior to accepting payment by credit card, or using credit cards to purchase goods or services for the official business of the local unit. This also applies to similar types of instruments, such as purchasing cards or procurement cards.

ACH Policy

Public Act 738 of 2002 (entitled “Electronic Transactions of Public Funds”) requires the governing body to approve a policy before making any payments using the ACH (Automated Clearing House) system (wire transfers).

Best Practices

While not required by a specific statute, the state treasury department suggests each local unit should adopt a purchasing policy, an ethics/conflict of interest policy, and a travel/reimbursement policy.

Purchasing Policy

A purchasing policy should address the following areas:

› Purpose

In general, the purpose of a purchasing policy is to encourage the efficient purchasing of appropriate goods or services at appropriate prices;

› Authority to commit the local unit

The policy should expressly state which employees have the authority to purchase goods or services;

› Approval process

The policy should define a process to purchase goods and services. The policy may distinguish between types of purchases (such as intergovernmental purchases, professional services, utilities, or emergency situations) and by dollar threshold. Often, purchase orders are also used to control and keep track of purchase commitments. Based on the types of service and dollar limitations, the policy should direct: (1) when competitiveness must be introduced (documented oral quotes, sealed bid, etc.); and (2) when additional approval is required (department head, supervisor, city/village manager, or governing body);

› Circumvention of dollar thresholds

The policy should expressly state that separating the work of vendors into smaller invoices is a violation of the dollar threshold rules;

› Grant requirements

Purchases to be reimbursed from grants are often required to follow additional purchasing requirements, and the purchasing policy should adopt these requirements, at least indirectly (by reference);

› Purchasing ordinance

It is imperative that the purchasing policy remain consistent with the purchasing ordinance, if one exists;

› Separation of duties

The policy should separate the duties of ordering, processing for payments, and receiving.

Ethics/Conflict of Interest Policy

Local governments should adopt a policy which generally addresses the following aspects:

- › General prohibition against entering into any business relationships that would put an employee or official into conflict with their obligations to the local unit of government;
- › Requirement to disclose any personal transactions, in excess of a dollar threshold, entered into with any vendor that also does business with the local unit;
- › Disclosure or prohibition of gifts received from vendors in excess of a dollar threshold;
- › Explicit expectation that in the performance of their duties, the employee/official will work in the best interest of the local unit;
- › An explicit expectation that all information provided will be truthful and complete.

The Uniform Accounting Procedures Manual

requires the governing body to be provided periodic financial reports by the clerk and treasurer. Reports by the clerk and treasurer must reconcile to each other every month. The required periodic reports must be given to the council/commission at least on a quarterly basis.

Public Act 2 of 1968, the Uniform Budgeting and Accounting Act

- Requires units of local government to maintain a uniform chart of accounts for financial management and reporting purposes.
- Authorizes the Department of Treasury to perform internal control reviews to ensure compliance with a uniform chart of accounts.
- Requires units of local government to file with the Department of Treasury annual financial and annual audit reports within 180 days of the unit of local government's fiscal year end.
- Requires units of local government to follow uniform procedures with regards to annual budget formulation, adoption, and monitoring.

Travel & Expense Reimbursement Policy

These policies may be incorporated into your purchasing policy, or may be stated as a separate policy:


- Authorization for any travel or business expense will be obtained prior to incurring the costs;
- All expenses requested for reimbursement will be substantiated with receipts or other documentation;
- All expenses requested for reimbursement will be for amounts that a reasonable, prudent person would conclude benefits the local unit. (An example of the above would be that the approval to use a city-owned cell phone should not be considered an approval to have the local unit pay for personal phone calls.)

Conclusion

Local elected officials are given the responsibility and authority to establish financial policies for their municipality. Inadequate oversight can lead to abuses such as embezzlement and misuse of and/or misappropriation of funds. Internal financial controls should reduce opportunities and temptations for fraud or embezzlement. Review your policies and make sure you have all the state requirements in place; better yet, implement the recommended best practices, too. The set of state manuals are available on the Department of Treasury website, michigan.gov/treasury. In addition, the League has sample policies and resources.

League Resources Available at mml.org

- Sample investment policies; One Pager *Plus* Fact Sheet on Investing Surplus Funds
- Sample credit card policies
- Sample ACH policies
- Sample purchasing policies
- Sample ethics/conflict of interest policies; Four One Pager *Plus* Fact Sheets on Ethics
- Sample travel policies

Excerpt from the *Accounting Procedures Manual for Local Units of Government in Michigan*, July 2007, printed with permission of the Michigan Department of Treasury, Local Audit and Finance Division Bureau of Local Government Services. 





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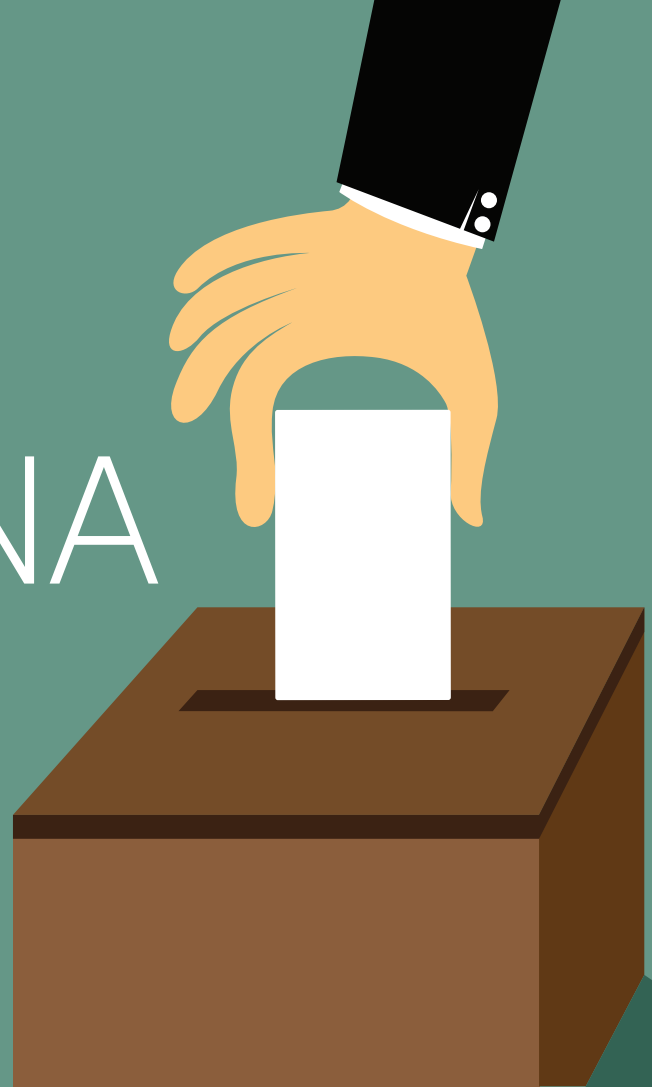
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LOCAL MARIJUANA Ballot Proposals

By Rick Haglund



Residents of larger cities and suburbs across the state increasingly say they want the right to use a little pot in private without the threat of being arrested. Voters in six Michigan cities approved November ballot issues that decriminalized possession of small amounts of marijuana by adults on private property or required the lowest level of enforcement of marijuana laws. That brings to 16 the number of Michigan communities where some form of decriminalization for recreational pot has been approved, according to the Safer Michigan Coalition, which is pushing for statewide legalization of marijuana.

LOCAL IMPACT

But local officials say the approval of the ballot measures will have little immediate impact in their communities because marijuana possession is still illegal under state and federal law. And many say enforcement of marijuana laws in their communities already is a low priority. “We didn’t have an ordinance that dealt with pot at all,” said Pleasant Ridge Mayor Kurt Metzger. “All (marijuana legalization supporters) could do was add a line to the city charter that police would treat marijuana as the lowest level crime for enforcement.” That measure in Pleasant Ridge, a small Detroit suburb, passed with 1,011 residents voting yes and 430 voting no. Metzger said there are few prosecutions for marijuana possession in his community. Most arrests there happen in traffic stops where officers spot marijuana in cars.

Law enforcement officials also say they spend little effort in looking for people possessing or using marijuana on private property. “We make very few of those kinds of arrests,” said Bob Ruth, Saginaw’s interim police chief.

"We don't have time for that." Saginaw voters approved amending the city's charter to prohibit the city from enacting ordinances that address the "use, possession or transfer" of less than an ounce of marijuana by adults on private property. The measure passed with 6,959 voting yes and 4,717 voting no.

Similar marijuana decriminalization proposals also were approved in Huntington Woods, Berkley, Mount Pleasant, and Port Huron in the November election. Voters in Oak Park and Hazel Park approved decriminalization proposals on their August primary ballots.

But residents of small, rural communities appear much less enthused about loosening restrictions on marijuana use in their towns. Decriminalization proposals on the November ballot failed in Clare, Frankfort, Harrison, Lapeer, and Onaway. Those communities, mostly in northern Michigan, tend to have older populations with more conservative views on marijuana use. "The core values of people here are pretty traditional," said Clare City Manager Ken Hibl. Proposed marijuana decriminalization questions failed to qualify for the November ballot in Utica and East Lansing.

DECRIMINALIZATION ADVOCATES

The Safer Michigan Coalition, which developed marijuana ballot templates for local advocates, is using a city-by-city decriminalization strategy in hopes of eventually convincing the Legislature to legalize pot statewide. "The state of Michigan is ripe for change," Safer Michigan Coalition co-founder Tim Beck said earlier this year. "We hope some

day that cannabis will be regulated like tobacco and alcohol, as they now do in Colorado and Washington State."

Alaska and Oregon became the latest states to allow retail sales of marijuana-infused products as voters approved ballot measures legalizing the recreational pot in the November 4 election. Voters in Washington, D.C., the nation's capital, also approved an initiative in November that allows residents to possess up to two ounces of marijuana and grow as many as six plants at home. The Safer Michigan Coalition claims legalizing marijuana would make the state safer by shifting law enforcement resources to fight more serious crimes. A poll last year by Lansing-based EPIC-MRA found that 63 percent of Michigan voters favor legalizing marijuana by taxing and regulating it like alcohol or replacing criminal penalties with fines.

LOCAL OFFICIALS' OPINIONS

While voters increasingly say they want pot legalized, some local officials are opposed to lifting restrictions on the recreational use of marijuana. In Berkley, where 62 percent of voters approved decriminalization of small amounts of pot, Mayor Phil O'Dwyer said he fears legalization for adults will increase access of marijuana to children. "Scientific studies show marijuana use during adolescence creates structural changes in the brain," affecting motivation, ambition, and socialization skills, he told the *Oakland Press*. O'Dwyer is the clinical director of Brookfield Clinics, a Garden City-based counseling center offering mental health and substance abuse services.

But Metzger, who supports legalizing recreational marijuana and taxing it, said he thinks it's wrong for

“...local officials say the approval of the ballot measures will have little immediate impact in their communities because marijuana possession is still illegal under state and federal law. And many say enforcement of marijuana laws in their communities already is a low priority.”



Michigan to be so supportive of the booming craft brewing, craft distillery and winemaking industries while outlawing recreational marijuana. “We produce vodka in Ferndale and beer in Grand Rapids,” he said. “I think it’s disingenuous that we say alcohol is wonderful and marijuana is something to run away from.”


STATE OF MICHIGAN

If the state is to decriminalize recreational marijuana, it likely will have to be done through a voter initiative because many lawmakers and other state officials are opposed to legalization. Gov. Rick Snyder wrote letters to the 11 cities with marijuana proposals, asking city officials to keep the questions off the ballots because marijuana possession is illegal under state law. None of them complied, saying they were obligated to put the proposals before voters because they were citizen initiatives.



In addition to local proposals, a pending state bill that would allow communities to regulate medical marihuana dispensaries has passed the House but is stalled in the Senate.

Observers say it is unlikely that the Republican-controlled Legislature will act to legalize marijuana. “I don’t think Michigan is going to jump on the bandwagon anytime soon,” Metzger said. Lawmakers are still working to legislate issues related to the state’s controversial medical marihuana act (spelled with an “h” in the Michigan Medical Marihuana Act), which voters adopted in 2008. Pending bills that would allow local communities to regulate medical marihuana dispensaries and permit certain people to manufacture medical marihuana-infused products have passed the House but are stalled in the Senate. Samantha Harkins, director of state affairs at the League, said law enforcement agencies raised concerns about the Senate legislation that it might be difficult to enforce local dispensary regulations that could conflict with each other.

It was unclear at press time whether the Senate would act on the bills during the Legislature’s lame duck session. 

Rick Haglund is a freelance writer. You may contact him at 248 761-4594 or haglund.rick@gmail.com.

MARIJUANA BALLOT PROPOSALS NOVEMBER 2014

City	Result	Votes	Percentage
BERKLEY	YES	3,811	62.25%
	NO	2,311	37.75%
CLARE	NO	432	55.89%
	YES	341	44.11%
FRANKFORT	NO	306	55.14%
	YES	249	44.86%
HARRISON	NO	330	63.46%
	YES	190	36.54%
HUNTINGTON WOODS	YES	2,295	69.80%
	NO	993	30.20%
LAPEER	NO	927	50.20%
	YES	921	49.80%
MT. PLEASANT	YES	2,705	62.27%
	NO	1,639	37.73%
ONAWAY	NO	148	64.35%
	YES	82	35.65%
PLEASANT RIDGE	YES	1,011	70.16%
	NO	430	29.84%
PORT HURON	YES	3,383	51.45%
	NO	3,192	48.55%
SAGINAW	YES	6,959	59.60%
	NO	4,717	40.40%

Source: Ballotpedia (ballotpedia.org)



BOLT VS CITY OF LANSING

A Taxing Question for Michigan's Local Governments

By Mark Nettleton

In 1978, Michigan voters adopted the “Headlee Amendment” to the Michigan Constitution. The amendment revised existing provisions and added new ones including an express limitation on the ability of local governments to enact new taxes or increase existing taxes without a vote of the electors. Following the adoption of the Headlee Amendment, taxpayers began to challenge local government fees, such as sewer and water connection fees, on the basis that the fees were invalid and impermissible taxes.

In 1998, the Michigan Supreme Court decided the seminal case, *Bolt v City of Lansing*, to address the “fee” versus “tax” question. Since the *Bolt* decision, local governments have struggled to determine whether proposed or adopted fees would survive a “*Bolt* challenge” by a taxpayer, thus raising a taxing question for local governments.

VALID USER FEE VERSUS AN INVALID TAX

Municipalities frequently charge numerous fees: application fees; permit fees; sewer and water connection fees; cable franchise fees; and commodity fees. In *Bolt*, the Michigan Supreme Court tried to clarify when such fees are valid.

The city of Lansing had, for many years, a combined sanitary sewer and storm water system. During heavy rain events, the combined sewer systems became overwhelmed and untreated or partially treated sanitary sewage flowed into the Grand and Cedar Rivers.¹ The city sought to remedy the overflow by separating the storm sewers from the sanitary sewers. At that time, the estimated cost to separate the two systems was \$176 million over 30 years.² To pay the project cost, the city imposed an annual stormwater service charge on each parcel of property located within the city. The revenue from the charge was expected to pay half of the capital cost of the separation project; the balance of the cost was to be paid from the city's general fund.

The charge was roughly based on estimated stormwater runoff from each parcel and factored in parcel size and the amount of the parcel covered by impervious surfaces: blacktop, sidewalks, patios, and buildings, for example. Residential parcels under two acres were charged a flat fee. The annual charge was included in the city's property tax bill and, if not paid when due, was considered delinquent and then collected as a delinquent tax.

Alexander Bolt, a property owner within the city of Lansing, challenged the annual stormwater fee alleging the fee was an impermissible tax imposed without a vote of the city's electors, in violation of *Headlee*. The Michigan Supreme Court agreed.

In invalidating the fee, the Court noted that a valid user fee is “exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit.”³ In contrast, taxes are “exactions which are imposed primarily for public rather than private purposes.... Revenue from taxes, therefore, must inure to the benefit of all, as opposed to exactions from a few for benefits that will inure to the persons or group assessed.”⁴ The Court held that a valid fee must serve a “regulatory purpose,” but concluded that the city's fee was imposed to raise revenue, as evidenced by the city's intent to use the revenue to pay half of the cost of the project. The Court also determined that the

¹ *Bolt* at 155; ² *Id.*; ³ *Id.* at 161; ⁴ *Id.*; ⁵ See *Graham v Township of Kochville*, 236 Mich App 141 at 155 (1999); ⁶ See *Mapleview Estates, Inc v City of Brown City*, 258 Mich App 412 (2003); see also *Graham at v Township of Kochville*, 236 Mich App 141, 155-156; ⁷ See *Lapeer County Abstract & Title Co. v Lapeer County Register of Deeds*, 264 Mich App 167 (2004); ⁸ See *Wheeler v Charter Township of Shelby*, 265 Mich App 657 (2005); ⁹ See *Meadows Valley, LLC v Village of Reese*, Case No. 309549 (Mich Ct App, unpublished opinion, 06/11/2013); ¹⁰ See *Tobin Group LLP v Genesee County*, Case No. 248663 (Mich Ct App, unpublished opinion, 12/14/2004); ¹¹ See *In re Petition for Foreclosure of Certain Parcels of Property v Township of Chesterfield*, Case No. 309229 (Mich Ct App, unpublished opinion, 05/27/2014); see also *County of Jackson v City of Jackson*, 302 Mich App 90 (2013).

amount of the fee was not proportionate to the service provided to those paying the fee because the fee was imposed on properties that were already served by separated storm sewers. Without such a corresponding benefit, the fee is no different than a tax imposed on all property owners. Finally, the Court determined that the fee was not voluntary—Mr. Bolt could not avoid paying the fee.

According to the *Bolt* Court, in order for a fee to be valid and not an impermissible tax, the fee must:

- 1 **SERVE A REGULATORY PURPOSE AND NOT BE IMPOSED SOLELY FOR A REVENUE-RAISING PURPOSE;**
- 2 **BE REASONABLE AND PROPORTIONATE TO THE COST OF THE SERVICE PROVIDED; AND**
- 3 **BE VOLUNTARY—A USER MUST HAVE A WAY TO LIMIT THE AMOUNT OF THE SERVICE USED AND THE FEE INCURRED.**


The Court noted that the three criteria are not to be considered in isolation, and subsequent courts have held that the criteria should be considered “in their totality,” such that a “weakness in one area would not necessarily require a finding that the charge at issue is not a fee.”⁵

WITHSTANDING A *BOLT* CHALLENGE

Since *Bolt*, numerous challenges to fees have been filed and decided. Courts have upheld mandatory connection to, and connection fees for public sewer and water;⁶ utility debt service fees; fees for copying public microfilm records;⁷ waste hauler fees;⁸ sewer “ready to serve” charges;⁹ and sanitary sewer and public water capital improvement charges,¹⁰ to name a few. Key to upholding these fees are the facts underlying the fee structure. Fees that pay for, or approximate, the municipality’s cost to provide the service to only those customers that benefit from the service, serve both a regulatory purpose and are proportionate. Further, even where payment of the fee is mandatory, such as a sewer or water connection fee, if the customer can regulate its use of the commodity (by using less water, for example), the courts are more likely to determine that the fee is “voluntary” under the *Bolt* “test.”

Fees are typically invalidated when they are imposed for a revenue-raising purpose, or when the fee is disproportionate to the cost of the service provided.¹¹

CONCLUSION

When enacting new fees or adjusting existing fees, local governments must carefully analyze whether the fee complies with the three-part *Bolt* test to ensure the fees will not be invalidated. 

Mark Nettleton is an attorney with Mika Meyers Beckett & Jones. You may contact him at 616-632-8048 or mnettleton@mmbjlaw.com.

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BECOMING THE CITY OF JONESVILLE





By Jeff Gray and Tim McLean

With a vote of its residents on August 5, 2014, Jonesville became the 278th city in Michigan. Jonesville was originally established in 1828, in Hillsdale County, about 20 miles north of the intersection of the borders of Michigan, Ohio, and Indiana. Home to 2,258 residents, Jonesville is a full service municipality, providing police, fire, public works, water, and wastewater treatment services.

CITIZEN'S COMMITTEE

The process that ended with a vote of the people, also began with the people of Jonesville. In 2011, the village council appointed a Citizen's Advisory Committee to examine the potential benefits of becoming a city. The committee consisted of nine residents in Jonesville.

After soliciting public input and expert opinions from July to November, the committee concluded that city incorporation would streamline government, residents would be able to obtain all services from a single unit of government, and property taxes would be reduced. There was one overriding message from residents: *they liked government in the village of Jonesville and asked that the incorporated city operate as similarly as possible as it had as a village.*

On November 16, 2011, the committee made a unanimous recommendation to village council that steps be taken to incorporate as a home rule city.

NEXT STEPS

The message from residents influenced the next steps in incorporation. When residents petitioned the State Boundary Commission, the existing village boundaries were used for the city. The elected charter commission used recently approved city charters from other communities as templates, but adjusted them to address local customs and past practices, where possible.

LESSONS LEARNED

Along the way, we learned some important lessons that others may find helpful if considering an incorporation:

- **Communicate regularly with your residents.** Make sure that they are in the loop about steps in the process. We developed a series of updated fact sheets that addressed frequently asked questions. Flyers were distributed with utility bills and were kept in our municipal office for residents to take with them. This helped us to gently debunk myths about raising taxes or changing the size of government. We also held open houses and initiated a door-to-door campaign to keep residents informed just prior to the election. Our elected officials and charter commissioners were instrumental in getting information to the public.
- **Don't reinvent the wheel.** We looked very closely at some of the most recent city incorporations. We borrowed liberally from recently approved city charters. The staff in Caseville and Caro provided their experiences explaining what worked and things to avoid. We also worked closely with the State Boundary Commission throughout the process. They were extremely helpful in answering questions relative to the Home Rule City Act.
Although we are not experts, we are glad to "pay it forward" to those villages that might be considering incorporation themselves.
- **Get help.** There are many qualified legal experts who can help you with this highly specialized process. Dr. Lynn Harvey, Professor Emeritus from Michigan State University, is considered an expert in village to city incorporations. Dr. Harvey was

brought on early to advise the advisory committee and assisted us throughout the process.

One important lesson towards the end of the process was use of specialized legal counsel for your proposed charter review. Your legal counsel of choice must also participate in the review with the attorney general's office.

Likewise, you will want specialized legal advice to address the division of assets with your township, as these negotiations can be

STEPS TO INCORPORATION—SIMPLIFIED

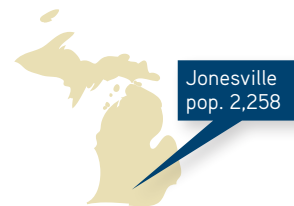
Petition submitted to State Boundary Commission (SBC)

SBC holds a Legal Sufficiency Hearing to accept or reject for non-conformity
(village can then make corrections)

SBC holds an Adjudicative Hearing to approve or deny petition

Charter commission elected OR
Referendum on incorporation
(If referendum passes, charter commission elected)


After soliciting public input and expert opinions...the [citizen's advisory] committee concluded that city incorporation would streamline government, residents would be able to obtain all services from a single unit of government, and property taxes would be reduced.



contentious. Through frequent communication, Jonesville reached an agreement with Fayette Township on division of assets in October of 2014 without litigation.

➤ **Utilize all of the resources at your disposal.**

The Michigan Municipal League has a document outlining a 68-point procedure for the village to city incorporation process. Using this document as a template, we then worked through each of the various steps. Any community interested in the process should utilize this document. It is important to methodically work through each step in the process.

endeavor that was challenging, exciting, frustrating, and memorable. With pomp and ceremony, the new city council and mayor were sworn in on August 20, 2014. 

LEAGUE RESOURCES

- Impact of Changing from a Village to a City, *The Review*, May 2003
- Reference Packet: Incorporation as a City
- Sample Feasibility/Impact Studies
- All City Charters
- Incorporation PowerPoint
- Sample Informational Materials for Citizens

Jeff Gray is the city manager for Jonesville. You may contact him at 517-849-2104 or manager@jonesville.org. Tim McLean is the assistant to the city manager for Jonesville. You may reach him at 517-849-2104 or services@jonesville.org.



OTHER RECENT VILLAGE TO CITY INCORPORATIONS

Caro (2009)	Dexter (2014)
Caseville (2010)	Douglas (2004)
Chelsea (2004)	Grosse Pointe Shores (2009)

COMPLETING THE PROCESS

On August 5, 2014, the proposed city charter was approved by voters by a two-to-one margin. Also, residents elected a new city council. Required filings followed—first to the Hillsdale County Clerk and, finally, on August 14, 2014 at the Office of the Great Seal. A process that started in the summer of 2011 had been completed, ending a three-year



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- TIF/Economic Development
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- Proactive Legislative Agenda
- Personal Property Tax
- Energy
- Green Initiatives

March 24-25, 2015
Lansing, Michigan

Register at cc.mml.org

Pre-Conference Workshops

Tuesday, March 24

These workshops are available for an additional fee, unless otherwise noted. Advance registration is requested for all pre-conference workshops.

Essential Skills Training

9:00 am-4:00 pm

This session is not only for those recently elected, but for every elected official who wants to serve his or her municipality more effectively. This day-long session can clarify many of the questions that you have had since you assumed office, and it covers basic information about the responsibilities of your office. At this session, you will be able to network with many new and experienced elected officials. Topics such as conducting meetings, the Open Meetings Act, the Freedom of Information Act, ethics, working with the media, and civic engagement will be covered.

Michigan Association of Municipal Attorneys 29th Annual Advanced Institute

9:00 am-4:30 pm

Stay current on the latest legal issues affecting Michigan local governments. Attendees will hear presentations from experts who will review recent legislation and court decisions as well as current challenges, strategies, and examples. You will leave this session with a better understanding of current legal issues and the impact they have on the municipalities you represent. This is also the perfect opportunity to network with your colleagues and exchange ideas and experiences.

Community Engagement: How to Constructively Bring the Public into Decision-Making

1:00-4:00 pm

Public participation is a powerful part of the decision-making process but often challenging, if not frustrating. This interactive session explains best practices on how to engage with the community in a more meaningful way through careful design, implementation and communication of community

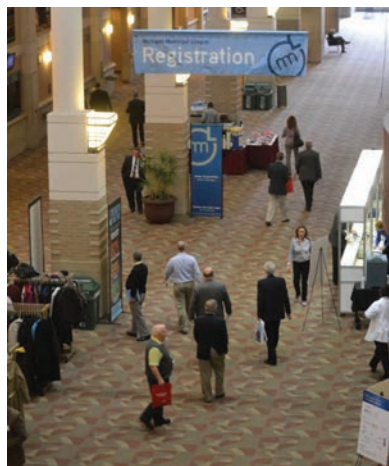
engagement efforts. A work-book with resources and worksheets to guide your future efforts is included along with hands-on activities.



Liquor Licensing: What You Need to Know Now!

1:00-4:00 pm

The Michigan Liquor Code is constantly changing. Municipalities should be asking: how do redevelopment licenses work? What is the municipalities' role in approving liquor licenses and permits? Do we have an appropriate ordinance in place to address the fact that there is less local control in some instances? How much money does the municipality receive from the State for its share of application fees? Is there legislation pending to increase fines for licensees who violate the Michigan Liquor Code, and will the municipalities be entitled to any portion of increased fines? Are we aware of Conditional Licensing and the effect Conditional Licensing may have on the transfer of liquor licenses in cities, townships and villages? All of these questions and more will be answered during this program.



Crowdfunding: Local Investing by and for the Community

1:00-4:00 pm

Free, advance registration required.

Crowdfunding is a new, innovative way to fund civic and private projects. Michigan is at the forefront of this movement and offers several types of crowdfunding that can spark community growth and revitalization. This session will explore investment crowdfunding, MEDC's matching grant crowdfunding initiative for public spaces, and other options that will help community leaders effect positive change.

Michigan's Future Is Rooted in Place: What You Need to Know about the Mlplace Initiative

1:00-4:00 pm

Free, advance registration required.

This interactive workshop is part of the Mlplace partnership training curriculum. Attendees will learn about placemaking, why it's important, and how to apply placemaking into local decision-making and community planning. This session will also feature a discussion on how state agencies and the League are using placemaking as a strategic planning tool and what opportunities communities have to access additional resources and assistance.

Register at **cc.mml.org**

AGENDA

TUESDAY, MARCH 24

9:00 am-4:00 pm	Pre-Conference Workshop: Essential Skills for the Elected Official*
9:00 am-4:30 pm	MAMA Annual Advanced Institute*
10:00 am-1:00 pm	MML Board of Trustees Meeting & Lunch
Noon-6:00 pm	Conference Registration
1:00-4:00 pm	Pre-Conference Workshops: Liquor Licensing: What You Need to Know Now!*
	Michigan's Future Is Rooted in Place: What You Need to Know about the Mlplace Initiative
	Crowdfunding: Local Investing by and for the Community
	Community Engagement: How to Constructively Bring the Public into Decision-Making*
4:15-5:30 pm	Capital Conference Welcoming General Session
5:30-7:30 pm	MML Liability & Property Pool Capital Conference Kick-Off Party
5:45-6:30 pm	EOA Board Meeting

WEDNESDAY, MARCH 25

7:30 am	Registration Open
7:30-8:30 am	Legislative Breakfast
8:30-9:45 am	General Session
9:30 am-3:15 pm	Annual Expo
9:45-10:15 am	Networking Break
10:15-11:30 am	Breakout Sessions
11:30 am-1:00 pm	Awards Luncheon
1:00-1:30 pm	Dessert Break in the Expo Hall
1:30-2:45 pm	Breakout Sessions
2:45-3:15 pm	Networking Break in the Expo Hall
3:15-4:30 pm	General Session
4:30-5:30 pm	MBC-LEO Annual Meeting

*Additional fee

“Capital Conference helps us recharge our batteries. I always come away with new ideas and a firmer grasp on the legislative issues that impact my community.”

— Rebecca Hopp
Mayor Pro Tem, Ferrysburg



Vendor Opportunities at Capital Conference

Each spring, hundreds of local officials, state legislators, and media figures gather in Lansing at one of the year's most important networking and educational events for Michigan's decision-makers. Being an event sponsor or exhibitor puts you right in the heart of the action!



Annual Expo:

Looking for an opportunity to connect face-to-face with potential clients from every part of the state? The Annual Expo is the place to be! Stake out a prime spot at one of the most popular events of the entire Conference: the Tuesday evening Kick-Off Party in the Expo Hall where vendors and attendees mix and mingle in a fun and informal setting. The Expo Hall is also a favorite hangout for networking between sessions throughout the entire Conference.

Advertising:

Advertising in the Capital Conference program is a guaranteed way to get your message in front of your target audience—and our full-color display ads will put your organization in its brightest light!

Event Sponsorship:

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For complete details about marketing opportunities at the League's Capital Conference, visit cc.mml.org or call Terri Murphy, 800-653-2483.

Register at cc.mml.org

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DIY Dredging Project Wins
2014 Community Excellence Award

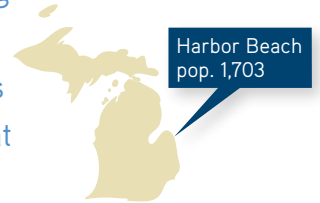
HARBOR BEACH

By Elizabeth Philips Foley



SOMETIMES YOU'VE GOT TO DIG A VERY DEEP HOLE TO GET OUT OF HOT WATER.

In the case of Harbor Beach, that meant saving the city's boating future by moving nearly 56 million pounds of soggy soil from the bottom of a marina located within a mile-long Lake Huron harbor once billed as the world's greatest manmade harbor. Even more impressive: they accomplished the feat at a significant savings of time and money by doing the job themselves.



So impressive, in fact, that the project earned the League's 2014 Community Excellence Award, voted by its peers at the League's annual Convention in October. It's the first community to ever win the statewide title



in Region 5, which encompasses the state's Thumb. "To be chosen by our peers the way it was, that was priceless," said Mayor Pro Tem Al

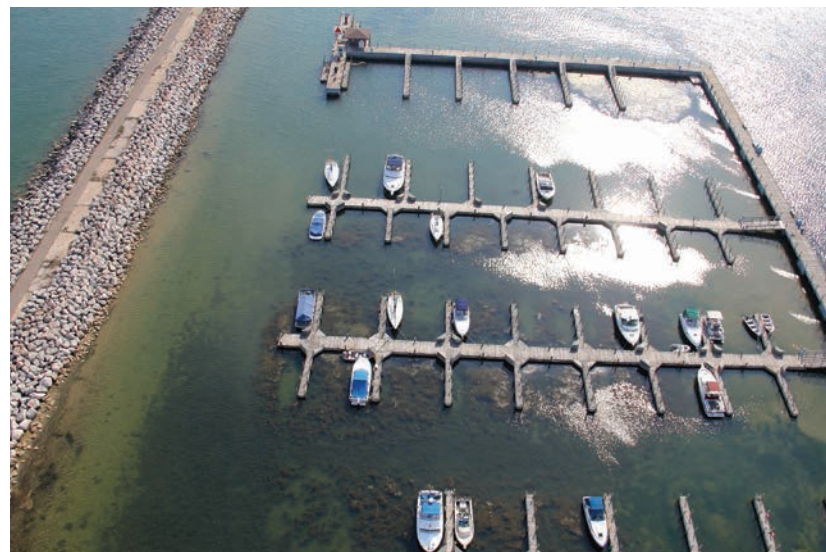
Kleinknecht. "My only wish was that City Director Ron Wruble, the dredge crew, and all the people of Harbor Beach could have been present when the city of Harbor Beach's name was read out loud as the winner on the last day of the Convention."

LOW WATER LEVELS

That triumphant moment began with one of the lowest moments in the city's history—at least when it comes to water levels. Like many Michigan waterfront communities, Harbor Beach has always derived much of its identity and revenue from its enviable location along the Great Lakes shore. Founded by a pair of lumbermen in 1838 near the outer tip of the Thumb, the sawmill settlement eventually became the village of Sand Beach. When the aptly named Harbor of Refuge was completed in 1898, the village became Harbor Beach. A mile long and a mile wide, the massive manmade harbor shelters nearly the entire north-south length of this small city.

"Our waterfront is the front door to Harbor Beach. During the summer our population doubles if not triples and access to the water is critical," said Planning Commissioner Clark Ramsey.

But in 2012, Harbor Beach was facing the lowest water levels seen on the Great Lakes since 1964. At this low ebb, the once-magnificent harbor and marina were in serious trouble.



During the summer the population of Harbor Beach doubles, if not triples, and access to the waterfront is critical. In 2012, the city was in a predicament—Great Lakes water levels were at the lowest since 1964, and contractors were in high demand. It looked like the marina would be closed for the entire 2013 season.



Dumpsite for materials dredged from the harbor.

“Water was disappearing, no one knew where it was going,” said Ramsey. “Out of 114 slips in our marina, maybe 12 on a good day were useable. The channel leaving the marina, even a shallow-hulled bass boat would have trouble getting out. The average depth was roughly two feet. The 24-person U.S. Coast Guard station based in our marina was practically helpless.”

STATE PITCHES IN

Fortunately, state leaders recognized the water level crisis facing so many Michigan communities. In early 2013, Governor Rick Snyder and the Michigan Department of Natural Resources-Waterways announced that grant money would be available for dredging purposes across the state. Harbor Beach was awarded \$558,696.46.

The trouble was everyone needed the same help at the same time. And no one could afford to wait.

“Dredging companies were in high demand at high cost and we needed a solution yesterday,” said Ramsey. “Our city council and community leaders feared that due to contractors’ schedules, our marina wouldn’t even be open for the 2013 season.”

So the city did “the absolutely insane,” said Ramsey. They would tackle the whole project themselves.

“ THE FINAL PROJECT COST IS STILL BEING TABULATED, BUT IT’S PROJECTED TO BE \$70-80,000 UNDER BUDGET...AND WE CUT 14 MONTHS OFF THE PROJECT COMPLETION DATE BY DOING IT OURSELVES. ”

—Harbor Beach Planning Commissioner Clark Ramsey

DARING, DIY (DO-IT-YOURSELF) ATTITUDE

“City Director Ron Wruble came to the council with this wild idea about self-dredging,” said Kleinknecht. “Once he convinced the mayor and the council that he wasn’t nuts, he went about addressing every possible problem that arose: first in securing a grant, then learning about barges, buying a hydra unit, wheeling and dealing with the county to buy some surplus trucks, getting qualified people to operate the dredge unit, and even making a surplus dumpster bought from a local trash collection company work for the project.”

After weeks of extensive legwork led by Wruble, the city purchased a two-piece 24-by-48-foot barge from

Illinois, a 40-yard dumpster, three dump trucks, and a Komatsu PC 120 extendable hydraulic excavator. The city was ready to dive head-first into the dredging business.

A crew of workers was put together from the city's Department of Public Works staff, with some part-time employees borrowed from the local road commission to allow for more dredging hours and days. One worker did the digging from the barge and filled the dumpster while one or two others transported the materials to the dump site.

OBSTACLES ALONG THE WAY

That end of the process turned out to be as big a challenge as the digging itself. "The DEQ found the sediment contained traces of heavy metals," explained Ramsey. "We had to create a DEQ-approved dump site roughly a mile away, haul the materials there via dump truck, and environmentally cap the site when finished."

To prevent the dump trucks from spilling dredged materials on the road on the way to the site, Wruble put his wits to work again to come up with a cost-effective protective cover: rubber roofing material.


A webcam located on the marina became a social media hit, with people as far away as North Carolina watching the dredging action online. Even the National Security Agency tuned in, joked Ramsey.

In the end, they removed 20,000 cubic yards of sediment from the marina and channel during the 2013 boating season without having to close the marina, with some follow-up maintenance in 2014 using the same five-year permit. Plus the city now has the heavy equipment and well-trained crew to tackle all kinds of jobs.

"Using the grant money we were able to purchase everything we needed for the project, cover our wages, and properly cap the dump site. The final project cost is still being tabulated but is projected to be \$70–80,000 under budget...and we cut 14 months off the project completion date by doing it ourselves," said Ramsey.

UNEXPECTED RESULTS

Marine traffic and revenues were up in 2014 and the deeper harbor now allows even 100-foot yachts to berth. A shuttle service and a paved walking/biking path connect the campground and marina to the beach and to the downtown shopping district, newly streetscaped in 2004.

"Our self-performed dredging project showed what can happen when you want to get something done and try to figure out the best way to do it," said Kleinknecht. "It got the job done." 


Elizabeth Philips Foley is a freelance writer. You may contact her at eshaw@mml.org.



City Director Ron Wruble came up with the idea of self-dredging. He did the leg work—securing a grant, learning about barges, buying a hydra unit, wheeling and dealing with the county to buy some surplus trucks, getting qualified people to operate the dredge unit, and even making a surplus dumpster bought from a local trash collection company work for the project. A crew of DPW workers and part-time employees borrowed from the local road commission made up the crew. One worker did the digging from the barge and filled the dumpster while one or two others transported the materials to the dump site.

FINANCING IMPROVEMENTS 101

By Thomas Traciak



A community that desires to finance a project must do so according to state law. A financing, or “obligation,” is narrowly defined as bonds or notes. Hence, financing primarily takes the form of bond issues with the exception of installment purchase contracts.

The following is a listing of commonly used bond issue formats. This is intended as an introduction to, and workable outline for, bond financing in Michigan. For a complete understanding, a community should consult its financing professionals, which include bond attorney and financial advisor.



UNLIMITED TAX GENERAL OBLIGATION (UTGO)

UTGO Bonds are voted issues and are considered by the market to be the most secure and most preferred form of financing. A voted issue can be for a wide variety of public purposes. Because it is the most secure option, a UTGO bond will typically produce the lowest net interest rate of any open market bond option. The ballot language may limit the application to one bond issue or a “series” of bond issues for the completion of a project, and is capped by a dollar amount. The ballot language must include an estimation of the simple average millage rate over the life of the issue and the estimated millage rate for the first year levy. The ballot may specifically cap the number of mills, but has the effect of making the issue “limited” tax in designation, and is seldom recommended.



LIMITED TAX GENERAL OBLIGATION (LTGO)

There are several choices that allow for a LTGO pledge. The pledge would be a first budget obligation of the general fund, but is only allowed to the charter or statutory millage limit. Often a referendum period is required for the pledge. The following are possible LTGO bonds for constructing a facility:

Capital Improvement Bonds (Act 34 of 2001):

This allows a county, city, village or township to issue bonds for a wide variety of public purposes including municipal facilities. A 45-day referendum period is required. The aggregate amount of Capital Improvement Bonds may not exceed 5 percent of SEV.

Building Authority Bonds (Act 31 of 1948):

Previous to Act 34 of 2001, a county, city, village, or township was not able to directly issue limited tax bonds

for a building project. Under Act 31 of 1948, a building authority may be formed that can issue the bonds with a limited tax pledge of the community without a vote. The building authority has always seemed like an unnecessary step in the process, which has been remedied with Capital Improvement Bonds authorized by Act 34 of 2001. The Building Authority Act, which is still an option, authorizes the construction of specific types of facilities, including most public purpose municipal buildings. It even allows for revenue bonds, which might be useful for such projects as parking structures. Building Authority Bonds count toward the general 10 percent of SEV debt limit, which is an advantage over the 5 percent limit for Act 34 Capital Improvement Bonds. Other authority options are available, such as for fire department facilities.

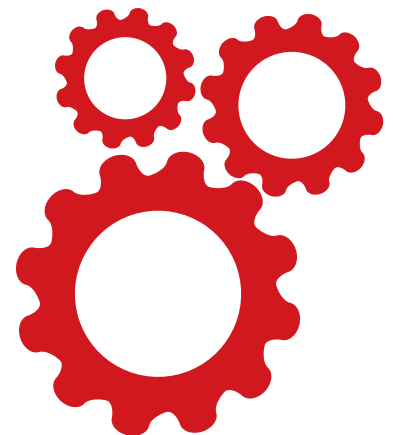
Utility Authority (Act 233 of 1955):

This method involves forming a water or sewer utility authority by two or more local units. The purpose of an authority is to accomplish financings and/or have operational control. The powers of the authority can be limited or broad. Many are designed to only have the power to issue bonds on behalf of the members. A primary advantage of the Act 233 authority is that bonds can be issued as revenue bonds or limited tax general obligation bonds.

County Issue (Act 185 of 1957 or 342 of 1939):

This method offers a conduit for issuing bonds for one or more local units in financing water and sewer projects. The local unit pledges their limited tax full faith and credit to the repayment of the bonds in the contract. The county, in turn, typically pledges its limited tax full faith and credit to the issuance of county bonds. One advantage is that the county may have a bond rating and be more readily acceptable to potential purchasers than that of the local unit.

A COMMUNITY THAT DESIRES TO FINANCE A PROJECT MUST DO SO ACCORDING TO STATE LAW. A FINANCING, OR “OBLIGATION,” IS NARROWLY DEFINED AS BONDS OR NOTES.



Special Assessment" (SA) and Portion Bonds (Various Acts):

A Special Assessment roll of individual properties may be established as a method of supporting a bond issue. This can be used in conjunction with other forms of financing. This is most appropriate for infrastructure benefiting specific properties. A city, village, or township portion bond may be issued in conjunction with a SA bond that is supported in some other fashion, e.g. rates and charges.

Tax Increment (Various enabling Acts including Act 197 of 1975, Act 450 of 1980, and Act 281 of 1986):

There are various bond options that rely on tax increment revenue capture. It must be demonstrated, however, that the facility serves the defined area.


Installment Purchase Contracts (IPC) (Act 99 of 1933):

Utilized by cities, villages, and townships, (counties have a separate authorization) this format has a fifteen-year duration, and the total of all outstanding IPCs is capped at 1.25 percent of taxable value. Typically the IPC is used for equipment purchase, but may have certain limited application for infrastructure and building projects. The market for an IPC is typically only banks that will treat the IPC as a bank investment.

Revenue Bond Obligation

This type of bond issue is supported and secured solely by the user fee revenues of the project. The issuer does pass an ordinance that covenants that rates will be maintained sufficient to cover debt service. This type of bond issue is used on a very limited basis when it comes to building projects. Examples include parking structures and marinas. Of the bond options outlined, this type of bond typically produces the highest interest rate in the open market.

Revenue Bond (Act 94 of 1933):

A Bond Ordinance, much like a Bond Resolution, is used to authorize the issuance of revenue bonds. A 45-day right of referendum period is required. If 25 percent of the project is grant funded, or if placed with the Municipal Bond Authority (including SRF, DWRF, and SWQIF), a LTGO pledge can additionally secure the bonds. 

Thomas Traciak is a principal with H.J. Umbaugh & Associates. You may contact him at 517-321-0110 or traciak@umbaugh.com.

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Heart of Downtown



Farmington
pop. 10,372

FARMINGTON'S SUNDQUIST PAVILION

During a community visioning process, Farmington residents tried to answer the question: Where is the heart of your downtown? Answer: There wasn't one. City leaders engaged a wide group of supporters and planners to help a strip-mall parking lot become the center of Farmington's downtown. They transformed a surface parking lot in the middle of a strip mall into a $\frac{3}{4}$ -acre park. The park has a large pavilion, attractive landscaping, and a large space to host community events year-round. And, the team was able to do all this without losing one parking spot.



The city transformed a surface parking lot in the middle of a strip mall into a $\frac{3}{4}$ -acre park with a pavilion and a space to host community events year-round—without losing one parking spot.

ACCOMPLISHMENTS

The Sundquist Pavilion in Riley Park hosts about 60 events throughout the year, offering a space for neighbors to gather, connect, and spend time downtown. For example, the Saturday Farmers Market hosts about 2,000 visitors each week and hundreds attend the Holly Days winter market. Resident-led programming, like weekly swing dancing performances, draws a smaller audience but keeps the space activated.

With more people in downtown Farmington on a regular basis, many local retail stores and restaurants have seen more foot traffic and higher sales. Improving the streetscape and walkability also encouraged business owners to enhance the aesthetics of their property. For example:

- Dress Barn used the opportunity to remodel their store, enhance their product line, and feature the Farmington store in a national photo shoot.
- Many downtown restaurants, like Los Tres Amigos, added outdoor seating and improved landscaping.
- Farmington planners were able to keep the same number of shopping center parking spaces, despite adding the park and pavilion to the middle of the surface lot.
- Development of the pavilion built momentum for the downtown master plan, which also included redeveloping other aspects of the area.
- The Grand River streetscape project was completed in 2009 and improved pedestrian safety, aesthetics, business environment, and reduced road congestion.



Planners used the tactics of bump-out parking to narrow the road and creative landscaping to make the sidewalk more comfortable.

- The Grove Street project was completed in 2013 and upgraded the shopping center and streetscape, adding parking, and improved the aesthetics and pedestrian safety.

FUNDING

Project start-up funding came from a private foundation, donations, bonds, and city contributions from the capital improvement fund. Maintenance is mainly funded by the DDA through its Principal Shopping District special assessment.

HOW-TO

► ENGAGE RESIDENTS FOR VISIONING

Create a foundation for the project by bringing residents and business owners together to talk about their community and identify what they want for their downtown. In Farmington, the engagement process smoothed implementation because planners could refer back to what neighbors discussed at early planning stages.

► FIND INSPIRATION

To help residents imagine the final product, city leaders used Plymouth's Kellogg Park as an example of what Farmington could look like. Planners drew up illustrative designs of the project to keep residents excited and supportive.

► CHANGE ZONING AND DESIGN STANDARDS

Farmington used its master plan process to make changes to the downtown zoning ordinance. The space



was previously zoned for a suburban shopping center. Changing to more traditional downtown zoning and design standards (for example, building at the front of a lot instead of the back) allowed planners and landscape architects to improve aesthetics, safety, and comfort.

► CELEBRATE

To kick off the new downtown space, city leaders worked with residents and business owners to organize an opening night celebration. On an October evening in 2005, neighbors gathered for the Harvest Moon Dance, which has become an annual event.

► PROGRAM YEAR-ROUND

Programming in the new space didn't stop with the Harvest Moon Dance—the DDA coordinates events in the park year-round. With a weekly farmers market, a summer concert series, art fairs, community events, and even an ice rink in the winter, the space is well used throughout the seasons.

► KEEP THE MOMENTUM GOING

As residents and visitors were spending more time downtown, it became clear that Farmington needed to continue its placemaking efforts and redesign wide streets that divide the downtown. In an effort to calm traffic and improve walkability, aesthetics, and the business environment, local leaders were able to redesign major corridors of the downtown.

LESSONS LEARNED

► EFFECTIVE ENGAGEMENT MAKES FOR SMOOTH IMPLEMENTATION

An in-depth community visioning process, seven years before the park's grand opening, was the best way for residents to communicate to city leaders what they wanted in their downtown. The priorities and ideas that came out of this meeting helped ensure public support and smooth implementation for the park and pavilion, even over controversial topics like parking and street design.

► KEEP THE SPACE ACTIVATED


Once Sundquist Pavilion was built, residents needed a reason to gather. Moving the city's farmers market was an obvious decision, but that only occupied the space once a week through the growing season. The DDA took an active role in hosting events and coordinating community groups' events that invited residents and visitors to gather in Farmington's redesigned downtown spaces. City leaders took the attitude of trying to "find a way to 'yes'" when approached by residents and

organizations interested in using the space. Be flexible and allow for resident innovation.

► GET CREATIVE WITH PARKING SPACES

The pavilion and park were built on an existing strip mall parking lot. Instead of throwing out the idea because of the fear of losing parking, planners had time to be creative with the space and rearrange parking spots. After the development was complete, the lot around the pavilion had the same number of spaces as before.

► KNOW YOUR FUNDERS

City leaders built strong relationships with local funders and residents interested in investing in the city. If residents and business owners are in full support, leaders will have an easier time finding funding. 

For more information contact Heather Van Poucker, director of information and policy research for the League at 734-669-6326 or hvanpoucker@mml.org. To see a full listing of the League's Case Studies please visit placemaking.mml.org.

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SHORE-TO-SHORE

RIDING AND HIKING TRAIL

By Therese Kline



A Shore to Shore ride is a 230-mile ride across the upper portion of lower Michigan, from Oscoda to Empire, on Michigan's own Shore-to-Shore Riding and Hiking Trail.

**"MOMMA, LOOK! HORSES!
JUST LIKE BULLSEYE WITH
WOODY AND JESSIE!"**

This cute tyke has a point. As our team rode past his group on our horses in Empire toward the shores of Lake Michigan, it does look like a parade of Woodies, Jessies, and their horse named Bullseye from the Toy Story movie. We are at the end of an historic 230-mile ride as we approach the lake with about 100 other riders and horses. Each team is a member of the Michigan Trail Riders Association (MTRA), and has completed a Shore-to-Shore ride: a ride across the upper portion of lower Michigan, from Oscoda to Empire on Michigan's own Shore-to-Shore Riding and Hiking Trail.

VISIONS OF A CROSS-STATE NON-MOTORIZED TRAIL

The 2014 ride in June celebrated a half century of existence and members cheered about riding horses across the state in east-west directions with MTRA. The association formed in 1963 around the dreams of a cross-state non-motorized trail by visionaries

Jim Hardy, Forest Rhodes, Fred Haskins, Sally and Tony Wilhelm, Phyllis and Rex Garn, Louise and Fitch Williams, and Basil Smith. These dreamers had their feet firmly on the ground with location and logistics on their side: Mr. Hardy worked for the Michigan Department of Conservation (Department of Natural Resources now), Mr. Rhodes worked for the U.S. Forest Service, and Fred Haskins was head forester at the Department of Conservation's Traverse City location.

These gentlemen worked on the east portions of the trail, from Tawas/Oscoda to Frederick. The western Michigan portions of the trail, including Traverse City and Elberta/Empire, were originally blazed by the Wilhelms, who managed a department store; the Garns, who had a horse boarding stable, dealt with the logistics of moving from camp to camp during the rides; and Fitch Williams, who was a lawyer. Basil Smith, a local barber, provided a lot of saddle time and his intricate knowledge of the local terrain.

LOCAL COMMUNITIES GET INVOLVED

How do you get 200 people on horses from Lake Huron to travel some 280 miles to Lake Michigan (or the reverse) in 10 days? You start with communities willing to work with the MTRA.



Empire and Oscoda graciously allow the horse and rider teams to enter lake waters after passing through their streets. Empire proudly allows the use of their main street for the parade, and trucks and trailers are waiting in the community grass lot. In 1995, during




This summer marked the 50th anniversary of the Shore-to-Shore Ride, and the MTRA organized a parade in Kalkaska. Other small communities along the trail welcome the riders who seek out dinner foods, fuel, beverages, dancing opportunities, laundry facilities, and other recreational adventures.

Empire's Centennial, the MTRA was invited to participate in the parade and festivities in the village. Additionally, the Empire Historical Museum houses many of the artifacts from some of the original ride and members! Oscoda has a Michigan State Park consisting of a boat launch and parking lot adjacent to the shoreline riders use to dip their horses feet in (and hopefully not their own booted ones!) so that they may earn a trophy to show that they have crossed the state on their horses.

ECONOMIC BENEFITS

About every 25 or so miles, the Michigan Department of Natural Resources or the Federal Forest Service, in partnership with MTRA, has an equestrian rustic camp. Each camp is in proximity to small communities such as Mio, the city of Grayling, and the village of Kalkaska. These places enjoy the economic benefits of the group as riders seek out dinner foods, fuel, beverages, dancing opportunities, laundry facilities, and other recreational adventures.

MTRA organized a parade in Kalkaska for its celebration of the 50th year of the Shore-to-Shore Ride. The trail (originally dedicated in 1964 by then-Governor George Romney) was rededicated. About 200 horse and rider teams, as well as horses in harness being driven, were on display on the main roads in Kalkaska. The village looked like a scene from a John Wayne movie!

Grayling, Mio, and Kalkaska welcome the riders, knowing that these tourism dollars keep the small town economy humming. In the winter, many snowshoers and cross country skiers utilize the trail, further creating a thriving tourist economy. The small towns of Michigan and the equestrian trail riders—it's a partnership that has benefited both groups for fifty years! 

Therese Kline is a flexible pipe specialist for the Michigan Department of Transportation. You may contact her at 517-241-0082 or klinet@michigan.gov.



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Court rules that shooting club is not subject to discharge of firearms statute

FACTS:

The Cheboygan Sportsman Club has owned and operated a shooting range in Cheboygan County since 1952. Roger Watts owns a residence that is located within 150 yards of the range. In 2012, Watts reported to the Cheboygan County Sheriff Department that he had found a bullet on his property he believed came from the range. The county prosecutor informed the Club that “any individual discharging a firearm within 150 yards of a residence [c]ould face criminal prosecution” for violating MCL 324.40111(6), a section of the Natural Resources and Environmental Protection Act (NREPA).

MCL 324.40111(6) provides in relevant part as follows:

[a]n individual shall not hunt or discharge a firearm within 150 yards of an occupied building, dwelling, house, residence, or cabin...without obtaining the written permission of the owner....

The statute is the current version of a 1968 statute that amended the Game Law of 1929. The 1968 version, i.e., MCL 312.10b, also contained language that no person, other than the owner “shall shoot or discharge any firearm...or hunt” within a safety zone defined, generally, as 150 yards of an occupied residence.

The Club brought an action seeking to preclude the prosecuting attorney from enforcing MCL 324.40111(6) against its members. The Club asserted that the statute only prohibits a hunter from discharging a firearm within 150 yards of an occupied dwelling. In an amicus brief, the National Rifle Association argued that the Club was immune from civil liability under the Sport Shooting Ranges Act. The Sport Shooting Ranges Act provides immunity for certain activities of shooting clubs that relate to noise or noise pollution.

QUESTION:

Is MCL 324.40111(6) applicable to the Club’s shooting range?

ANSWER ACCORDING TO THE TRIAL COURT:

The trial court held that the two statutes in question were incompatible and that since the Sport Shooting Ranges Act was more specific, it prevailed and provided immunity to the Club’s members.

ANSWER ACCORDING TO THE MICHIGAN COURT OF APPEALS:

The majority of the members of the court of appeals concluded that the trial court erred in applying the Sport Shooting Ranges Act, finding that the Act had no relevance to the facts of the case. The court also determined that MCL 324.40111(6) did not apply to shooting ranges but rather to hunters. The court concluded that the predecessor statute had been enacted to regulate the discharge of firearms in the hunting setting and also on an Attorney General’s Opinion that the “safety zone” provision in the predecessor statute did not apply to landowners engaging in target practice on their own property.

ANSWER ACCORDING TO THE DISSENTING OPINION OF THE COURT OF APPEALS:

The dissent agreed that the Sport Shooting Ranges Act had no applicability but asserted that the NREPA provisions that prohibit “hunting or discharging firearm within 150 yards of an occupied building” clearly applied. The dissent argued that the majority had incorrectly interpreted the statute and had applied erroneous standards of statutory interpretation.

Cheboygan Sportsman Club v Cheboygan County Prosecuting Attorney, No. 313902 (Oct. 2, 2014).

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

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2014 WAGE & SALARY RESULTS

Ready Soon!

The League's Statewide Pay and Benefits Survey of 143 job titles will soon be available to full member communities who participated in the survey, with automatic access provided to managers, department heads, and elected officials.

The data, expected in mid-January, is the most comprehensive statewide public sector benchmark information of its kind. The searchable database allows users to search by position, population, location, and perform side-by-side comparisons of results from selected municipalities.

The Michigan Municipal League conducts this wage and salary survey for the benefit of our member communities, and it is intended to be used by management employees, their designees, or elected officials working on behalf of member communities for official city/village/township business.

Q: Is email a public record?

A: Email messages are public records if they are created or received as part of performing an official government function.

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

A: 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.

Q: Does all email have the same retention period?

A: 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.

Q: Could my email messages be released in accordance with a Freedom of Information Act (FOIA) request or during litigation (discovery)?

A: Just like paper records, email messages might be subject to disclosure in accordance with FOIA. They can also be subject to discovery once litigation begins. Email accounts are provided to employees for conducting public business. Employees should be prepared to provide access to their email to their FOIA Coordinator or an attorney representing their agency under these circumstances.

Q: What budget procedures should we have in place?

A: The budget process is a complicated and involved procedure. The Uniform Budgeting and Accounting Act (1968 PA 2, MCL 141.421 et seq.) as amended, spells out the procedures and requirements of the budgeting process and the accounting function for municipalities.

The legislative body must adopt a budget annually (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 the League's publication *Handbook for Municipal Officials* or *Handbook for General Law Village Officials*, for further information on budgeting.)

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

A: Yes, according to the Budget Hearings of Local Governments Act (1963 PA 43, MCL 141.411 et seq.), 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.

Q: 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?

A: 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.

Q: Is there a "rule of thumb" for a fund balance amount?

A: 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.

The League's Information Service provides member officials with answers to questions on a vast array of municipal topics. Send your municipal inquiries to info@mml.org, or call 1-800-653-2483.



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Located on the picturesque shores of Little Bay de Noc, the Upper Peninsula city of Gladstone is known as the “year-round playground.” Gladstone has the small town quality and hospitality that the Upper Peninsula is known for, and a great quality of life and sense of place enjoyed by residents and visitors.

Gladstone won the League’s 2014 Community Excellence Award for Region 7 (encompassing the entire Upper Peninsula) for its Afterschool

Gladstone
pop. 4,973



GLADSTONE

After-School Ski Hill Program

Ski Program. Up to 70 kids a day attend the after-school ski program. Students from Gladstone and surrounding schools can ride a bus three days a week to the city’s ski hill, where they receive a healthy snack and homework assistance. At 4 pm they can tube, snowboard, or ski. Equipment is provided as needed, and lessons are offered by the hill’s student/city employees. This program addresses latch-key issues, educational support, healthy eating and exercise, personal growth in skills and self-confidence, as well as employment and job skills for high school students. It makes a life-long hobby affordable and is a collaboration with area schools.

