

the review

January/February 2016

the official magazine of the  michigan municipal league



Westland City Hall Big Box Retrofit

Mayor William Wild leads
transformation

Community Excellence Award Winner

- New Sign Law
- Preventing Fraud
- Howell Right-of-Way Case
- Responsibilities of Elected Officials

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michigan municipal league

the review

The official magazine of the Michigan Municipal League

Volume 89, Number 1

We love where you live

The Michigan Municipal League is dedicated to making Michigan's communities better by thoughtfully innovating programs, energetically connecting ideas and people, actively serving members with resources and services, and passionately inspiring positive change for Michigan's greatest centers of potential: its communities.

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Please recycle this magazine

Welcome to Public Office

You've been elected. Well done! Even while the celebratory toasts and congratulatory remarks following your successful campaign begin to fade, there is work to be done. I would challenge all of you, as we challenge ourselves here at the League, to think differently and be open to new ideas. For example, thinking creatively in the way services could be delivered; how public/private relationships can expedite getting things done, and engaging residents like never before, to help solve problems. As we work collectively to create vibrant sustainable communities to attract people, the call for new governance models becomes foremost in meeting those demands.

City and village elected officials bring a diverse range of backgrounds, expertise, and priorities to their roles as community leaders. Through your leadership, Michigan's communities have the potential to be laboratories of innovation and creative problem solving. Although it seems counter-intuitive, as we have become more global, what happens at the local level has become even more critical. It's important that we talk and listen to each other, even when the conversations get uncomfortable. Creating a vision and being open to new ideas (opposed to "we've always done it that way"), collaborating with your fellow councilmembers and staff, and engaging the public has the potential to make some powerful positive changes in your community and set a different course for years to come.

To maximize the inherent potential of both the collective skills of officials, as well as the form of government itself, it is important to have a framework on which to build. This is why we are devoting the majority of this issue to some basic information for elected officials so that you have the foundational tools to meet the challenges head on. Certainly, elected officials who are continuing members of council are an essential resource. The administrative officials, who typically are not only charged with efficient administration but are likely to have served the community for some period of time, will need to be relied upon as well. In addition, we feel that there are resources that newly elected officials can, and should, count on.

As ongoing support to our members, the League offers numerous educational opportunities—including a series of sessions specifically for Newly Elected Officials. League programs are as diverse as the needs of the League audience (each of you) and can be as specific as needed. In short, the League's educational programs can serve as a lens, to focus the wealth of knowledge and capability you bring to your new role as an elected official and to maximize your impact and contribution to your colleagues on council and the community as a whole! We also field hundreds of questions a year through the League's information services, and welcome any questions that you may have.

To get you started, this issue of *The Review* has articles to introduce you to the roles and responsibilities of elected officials; raise awareness on recognizing common types of fraud and best practices on how to prevent it; and setting municipal goodwill through the most basic governing document—the charter. Moving beyond the basics, also included are steps to setting water and sewer rates; the city of Howell's victory in requiring homeowners to maintain the curblawn; and how a new sign law, *Reed v Town of Gilbert*, will most likely affect every municipal sign ordinance in the country. Lastly, please read about the Westland City Hall Big Box Retrofit—the League's 2015 Community Excellence Award (CEA) Cup winner. A big congrats to them again!

Finally, be sure to make plans to attend the League's Capital Conference on March 22-23 in Lansing. Keeping up with legislative issues should be at the top of your list! We will be highlighting and discussing the latest state and federal issues that directly affect local communities, and in addition to legislative concerns, will have focused workshops on several topical issues.



Daniel P. Gilmartin
League executive director and CEO
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Understanding the Roles and Responsibilities of the Elected Official

By Peter Letzmann

Well, you got elected to office—now what? As a public official in Michigan accepts the office, the following oath is taken: “I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of...according to the best of my ability.” Most of us understand the requirements of the U.S. and Michigan Constitutions, but we may not be familiar with the duties that we swore to faithfully discharge.

It’s been over 28 years since the first edition of this article, when I first provided a checklist to be utilized by public officials before beginning the voyage. I have made hundreds of presentations discussing the roles and responsibilities of elected officials using this article. From the feedback provided by the audiences and an additional 28 years of local government law practice, I offer this revision.

This, by no means is a complete or comprehensive list, but an assembly of frequently occurring challenges, to which you should add and assign priorities as you see fit. Remember, being a public official is hard work and requires discipline. Showing up is half the job, but in this case that is not enough. Now the check list.

First, do no harm. Inattentiveness, neglect, retribution, incompetence, malice, slothfulness, distractions, dishonesty, are all to be avoided.

Know the Requirements of the Law and Best Practices

- Understand and follow, especially: your charter, ordinances, local rules, applicable state and federal laws, and the Constitutions of the U.S. and Michigan. The municipality’s attorney can be a resource.
- Keep up to date. Educate yourself. Go to conferences, read, and just learn. (Check the Michigan Municipal League website and *The Review* for training opportunities.)
- Respect the “separation of power.” There is an identifiable difference between the legislative and the executive functions. Know them, respect them, and operate in your capacity only.



- Do your homework. Read and familiarize yourself with the meeting materials, the issues to be decided, and the background of the issues.
- Be confident in the use of electronic devices.
- Understand how to “surf the net.” Make the Internet, with its far reaching search and speed capabilities, part of your research—but view the information with the appropriate skepticism.

Public Meetings and Public Hearings

- Familiarize yourself with the meeting rules of procedure, including parliamentary procedure.
- Engage in clear communications. Especially important is communications at meetings and with appointees and staff. Communicate in a manner that is simple and straightforward; that there are no misunderstandings. Sometimes the purpose of the communication is not only to debate but to educate.
- Ask questions. Don’t make decisions without having the facts and understanding. Test the opinions of others.
- Allow for appropriate “input” from all. Public comment is required at all public meetings.

Understand the Finances

- Approve the budget. Based on the financial history, projections for the future and the revenues, adopt a budget that best addresses the requirements of law and the needs of the community.
- Have a “rainy-day” fund. Unexpected expenses should be expected.
- Provide for major expenditures by utilizing a “sinking fund.”
- Have a clear understanding of borrowing. Bonds are one method; have a full understanding of the procedures and implications, especially for future budgets.

Working as a Body

- Be a leader among equals. Set the example. Speak up and take a stance for good government, while being part of the team.
- Avoid sandbagging. Don't set up your colleagues or staff to make yourself look good.
- Don't make promises that you cannot keep. Respond with "we'll look into that" rather than "we will fix it."
- Remember you only speak for yourself and not the whole council.
- Learn to build consensus. It's a group effort, even if the law does not always require it. Listen. Avoid alienating your colleagues; build congeniality.
- Work as a body. Policymaking bodies function as a body; that is, they take action by the rule of the majority. The individual is generally powerless.

Making a Decision

- Be familiar with the history, demographics, and the hope and dreams of your community.
- Calculate your proposed actions. In light of past experiences, current circumstances, and future hopes, dreams, and goals, what is the wise thing to do?
- Develop a long-term strategic plan. Include vision (long term), mission (short term), values, and goals of the municipality, the council, and the manager. Avoid just focusing on the short-term fixes.
- Utilize critical thinking—the objective analysis and evaluation of an issue in order to form a judgment.
- Be cautious of special interests. Remember the Constitutional "equal protection;" that is, everyone, not only the "squeaky wheel," gets attention.
- Make objective decisions. The decisions, based on all of the facts, are to be made in the best interest of the community, not an individual or an individual group. That is a fiduciary duty; a legal duty to act solely in the community's interests.

Purchasing and Spending

- Establish and follow a purchasing procedure, including bidding and avoiding conflicts of interest. Delegate the small purchases and approve the major purchases.
- Be aware of what a legitimate expense is and what is an illegal expenditure.

Appointees, Employees, and Officials

- Hire, retain, and compensate appointees. With the assistance of professionals, the selection, the periodic evaluation, and the appropriate compensation is one of the most important duties. And, if it becomes necessary, the dismissal of the appointee should be done properly and without delay.
- Be a morale booster. Encourage the employees, members of the boards and committees, and the volunteers. Acknowledge and thank them for their work. Discipline and criticism is the role of the executive.

Participation, Recruitment, and Succession

- Encourage public attendance and participation at council meetings to create an interest in government, especially among the young. Coordinate with high school civics and university public administration classes.
- Promote applications for positions on the municipality's boards, committees, and commissions.
- Select the best appointees for the boards, committees, and commissions. Not only do they make important decisions and recommendations, but the boards, committees, and commissions are frequently the training ground for new elected officials.

Ethics and Integrity

- Act ethically. Establish a code of ethics and insure that it is enforced equally and against all. Set the example for the rest of your local government and the community. Be like Caesar's wife: not only do no wrong, but don't give the appearance of wrongdoing.
- Respect the democratic process. Follow not only the letter of the law, but the spirit and the intent of the law.
- Do not misuse the public's property, employees, and resources.
- Do not bypass the system, nor permit others to do so.

Accountability

- Take inventory. From time to time, meet with your colleagues to make sure you are still on track to meet council's goals and acting within your values.
- Take responsibility for your actions; don't blame others for your mistakes.

Transparency and Privacy

- Decisions are to be made in public. The Open Meetings

Act and most charters require that most decisions be made in the open. The public has a right to know and there are penalties for violations.

- Keep the confidential information confidential. Improper disclosure may have severe consequences and needless embarrassment.

Evaluation of Services and Appointees

- Be the conduit of complaints, even the anonymous ones. Take complaints willingly, and forward them to the executive department, or proper agency, for resolution. Response to the citizen is essential.
- Periodically evaluate the appointees. Base the evaluation on previously established goals, using objective standards and provide constructive feedback.

Intergovernmental Relations and Cooperation

- Network and work with other governmental and non-governmental agencies. You can learn from others and seek out ways to collaborate.
- Federal, state, and county officials can be helpful and the source of revenues, if they know the needs of your community.

Image of the Community:

- Project enthusiasm and optimism. It's not always easy, especially during difficult times. Smile. Remember that no one wants to work with a whiner and complainer.
- Establish a good relationship with the media. They will find the bad and embarrassing news; don't try and hide it. Tell them the good news, quickly and give them a photo if you have one. You are a public relations agent for the municipality, at all times.
- Work at earning the respect and trust of the public. At all times, officially or unofficially, act, speak, and appear in a manner that does no besmirch the office or your character.

This is my random list of duties and responsibilities (to which you may add your own), and is to be shared with others. I would appreciate feedback so that I may enhance futures lists. Finally, ask yourself, "if good government does not begin with me, with whom will it begin; and, if good government does not begin today, when will it begin?"

Peter Letzmann is the former city attorney of Troy, Michigan. He is now in private practice specializing in local government legal and leadership issues. You may reach him at peter@letzmann.com.



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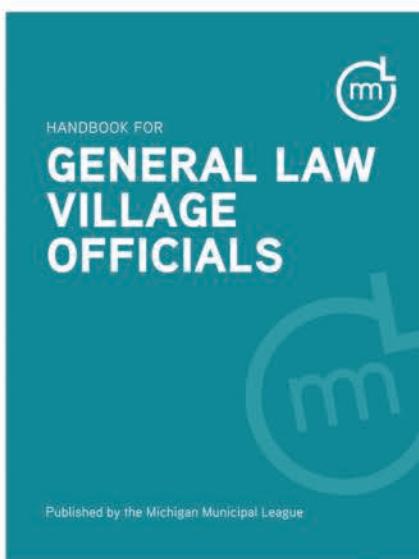


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HOWELL WINS DUE PROCESS AND RIGHT-OF-WAY MAINTENANCE CASE

By Dennis Perkins

In 1959, the city of Howell enacted an ordinance that governs the maintenance of areas of land between a sidewalk and a street (otherwise known as a curb strip or curb lawn) and within the city's right-of-way. The ordinance requires land owners to keep the area free and clear of any weeds, tall grasses, or other types of plants that are hazardous to health. The ordinance also set forth remedies to the city in the case of noncompliance by a landowner. The city manager, or his/her authorized representative, shall serve notice upon the land owner to comply with the provisions of the ordinance. Notices are to be given either verbally or in writing. A violation of the ordinance is deemed to be a municipal civil infraction. This type of ordinance, in one form or another, has been adopted by many municipalities throughout Michigan.

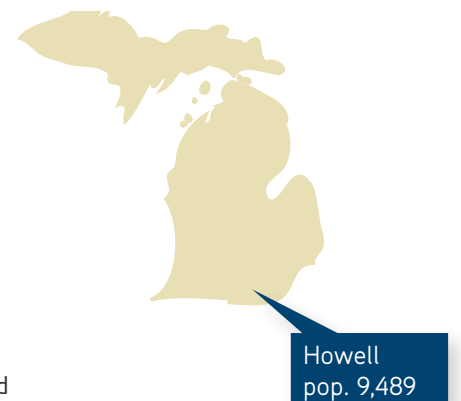
Around 2010, the city commenced reconstruction of Sibley Street, installing new curb and sidewalks. David Shoemaker resided on Sibley Street as both a landowner and resident. Prior to the street renovation, he maintained both the sidewalk and the right-of-way area between the sidewalk and the edge of the road abutting his home and property. After renovation, he refused to maintain the same area since the city had removed a tree and grass he had planted during reconstruction. New trees and grass were planted, and Mr. Shoemaker complained that it was more difficult to maintain the curb strip. As a result, this started a series of events which led to Mr. Shoemaker's refusal to maintain the area, and the city's subsequent efforts to keep the area mowed and trimmed.

For a period of 16 months, the city requested Mr. Shoemaker to maintain this area. He was cited for municipal

civil infraction violations for failure to maintain the area by the city's code enforcement officer. Initially, when cited for a violation, Mr. Shoemaker would comply. However, as Mr. Shoemaker continued to be cited for violations, he

refused to comply. As a result, the city had the area mowed and billed him for the cost and charges of same. Shoemaker admitted that he knew that charges and costs were being levied by the city, but argued that the city failed to notify him about the ways in which he could challenge those charges.

In December 2011, Mr. Shoemaker filed suit against the city. He alleged, among other counts, violations of procedural due process and substantive due process. As to the procedural due process claim, Shoemaker alleged that the code imposed fines, costs, and penalties without giving him (or any other citizen) any recourse to a hearing on any issue. As to the substantive due process claim, Shoemaker alleged specifically that the code imposed a duty upon a citizen to maintain city property without pay and that the city had no power under law to impose such a duty. Though the city argued that there were adequate procedural protections in the ordinance, the court found that the ordinance was devoid of any mechanism a citizen could invoke to seek a hearing before a court or a



quasi-judicial board on any issue arising under the ordinance. As to the issue of substantive due process, the court declared that the city's ordinance was unconstitutional in that the city imposed costs upon Mr. Shoemaker to abate a nuisance on public, city-owned property. In essence, the court declared that the city (and all cities with a similar ordinance), was to maintain its right-of-ways at the city's sole cost.

Without an appeal, the city faced the following changes to its ordinance: 1) adding rigorous procedural due process rules which would establish procedures never used in these types of instances, and 2) it would not have the authority to force property owners to maintain any portion of the right-of-way.

The city appealed, and the Court of Appeals reversed the District Court and remanded (ordered) the case back to the District Court for dismissal of Shoemaker's complaint. In its opinion, the Court of Appeals stated that due process is "the requirement that a person...be given notice of the case against him and [an] opportunity to meet it." Taking into account this basic definition, the Court of Appeals found that city code enforcement officer Donahue warned Shoemaker that he was in violation of the ordinance on a least six occasions, with notifications ranging from: four door hanger notices; three notice of ordinance violation letters; a conversation between Donahue and Shoemaker's daughter; and a telephone conversation between Donahue and Shoemaker.

Shoemaker's failure to make any effort to learn about procedures that would have afforded his procedural due process rights could not now be used to claim a violation

Michigan municipalities continue to have the authority to require property owners to maintain those portions of the right-of-way which abut their properties—the curb strip, between the sidewalk and curb/edge of the road—be it mowing the grass during the summer, or removing snow and ice from the sidewalk in the winter.



The curb strip/curblawn at issue in the case.

Author's note: I wish to thank attorneys Margaret T. Debler and Marcelyn A. Stepanski of Johnson, Rosati, Schultz and Joppich, and attorney Julie McCann O'Connor of O'Connor, DeGrazia, Tamm and O'Connor, P.C., scrivener of the MML Amici Curiae brief, for their work on behalf of the city of Howell.

The Michigan Municipal League's Legal Defense Fund is used to assist in litigation and other legal matters involving a city, village, or township, the outcome of which could have statewide significance. Membership in the Defense Fund is open to League members which pay a modest annual fee. Resources of the Fund are extended in cases which would have a considerable impact on Michigan municipal law and would affect the organization, operation, powers, duties, or financing of Michigan's communities. The typical form of assistance is the filing of an amicus brief to support the legal position of the community, most often in the Michigan Supreme Court or Michigan Court of Appeals.




of procedural due process. Though notice was not perfect, the Court of Appeals stated that “the Constitution does not require strict adherence to the city’s ordinances. What the Constitution does demand—that the notice as given be reasonably calculated to alert Shoemaker of the charges against him and any avenues available for challenging these charges—was accomplished by the notices distributed by the city.” This procedural notice also could be found by Shoemaker under the city’s municipal civil infraction ordinance. The Court of Appeals stated that the additional due process required by the District Court would add little value to the notice already received by Shoemaker and add substantial costs to the city in providing a scheme set out by the District Court.

As to substantive due process, the Court of Appeals refused to expand or identify a new fundamental right that a person may not be forced by a municipal government to maintain an area of municipal property. A thorough review of Michigan law led the Court of Appeals to conclude that Michigan cities possess nominal title to land designated for public use pursuant to one of the plat acts, while the private property owners retain the usual rights of the proprietor. In other words, the court found that despite the city’s right-of-way over the curb strip for public use, Shoemaker retained both his property interest in, and de facto use of, the land in question.

Michigan municipalities continue to have the authority to require property owners to maintain those portions of the right-of-way which abut their properties—the curb strip, between the sidewalk and curb/edge of the road—be it mowing the grass during the summer, or removing snow and ice from the sidewalk in the winter. Municipalities should ensure that they have done everything within reason to notify landowners of violations and opportunities to comply.


Dennis Perkins is the attorney for the city of Howell. You may contact him at 517-546-6623 or attyperkins@sbcglobal.net.



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FROM “PREY” TO “PROTECTOR”

Avoiding Common Fraud Pitfalls

By Jenell West

It sounds like the setup for a primetime crime drama: trusted employees embezzling tens of thousands of dollars from their employers.

This isn't fiction, though. It's real life and it's happening right now.

According to the most recent Report to the Nations on Occupational Fraud and Abuse from the Association of Certified Fraud Examiners' (ACFE), the annual median loss experienced by organizations in the government and public administration sector is \$64,000. In fact, more than 10 percent of fraud cases affect this industry—second only to banking and financial services.

But there's good news: there are steps you can take today to help prevent your municipality from falling prey to such misfortune. The following are some common schemes you need to be aware of, along with tips to avoid falling victim to them.

Cash Receipt Fraud

Cash receipt fraud is typically committed by those responsible for collecting or remitting cash. Think ancillary revenue sources such as dog licenses, fees at community centers and school activities—not main sources of funds like tax payments.

To prevent cash receipt fraud:

- Consider replacing pen-and-paper procedures with computerized systems when possible. If you can't replace your pen-and-paper system, use pre-numbered receipts and verify that the number of receipts issued corresponds with your accounting records.
- Leverage audit trails/reconciliation features within computerized systems as appropriate.
- Require the employee remitting funds to sign his or her name on transmittal forms and deposit tickets so that you have clear evidence of who was remitting the funds.
- Require employees to place cash and checks in a sealed, tamper-evident bag prior to remittance to their colleagues/bank.
- Develop and implement a document retention policy. Documents should be stored by an employee who is not responsible for collecting, recording or reconciling cash receipts.
- Perform spot checks of cash deposits.

Credit Card Fraud

Credit card fraud is one of the most frequently occurring types of fraud—lax documentation guidelines allow fraudsters to add non-work-related charges to your credit cards.

To mitigate credit card fraud:

- Design an acceptable use policy for your credit cards and require employees to acknowledge it in writing. This policy should clearly state the consequences of credit card misuse and missing receipts.
- Review employees who have been issued credit cards and verify that their spending limits are appropriate.
- Cancel credit cards when employees are terminated.
- Require that copies of original, detailed receipts be submitted with credit cards and expense reports.



Expense Report Fraud

Expense report fraud is committed at all levels of an organization. Employees are emboldened by poor review procedures, which can lead to lavish meals with friends and gifts purchased under the guise of business dinners and other seemingly innocuous activities.

Prevention tips mirror those of credit card fraud. In addition:

- Designate a qualified staff member to review and approve documentation related to expense reports. Expense reports belonging to upper-level staff should be reviewed by your city council, board of commissioners, etc.
- Approach a review logically. When and where was the item purchased? Does the location make sense? If a vendor lunch took place 20 miles away from their office and yours, why? If a gift was recorded as being given to someone, call and ask what they thought of it.
- Detect outliers like consistently high totals and unusual growth in total expenses.
- Compare projected expenses to actual expenses for business trips and other items that may be included on numerous expense reports.

YOUR FRAUD PREVENTION TOOLKIT

Once you understand what to look out for, it's also good to make sure you have the proper tools for preventing fraud at your disposal. Everyone loves a red flag—they help highlight situations that require prompt attention. Red flags can include an employee living beyond his or her means, a refusal to take vacations, unusually close associations with vendors and an unwillingness to share job responsibilities. Financial difficulties and domestic problems frequently afflict perpetrators of fraud.

Your strongest assets in the fight against fraud? Your employees and vendors. Just under half of all internal cases are reported by those who work for and with the victimized organization. Minimize losses by implementing a user-friendly reporting system such as a 24/7 hotline and encourage your staff to utilize it.

Management review and internal audit are also key contributors to uncovering suspicious activity.

In-depth background investigations of new staff provide one of your strongest means of preventing internal fraud. Periodic re-investigations, especially for recently promoted individuals, are also essential.

Trust is not an internal control. Properly designed and customized internal controls help ensure that all money circulating in and out of the organization is accounted for and thoroughly documented. Enforcing this protocol provides the opportunity to identify fraud before it can inflict significant damage.



business alliance program

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Misuse of Government-Owned Assets

Asset misuse can occur throughout your government. Using a government-owned vehicle for personal trips is one example.

To prevent misuse:

- Specify the terms of appropriate use and update as necessary in a contract or employee manual.

- Document the financial terms of any agreements in a contract or employee manual.
- Remind employees of these agreements and where they can find them.

Collusion with Vendors

While rare, collusion with vendors can be costly. Investment in or ownership of a supplier or competitor, acceptance of inappropriate gifts and involvement in other business ventures with vendors are all instances of this type of fraud.

To prevent vendor collusion:

- Perform due diligence on any new vendors.
- Review disbursements to vendors to ensure that there is a valid contract governing the payments.
- Compare vendor addresses to employee addresses and promptly investigate any commonalities.

If you suspect fraud is taking place in your organization, be sure to secure legal counsel before taking any other steps. Become informed about your rights and the rights of the person or people perpetrating the fraud.

Jenell West, CPA, CFE, CIA, MAcc is a Forensic Accounting Manager for Rehmann's Corporate Investigative Services. You may contact her at 248-614-6434 or jenell.west@rehmann.com.

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HOW IT WORKS

To get your RFP distributed to the right companies in our BAP program, simply email a PDF version of the RFP or bid specifications to rpfsharing@mml.org and we will do the rest.

That's right. No more long hours searching for the right companies to receive your RFP. No more copy, postage, and handling costs to compile and mail all those packets. Just one easy step is all it takes.

To enhance this new service, we have also created a sample RFP page. If you've never written an RFP before, or you want to take a peek at what others have written, check out our new information page. We have sample RFPs available on our website, www.mml.org.

It's just one more way the League is here to help our members serve their communities even better than before!



Municipal Goodwill through Charters

By Daniel Matson

New participants in municipal government bring personal views, values, and feelings to their positions. Depending upon what their experiences have been with government, there may be a sense that it is insidious by nature and should be viewed with suspicion, and (even) hostility—or there may be warmth, sincerity, and a firm resolve by the newcomer to serve. As with anything, first impressions count. Why not greet the initial experience of an office holder with a pronouncement of ideals which reflect certain purposes of government that are important to the community? They are most meaningful and legally weighty if they appear in the basic governing documents, and may help especially if their reading is mandated. They can set the tone of an entire term of office.

There will always be some turnover in government, whether term limits apply or not. It is helpful, therefore, if senior officials and the administration show willingness to share their insights, experiences, and knowledge with newer members. A lot depends upon the goodwill of those presently holding office toward new colleagues.

Orientation

An orientation provision in the charter or in an ordinance will provide an outstanding opportunity to get acquainted with the mandates and the constraints of positions within government. It is as valuable an introduction for new office holders as it is a review for incumbents. All persons in decision-making capacities should be included. A meeting of key people in the municipal structure will create interaction as everyone gets acquainted with each other and with the whole picture. It allows department heads to hear the powers and prerogatives of the council and the chief executive official, and vice versa.

Chairs of committees, commissions, boards, and authorities, also need to be acquainted and reacquainted with the scope of their duties and powers within the municipal framework, and should be included. The meeting will be open to the public, and interested staff should be invited and encouraged to attend. Questions should be solicited and answers provided as best as possible, by direct reference to specific governing documents involved. The act of looking in the right places for controlling authority is a good habit to form.

Closing Ranks and Uniting

It takes time to settle into an office. After campaigning and political rhetoric ceases and the realization begins to dawn that there is much more complexity to this business of governing than meets the eye, former opponents tend to close ranks and unite in their work. That is not to ignore the real world of divergent views that promote debate. Debate is healthy. It is curative of misconceptions; it is our way of approaching problems. But it must be balanced and founded upon the sincere search for truth, if it is to benefit our constituents.

Citizens have the right to expect the best from officials, officers, and governmental staff. They tend to lump the whole system under the concept of 'government,' which has either good or bad connotations for them. But each municipal servant is individually accountable to the people. A municipality can, and should, adopt an ethics ordinance which will provide a framework of understanding of the expectations and the limits of conduct and performance of each person who participates in governing it.

Government Image

The standards of performance are greater for municipal servants than in other employment. Government, by its nature, presupposes that those within it hold positions of trust. The people grant responsibilities to their leaders over their funds, their property, their environment, their safety, and much more. That is why there is a citizens' outcry when unseemly actions occur. People feel betrayed.

Municipal Goodwill

The consistency of what we do counts for much. We must be uniform in our application of local law and how we treat our citizens in general. We are examples to others. Goodwill requires municipal servants to be civil toward each other and all others. Bad tempers promote ill will and sustain it.

Now, what specific language in a local charter will help build municipal goodwill?

It can begin with a statement of ideals in the preamble. The preamble can be viewed as a mission statement for the community. The preamble can set the personalized tone of the document that matches your community outlook. It can reflect the valid concerns of local government. Approaches

may be either permissive or mandatory.

Charter language may authorize the council to adopt specific legislation regarding the following:

Ethics

Within two years after the effective date of this charter, the council shall adopt an ethics policy ordinance by which all persons in the municipal service, whether compensated or voluntary, shall abide. It shall encourage such persons to place the public interest above self-interest.

An Informed Public

Enhancement of ongoing public awareness of municipal business through the use of news releases, cable television, public appearances, municipal websites, social media, and other forms of communication.

Planning for Change

Continual planning for the effects of inevitable change upon municipal government, and upon the provision of services to the public.

Continuing Education

Providing programs for instruction and training of persons within the municipal service, related to their positions in local government.

Environmental Resources

Preserving and protecting environmental resources of the community.

Cultural Enhancement

Promoting the distinctive cultural assets of the community, including its history, natural beauty, and the arts.

Intergovernmental Relations

Establishing and maintaining liaison with other governmental units, to promote common goals and understanding.

Alternative Dispute Resolution

Making available a program of resolving claims, disputes, and conflicts between members of the public and the municipality, and between persons within the municipal service, by out of court means in appropriate cases.

Conclusion

In business, the value of a going concern can be measured by the intangible known as 'goodwill.' It is no less valuable in municipal government. Without it, your work will become drudgery. With it, there is no limit to the sense of satisfaction we all crave as we face and conclude each day of municipal service.

Michigan Municipal League Charter Database

What is the charter database?

The charter database is a glimpse into the unique governing documents of Michigan's cities. It is a one-of-a-kind compilation of 40 variables from 275 home rule city charters on key concepts such as the number of councilmembers serving on council, how the mayor is selected (elected or chosen by the council), terms of office of council, how vacancies are filled, meeting attendance policy, fiscal year, etc.

How do I use the charter database?

Search for charter provisions by region, population range, or county. For example, if you are amending your charter and want to know what other cities in Michigan have the provision you are looking for (method of filling council vacancies, purchasing limits, nepotism, etc.), you can choose your criteria from a drop down menu and find the data in the charter database. Entire charters, in pdfs, are included (when available) so you can also search a specific city's charter to pinpoint the text of a provision you are interested in.

To access the charter database, visit www.mml.org.

We have the ability to affect in a positive way the outcome of how government approaches solutions to the problems of society. We can do it deliberately and orderly in the ways mentioned, or we can just let time and circumstances dictate the result. We can, and must, take the initiative, not only to allow us to have a more pleasant experience in governing, but to give the same kind of hope and opportunity to our successors.

Daniel Matson is the recently retired attorney for the city of DeWitt.



Sign Regulation Turned Upside **Down**

By William Brinton

Shocking Decision

On June 18, 2015, sign regulation in America was turned upside down. A decision involving the Town of Gilbert, AZ was labeled shocking and a blockbuster decision. The clear message to local governments across the nation is to now examine their sign regulations and determine whether they would survive challenges under the federal Civil Rights Act and the First Amendment of the U.S. Constitution.

Civil Rights and Attorneys' Fees

You may be surprised to learn that a First Amendment defect in sign regulations opens up a line of attack under federal civil rights laws. This means a successful plaintiff may be able to recover attorneys' fees from a municipality. The Town of Gilbert now faces an attorneys' fee claim reported to be in excess of \$1 million. The first step is to discuss this matter with your local government attorney. The following is a primer for your understanding of the issue.

Noncommercial Speech

The dispute before the Supreme Court involved differing treatment between different categories of temporary signs that carried noncommercial messages. You should know that noncommercial speech, e.g., political speech, is accorded a higher level of First Amendment protection than commercial speech. In fact, it was not until the 1970s that commercial speech rose to the level of First Amendment protection.

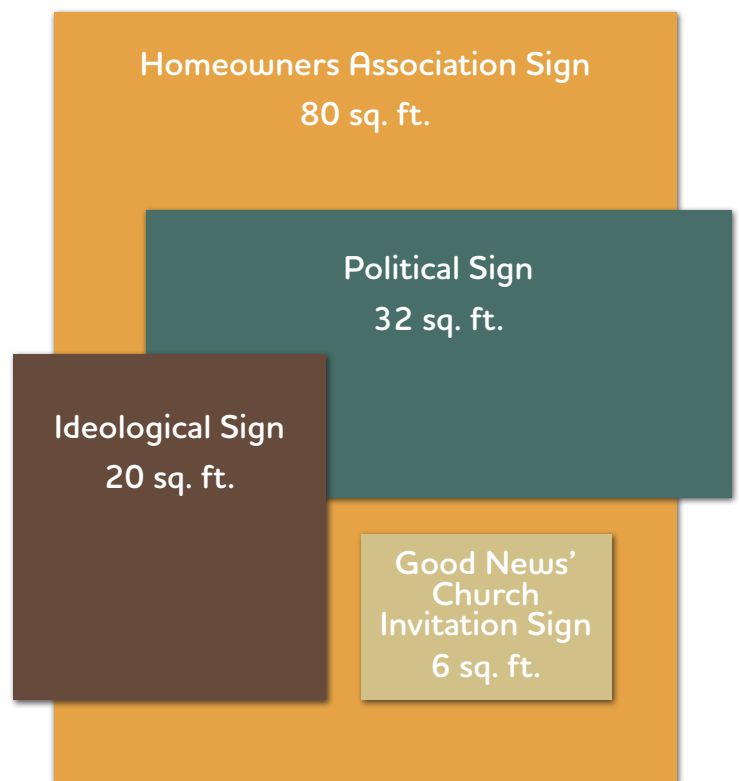
Typical American Sign Code

A typical sign code has several categories of temporary noncommercial signs, such as (1) political/election signs, (2) directional signs to an event, and (3) free speech signs (which Gilbert identified as "ideological signs") whereby the sign may display a message about any topic 24/7, such as Save the

Whales or Peace in the Gulf (or even hate speech that would be viewed as highly offensive). Criteria for their size, height, number, setback, spacing, duration, etc. may and often do vary.

The Town of Gilbert's Code

Below is a depiction of Gilbert's maximum allowed sign sizes and sign heights for common categories of temporary noncommercial signs. This depiction came from the plaintiffs' brief. The 6-square foot dimensions shown for the so-called "Invitation Sign" were those for a temporary directional sign.



Your Code

Look at your own sign code or the codes in neighboring jurisdictions. Take a pen and jot down whether the size and/or height standards are identical for the above sign categories; compare them by zoning district. What did you find?

Strict Scrutiny:

A Civil War Stomach Wound

Obviously the regulations with these differing limitations impact “speech.” Therefore they implicate the First Amendment. If the regulations are viewed as content-based, then a municipality must meet a strict scrutiny review. This exacting level of review requires the government to show a compelling governmental interest. Meeting that standard is akin to surviving a stomach wound during the Civil War: highly unlikely.

Intermediate Scrutiny and Aesthetics

Aesthetics is not recognized as a compelling governmental interest for purposes of constitutional review. Not surprisingly, however, aesthetics is recognized as a substantial governmental interest. Content-neutral regulations are subject to “intermediate scrutiny,” and under that less-exacting level of review aesthetics is a long recognized foundation for sign regulation that satisfies the First Amendment in combination with several other factors. Aesthetics is the basic underpinning of sign regulations everywhere.

A Call from a Colleague

A number of years ago, I received a call from a colleague, Randal Morrison from San Diego, CA. He warned me of what had the makings of a threat to the ability of local governments to regulate signs in the manner that they had become accustomed. He noted that a pastor of a small itinerant church had filed a federal action against the Town of Gilbert. The nature of the dispute was framed as big government trying to squash the religious speech of a small church.

Saturday Signs for Sunday Services

In 2005, Pastor Reed had placed seventeen temporary noncommercial directional signs for his church services. Nothing would seem wrong with that. The signs, however, were placed on a Saturday morning long before the commencement of the church services, which were the following Sunday morning.

Twelve Hours Not Enough

The lawsuit asserted among other claims that the one-hour durational limit before the event was too short and a violation of free speech rights. The town then amended its code to extend the durational limit to twelve hours. Twelve hours did not satisfy the plaintiffs, and an amended complaint was filed.

Ping Pong

From 2007 to 2014, the case went back and forth between the federal district court and the federal appeals court. In these four rounds, the town won every time. In the last two rounds, the judicial focus was on the distinction in the code between temporary directional signs and other types of noncommercial signs like political signs and ideological signs.

What, Me Worry?

The takeaway at that time for the local officials was likely that their municipality had won every round in court. As Alfred E. Neuman of *Mad Magazine* fame would say, “What, Me Worry?”

One-in-a-Hundred Chance

But there is always that one-in-a-hundred chance that the Supreme Court will accept discretionary review. And the Supreme Court did just that. The oral arguments were rough. The decision was a game changer.

Justice Thomas’ Majority Opinion

Justice Clarence Thomas, joined by five other justices, held that the town’s temporary noncommercial sign regulations were content-based on their face. The regulations did not meet a compelling governmental interest and they were struck down. Justice Thomas wrote that facial distinctions based upon message, whether defining regulated speech by subject matter or defining regulated speech by its function or purpose are both distinctions drawn based upon the message that the speaker conveys, and, therefore, are subject to strict scrutiny. In *Reed*, the regulated speech was noncommercial speech. Unless the town’s distinctions were content-neutral, there was little chance that they could survive scrutiny where aesthetics could play no role.

Entirely Reasonable Sign Ordinances Will Have To Be Struck Down

In a concurring opinion, joining in the result but not the reasoning, Justice Kagan joined by Justices Breyer and Ginsberg, observed that courts would have no choice but to strike down thousands of reasonable ordinances:

As the years go by, courts will discover that thousands of towns have such ordinances, many of them “entirely reasonable.” And as the challenges to them mount, courts will have to invalidate one after the other...And courts will strike down those democratically enacted local laws even though no one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result.

Justice Kagan, tongue in cheek, mused that the Supreme Court may soon find itself a veritable supreme board of sign review.

Justice Breyer's Warning

Justice Breyer joined by Justice Kagan separately warned of the far-reaching consequences of the majority's decision, one that was beyond just sign regulations. Their prediction is coming true as all manner of laws are now being challenged and some are falling. As one federal appellate judge exclaimed when a majority on a panel struck down a Florida statute pertaining to credit card transactions, we have a Greek tragedy "where a federal court has struck down a state statute for no good reason."

Justice Alito Talks "Properly Understood"

Justice Alito, joined by Justices Sotomayer and Kennedy, authored a critical concurring opinion. The opinion recited that properly understood today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.

Justice Alito then listed rules that would be content-neutral, including the distinction between on-site and off-site signs. This is certainly a basis for understanding that off-site commercial billboards can be treated separately from on-site commercial billboards.



Different Manner of Regulating Going Forward

This outcome means that all manner of temporary noncommercial signs should be regulated in an identical manner as to their allowed size, height, spacing, number, duration, setback and other such criteria. Differences in criteria between or among zoning districts would be permissible, but they cannot be separately distinguished or categorized by their message, whether by subject matter or by their function or purpose.

Recommendation

Of course, not all lawyers are in agreement as to the meaning of the decision under various scenarios. Those lawyers who have spent decades in the intersection of First Amendment law and land use law are now sorting this out and assisting local governments in replacing their sign codes. Many codes have an assortment of other constitutional problems. The recommendation of this practitioner is to replace a code and replace or revise definitions.

Consultation with Municipal Attorneys

It bears repeating that elected officials should consult with their own municipal attorneys in taking steps to replace current sign codes with new codes that serve legitimate "esthetic objectives" and that the new codes otherwise meet First Amendment considerations. Consultation with experts in the field is highly recommended.

William Brinton is an attorney and shareholder with Rogers Towers Law in Jacksonville, Florida. You may reach him at 904-398-3911 or WBrinton@rtlaw.com.



Justice Alito



CAPITAL CONFERENCE

March 22-23, 2016
Lansing Center, Lansing



CAPITAL CONFERENCE

MARCH 22-23, 2016, LANSING



Michigan communities face a myriad of challenges every year and keeping informed on legislative initiatives is at the top of that list. How will your municipality's finances be affected by changes in pension funding and revenue sharing? Do you need to begin thinking about how car sharing services, taxi alternatives, self-driving vehicles, and other new mobility options will impact your community?"

Capital Conference is the source for answers on all the state and federal issues that impact local communities. It's also the best place to network and make your voice heard on matters of public policy. Don't lose your place in Lansing. We're saving you a seat at the League's 2016 Capital Conference.

SESSIONS INCLUDE:

- Legislative Update
- Municipal Finance
- Mobility
- Grand Bargain
- Michigan Municipal Services Authority Grants
- Medical Marijuana
- Hot Topics
- Lobbying

Register at cc.mml.org

Conference Workshops

Tuesday, March 22, 9:00 am–Noon

These workshops are designed to give you the detailed information you need to do a top-notch job for your community. Topics include neighborhood revitalization, evaluating municipal programs and diversity. The workshops are FREE for anyone registered for Capital Conference, but space is limited, so sign up early!

Meet Your State Representatives

Tuesday, March 22

9:00 am–Noon

1:30–2:30 pm

Wednesday, March 23

10:30–11:45 am

1:30–2:45 pm

The time periods listed above have been set aside for you to meet with your State Representatives. Other Conference sessions may also be held during some of these time slots. We encourage you to contact your representatives beforehand and make arrangements to meet and discuss issues of importance to you and your community.

Legislative Breakfast

Wednesday, March 23, 7:30–8:30 am

Enjoy breakfast in a relaxed setting at the Lansing Center as you network with senators, representatives, key legislative staff members, and other top state officials. Hear their perspectives on state issues and share your views on matters that affect your community.

Community Excellence Award

Wednesday, March 23, 11:45 am–1:00 pm

During the Capital Conference Luncheon, we'll hear from the winner of the 2015 Race for the Cup. Westland's ingenious city hall big box retrofit earned them the top spot in last year's Community Excellence Award competition. City officials will share their experiences since taking home the top prize at the 2015 Convention, and they'll help us launch another round of rousing competition.

Networking

Tuesday, March 22, 4:30–6:30 pm

MML Liability & Property Pool Welcome Reception

Wednesday, March 23

9:45–10:30 am Networking Break

1:00–1:30 pm Dessert Break in the Expo Hall

2:45–3:15 pm Networking Break in the Expo Hall

Meeting your municipal colleagues in an informal setting and sharing ideas is a valuable part of the Capital Conference experience. We've built several hours of networking time into the schedule, and you may find other times that fit your needs as well.

Student Scholarship Essay Contest

Michigan students interested in local government and public service are encouraged to participate in an essay contest on a topic important to our state's communities. This year's topic is pop-up placemaking and how students can use that concept to activate a public space in their city or village. The author of the winning essay earns a scholarship to Capital Conference.

AGENDA

Tuesday, March 22

9 am–Noon	Workshops/Summits
9 am–4:30 pm	MAMA Annual Advanced Institute*
10 am–1 pm	MML Board of Trustees Meeting & Lunch
Noon–6 pm	Conference Registration
1–2 pm	Elected Officials Academy Board Meeting
1:30–2:30 pm	Meet with Your State Representatives
2:45–4:30 pm	Capital Conference Welcome
4:30–6:30 pm	MML Liability & Property Pool Conference Welcome Reception

Wednesday, March 23

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
9:45–10:30 am	Networking Break
10:30–11:45 am	Breakout Sessions
11:45 am–1 pm	Luncheon
1–1:30 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

Register at cc.mml.org

“I always look forward to attending Capital Conference to find out first-hand what’s going on in Lansing, and I find the updates by the MML lobbyists especially helpful. I’ve found the information I received at the event is always useful in the decisions we make back home.”

— Kathleen Ling
Commissioner, Mount Pleasant

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 Welcome Reception 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 conference.

Advertising

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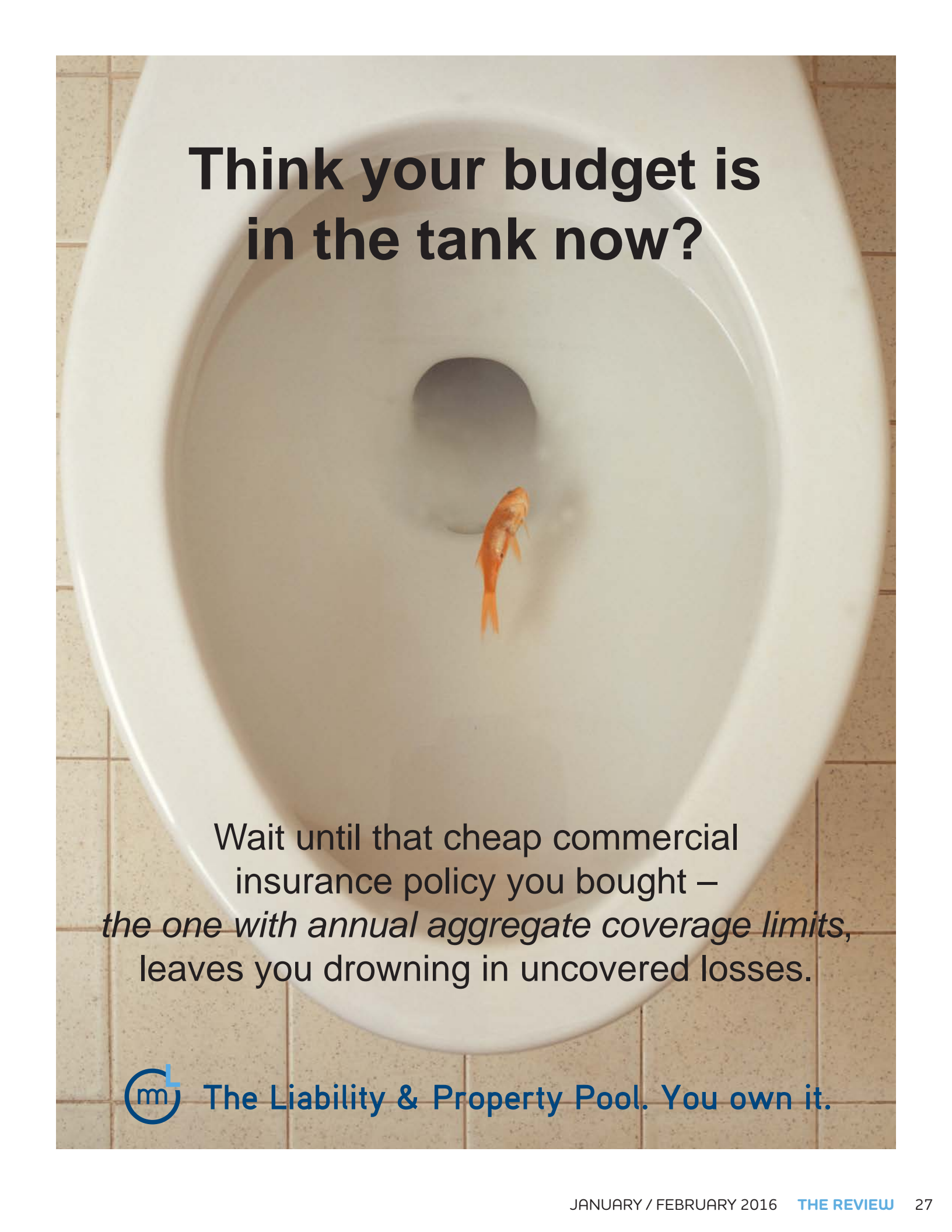
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From Water-Logged to Light-Filled:

**How Westland Transformed a Big
Box Store into a Stunning City Hall**

By Lisa Donovan



Slosh, slosh, slosh! The sound of water filling the leaky basement reverberated through Westland City Hall for years. At the League’s Convention in September, that sound was replaced with celebratory applause as Westland’s ingenious big box retrofit solution earned it the top spot in the 2015 Race for the Cup!

“There were four incredible projects and the competition was very stiff, but what makes us proud is that this is voted on by our peers,” said Westland Mayor William Wild. “When you see other municipalities that know how hard these projects are to pull off, and to be recognized by them, is something we appreciate, and I know the residents of Westland appreciate it as well.”

Westland City Council President James Godbout said the Westland City Hall Big Box Retrofit was a major endeavor that involved significant community input. The Westland community is very proud of the project and the award will help bring statewide recognition to it as well.

The Challenge

Westland’s city hall was originally built in 1964 to house the Nankin Township Water Commission. When Westland incorporated as a city in 1966, the 13,000-square foot building was converted into the administration offices for the new city. Over the years, the high water table under the building created serious, costly structural issues. The basement frequently flooded, and substantial erosion of the sub soil was causing the building to sink.

The city also faced the problem of insufficient office space for the additional departments needed to serve the growing community. Eventually, the city began operating out of buildings on five different city sites. This situation was inconvenient for residents and a potential deterrent to developers and companies considering doing business with the city.

Prior administrations had considered how to address the building’s structural and space problems. “When we started building consensus to tackle this problem, we actually used the capital needs assessment from 1999,” said Wild. “That shows how far back the need went.”

But in 2012, all the right factors came together to bring about a solution. With city officials united behind the effort, the city hired Plante Moran CRESA to evaluate its needs and provide city leaders with estimates on different building options. The analysis revealed that it would cost about \$15 million to renovate the existing city hall or \$15 million to erect a new building from the ground up.

That’s when a third option came into play: an empty big box store adjacent to the regional Westland Shopping Center in the city’s “shop and dine” area. It’s location in the city’s TIFA district made it even more attractive, as the city would be

...a third option [for a new city hall] came into play: an empty big box store adjacent to the regional Westland Shopping Center in the city’s “shop and dine” area. It’s location in the city’s TIFA district made it even more attractive, as the city would be able to use TIFA funds to purchase and renovate the building rather than assess a millage on residents.



able to use TIFA funds to purchase and renovate the building rather than assess a millage on residents. City officials were able to negotiate an attractive sales price for the long-vacant Circuit City store. Combined with the cost to retrofit the building, the final price tag was \$12.1 million—considerably less than the other two options.

Following months of meetings with city staff and residents regarding the building’s design and function, and 12 months of construction, the new city hall opened for business on September 26, 2014. The 64,000-square foot city hall now houses all city departments in one modern, attractive, energy-efficient building.

The Results

The city’s investment has served as a catalyst for economic development. “We’ve seen about \$15-\$20 million in investment in Westland since the city hall project began,” said Godbout. “There’s buzz in the business community. They see the city invest and they’re more inclined to make changes, like updating their façade. There’s also buzz in commercial real estate, leading to new businesses coming in.”

Westland Shopping Center, the city’s primary retail hub, has been the beneficiary of a lot of that positive buzz. “When we’re bringing tenants into the market, we show them the

newest and brightest things in the market, and the new city hall is certainly one of them. When they see the city investing in itself, it encourages them to come to this market,” said Jerry Weller, general manager of Westland Shopping Center, who also sits on Westland’s TIFA board. “We’re very pleased with our occupancy now. We’re as full as we’ve ever been.”

Westland hoped that city hall’s modern architectural elements and sustainable landscaping features would set the bar for other buildings. That hope is being realized in new developments like the On the Border Mexican Grill & Cantina. Its new location across the street from both city hall and Westland Shopping Center opened in December.

“The new city hall facility is a visible sign that this is a successful, growing community,” said Devin Keil, On the Border’s senior vice president of development. “We identified Westland as an attractive market based on the strength of the city, its vibrant restaurant and retail activity, and our existing success within the Detroit area.”

Residents have certainly noticed all the positive changes in their community. Life-long resident Vic Barra is one of them. As president of the Wayne Ford Civic League, he spends much of his time working on improvement projects with the city—everything from refurbishing parks to raising funds to restore the high school’s planetarium.

“When it came time to build a new city hall, it was a stroke of genius on the part of the mayor to look at some of our empty big box buildings,” said Barra, a pipe fitter leader for Ford’s research and engineering division. “We’re seeing businesses come back into our hometown, and it’s very exciting for all of us. The community pride that is being restored through all these positive activities is heartwarming.”

But what good is a new city hall without an engaged staff to keep things humming along for all the residents and businesses? Michele Halis loved her job with the city, but in the old building it had become a real pain—literally! The damp conditions aggravated her mold allergy, leading to constant headaches. Now, in the brand new building with a skylight over her desk and great connectivity to the mayor and other employees, those headaches are history.

“Having easy access to other departments has made a huge change in our productivity. And the amazing technology makes our jobs a whole lot easier,” said Halis, executive assistant to the director of community relations. “Everyone seems so much happier.”

Lisa Donovan is a communications coordinator for the League. You may contact her at 734-669-6318 or ldonovan@mml.org.



This year’s Community Excellence Award projects were divided into four categories: Funding for the Future, Michigan in Motion, Place for Talent, and Strength in Structure—the category that Westland was in. Each entry was ranked by a panel of judges, and the public had a chance to weigh in through an online voting component. The top entry in each category advanced to the final round that took place at the League’s Convention in Traverse City.





5 KEYS

to Setting Water and Sewer Rates

By Bill Brickey and Keith Szymanski

In many communities, the only “business-type activities” (as they’re referred to by us accountants) are water and sewer operations. It can be challenging for rate-setters to change their mindset as they go from budgeting their governmental funds to projecting operations of what should be a self-sustaining enterprise within a governmental entity. Setting water and sewer rates should be a deliberate, annual process that includes the following key steps:

1. Understand Your Objectives

Some of the objectives are obvious. Water and sewer funds should generate enough cash to cover operating costs, pay debt service, and make necessary capital improvements, but paying the bills and keeping the water flowing are just the basics. Rate-setters should also consider how much cash should be held in reserves—more on this in a bit. To the extent possible, rate-setters should also seek to limit the variability in the rate increases passed on to customers. While it’s almost impossible to make everyone happy, most customers can understand the need for reasonable and steady increases in rates from year to year. What’s more likely to draw an outcry is a dramatic spike in rates after multiple years of little or no increases.

2. Understand Your Operating Costs and What Drives Them

For the most part, all systems have the same categories of operating expenses: the actual cost of water and sewage treatment, operations, maintenance, and administrative costs. It is one thing to know the costs, but another to understand what drives them. Are they fixed each year or variable based on sales? Are we in a mature community in which consumption is decreasing as homes become more efficient or is development adding new users to our system? How much will a dry summer impact the system compared to one with a lot of rain? It is important to break down the costs and consider the answers to these questions before beginning to consider changes in rates. The more variation in consumption, the greater the need to maintain adequate working capital reserves to cover fixed costs if consumption does not meet expectations.



business alliance program

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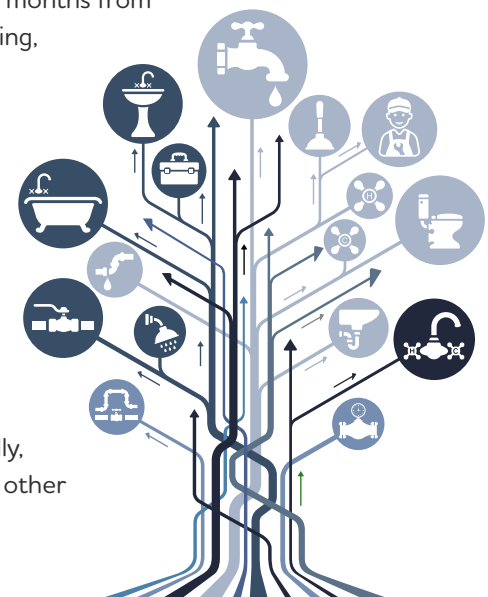
3. Consider Other Cash Outflows

After evaluating your costs, it is necessary to consider those cash outlay items that don’t show up on a system’s income statement because they only impact the balance sheet: debt service principal payments and capital improvement outlays. Debt service principal requirements are relatively easy to project using amortization schedules. For capital improvements, we recommend creating a plan that covers the next five to 10 years and details the needed purchases for equipment and vehicles as well as infrastructure projects. Once the future needs are known, determine whether they will be paid in cash or funded with debt. If paid from cash reserves, begin planning for them now in order to ensure enough is on hand at the time the purchase will be made.

4. Establish Adequate Reserves

As alluded to before, there’s more to maintaining a fiscally healthy water and sewer system than simply being able to pay the bills. A strong system also maintains an adequate amount of cash on hand for operations and emergencies. There is no working capital reserve amount that is right for every system, but a common benchmark is 60 to 120 days of operating costs. Most systems have to pay providers monthly and employees twice monthly whereas collections from customers can lag many months from the date of usage, to billing, to ultimate collection.

For an emergency replacement reserve, it is recommended to have 1–2 percent of the net book value of capital assets (net book value equals original cost less accumulated depreciation). Additionally, some systems may have other



required reserves based on debt agreements or orders from the Environmental Protection Agency. When setting rates, it's important to consider not only cash outflows, but also amounts that should be kept on hand. Rate-setters should also be careful not to accumulate excessive reserves. For the most part, today's customers should only be asked to pay for today's costs (plus reasonable additions to reserves).

5. Develop a Multi-Year Tool

Clearly there is a lot that goes into setting water and sewer rates. In order to accumulate the information and evaluate the future needs of the system, we recommend creating a multiyear forecast that incorporates all of the items mentioned above. It should be a "living document" that is updated to reflect changes in facts or assumptions. While it may not be necessary to share all of the details with those responsible for approving the rates, they should understand and agree with the key inputs and assumptions. Finally, it should be an objective of the forecast to have the necessary reserves on hand at the end of a number of years. The rate increases needed to achieve those reserves can be smoothed over all years as long as adequate cash is available for operations at all times.

We hope these five keys will be helpful the next time your community begins the process of setting water and sewer rates.

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The Bolt Decision

In *Bolt v City of Lansing*, the Michigan Supreme Court developed a test for user charges. In order to avoid classification as a tax, a user charge must "serve a regulatory purpose rather than a revenue-raising purpose."

Rates and charges must also bear a direct relation to the cost of providing the service to the ratepayer. A fee designed to raise revenue for general public services in addition to covering the cost of providing the service which is the subject of the fee is actually a tax. A fee designed to raise revenue from a broad range of users of a system to pay the cost of an improvement to a discrete part of the system which will benefit only a smaller group of users may also be considered a tax.

Revenues derived from user charges (or assessments) must be segregated from other municipal funds and applied solely to the expenses of providing the service or the improvement. The expenses of providing the service may include some indirect costs of providing the service.

(Excerpt, CH 22: Special Assessments and User Charges, Handbook for Municipal Officials, MML, 2015.)

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Please contact Bill Brickey at William.Brickey@plantemoran.com or Keith Szymanski at Keith.Szymanski@plantemoran.com for more information.

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THE DANGERS OF NORMALIZATION OF DEVIANCE & OFFICER CREATED JEOPARDY

By Gene King

Emergency service organizations often face challenging behavioral issues. Two that can lead to disastrous outcomes if not addressed in a timely manner, are: normalization of deviance and officer created jeopardy.

Normalization of Deviance is generally described as the gradual process through which unacceptable practice or standards become acceptable. As the deviant behavior is repeated without catastrophic results, it becomes the social norm for the organization.

In law enforcement, behaviors that deviate from departmental policy, procedures, and rules frequently are not perceived to be extreme if the outcome is successful.

Examples of normalization of deviance cover a wide range of activities and responsibilities that include:

- Failing to check the vehicle's fluids, the patrol shotgun or rifle, first aid kit, automatic external defibrillator (AED), flares, or fire extinguisher at the beginning of the shift;
- Failing to wear a seatbelt while driving or a safety vest at an accident or when directing traffic;
- Using excessive speed and unsafe practices in emergency response;

- Going for backup and not calling out or not waiting for backup in critical calls;
- Use of aggressive or inappropriate language in citizen contacts;
- Displaying weapons at inappropriate times; and
- Failing to write reports that are complete and accurate.

As time passes, and officers continue to do what they want without a negative outcome or management intervention, actual standards quickly become irrelevant and occasional negative outcomes have less impact. Officers start to recognize that things go wrong occasionally, but as long as they remain below the radar, the job gets done and nobody cares!

Officer Created Jeopardy occurs when officers do not follow established tactics, policies, or training, needlessly placing themselves or others at significant risk of harm. It usually involves some aspects of normalization of deviance because the officer's behavior generally is contrary to training, policy and, frequently, good judgment. If officers choose to act in this way, they may act in a tactically unsafe manner or make

Normalization of Deviance is generally described as the gradual process through which unacceptable practice or standards become acceptable.

a reckless decision simply because doing so has worked in the past without repercussions. The behavior is often enhanced by the afterglow of a successful outcome—high fives and back slapping—that overshadows the rash actions the officers took and the risk exposure to all involved. That is until someone says “That’s nuts! We’re lucky it worked!” Officer created jeopardy also breeds contempt and mistrust among officers who are exposed to the danger and the potential ramifications of the behavior.

Examples of officer created jeopardy include:

- Violating the personal space of a subject and acting aggressively to evoke a reaction or body contact;
- Entering a person’s property without legal authority or permission to do so;
- Rushing or acting hastily at an incident;
- Forcing a confrontation or the need for use of force; and
- Leaving cover to confront an armed subject.

Officers finding themselves in these situations often respond with force in an attempt to get out of the danger they initiated.

Consequences

Unfortunately, in today’s media obsessed culture, the public has access to videos on YouTube, news reports, or commentaries that purport to show officers ignoring departmental policy and/or training or acting in a manner that appears to be contrary to departmental expectations. Some of those incidents have resulted in tragedy and social unrest; while others have caused injury to employees and the public, as well as damage to property. Analyses of these examples demonstrate how allowing deviant behaviors to exist in an organization will eventually be costly and frequently lead to a loss of the community’s faith and trust. This can pose an enormous threat to the effectiveness of the police agency.

Your Organization Has A Culture: Are You Supporting It?

Organizational culture is a system of shared expectations, standards, and beliefs that direct how people behave in it. Every organization has its own unique culture that provides

the guiding principles, rules, and boundaries for its employees’ conduct. This means that every employee, regardless of position, is responsible to maintain the culture of the organization in their everyday job assignments. Fulfilling this responsibility is critical in law enforcement, where employees work independently and have a significant amount of discretion afforded to them at every level.

Know Before The Media Does!

According to Audrey Forbush of Plunkett Cooney, LEAF’s Legal Advisor, a common theme in the media and in a number of television and movie police dramas is that police think it is alright to bend the rules, knock people around, invade their property, or take advantage of the weak as long as they “get” the bad guys. She emphasizes that most real world police officers believe in the process of law and go to great lengths to try and uphold their responsibility to follow it. But it is top management’s responsibility to lead and lay the foundation of trust so officers can maintain their and the department’s integrity in the effort to follow the rules and do the right thing. Management must provide industry standard policies and training that will guide officers in doing their job. Providing the appropriate tools and weapons, and teaching the mechanical skills to use them, is also important. Forbush points to the U.S. Supreme Court decision in *Canton v Harris*, 489 U.S. 378; 109 S.Ct. 1197 (1989) as the gold standard for establishing that officers must be trained in those job tasks that are “usual and recurring situations that municipal employees face.”

Once officers know what is expected of them, they also must understand the discretion they have to make decisions as they regularly encounter evolving incidents and challenges. Management must teach its officers to think outside the box for solutions when they face rapidly changing dynamic situations that may not fall within their frame of reference, or do not fall within the specific guidance of the department. They must know how to apply what they know of the law and policy and adapt it the best they can to the situation. It is important for the officers to know when escalation and de-escalation may be appropriate, and that clearly describing the specific acts they confronted and the action they took in

Officer Created Jeopardy occurs when officers do not follow established tactics, policies, or training, needlessly placing themselves or others at significant risk of harm.

response to control each act in the situation will help define the outcome of the incident and defend their decision making.

According to Forbush, accomplishing this requires management to develop and institute an audit process that functions as an early warning of any deviant activity or abhorrent behavior. She stresses that the only way to ensure the culture of an organization is intact as top management has defined it, is to regularly look at what the organization is doing, root out incidents of normalized deviance and officer created jeopardy, and take appropriate action.

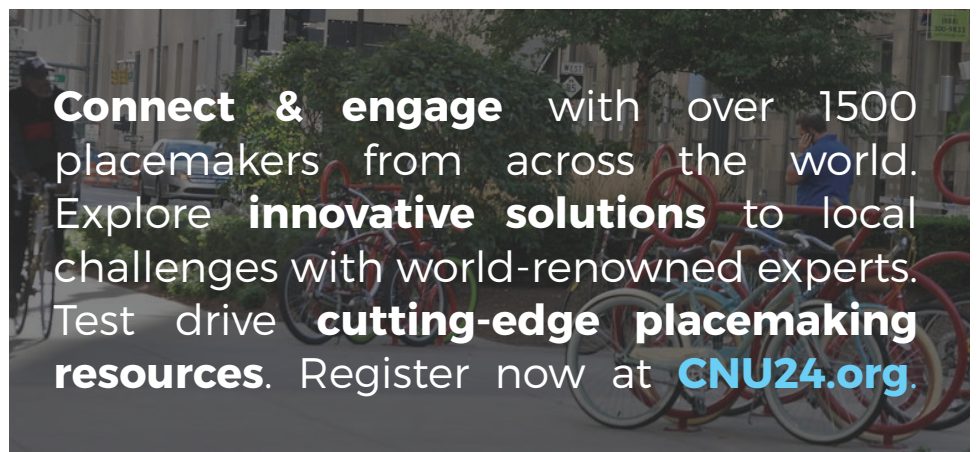
Action Points

Evaluate your operation to see how well your organization is meeting these recommendations:

- Establish up to date policies and rules to guide employees.
- Provide officers training in policies, rules, and required skills.
- Train employees in the philosophy of policies and management expectations of behavior, including the rationale for the appropriate use of discretion in decision making.
- Supervise employees by having a presence, reviewing their actions, and holding them accountable for the decisions they make.
- Hold supervisors accountable for supervising and maintaining management's expectations.
- Document, document, document! It is your proof!



Gene King is a loss control consultant and the Law Enforcement Action Forum (LEAF) coordinator for the League.



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Does the privacy exemption apply to incident reports involving student-athletes?

FACTS

ESPN submitted a FOIA (Freedom of Information Act) request to Michigan State University asking it to provide incident reports involving a list of student-athletes over a specific period of time. ESPN sought the information to learn whether University policing standards are consistent and uniform for all students. The University produced two sets of records, but redacted the names and identifying information of the suspects, victims, and witnesses. The University cited the privacy exemption set forth in MCL 15.243(1)(a) and a related FOIA provision. ESPN sued on the basis that the University erroneously withheld the requested information.

MCL 15.243(1)(a) provides that a public body “may exempt” from FOIA’s disclosure requirement information that is of a personal nature if the disclosure would “constitute a clearly unwarranted invasion of an individual’s privacy.” Courts have determined that the exemption has a two-prong analysis—both of which must be met for the exemption to apply.

The first prong is satisfied if information contains “intimate” or “embarrassing” details of a personal nature. Michigan courts have indicated that “private or confidential information relating to a person” is information of a personal nature. Courts have also stated that although a name, in and of itself, is not information of a personal nature, information associated with the name may be information of a personal nature.

The second prong asks “whether disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” Courts have indicated that in making this determination, the public interest in disclosure must be balanced against the interest intended to be protected.

QUESTION

Does the privacy exemption apply to the request for incident reports of student-athletes under the facts as presented?

ANSWER ACCORDING TO THE TRIAL

COURT: The trial court agreed that the privacy exemption applied to names and identifying information of the victims and witnesses, but ordered the disclosure of the names of suspects if on the list of student-athletes identified by ESPN in its request.

ANSWER ACCORDING TO THE MICHIGAN COURT OF APPEALS:

The Michigan Court of Appeals affirmed the decision of the trial court as it related to ESPN’s request for information related to suspects. The Court held that “the public’s interest in governmental accountability must prevail over an individual’s, or a group of individual’s, expectation of privacy.” (The issue as it related to victims and witnesses was not appealed.)

ESPN v Michigan State University, No. 326773 (August 18, 2015).

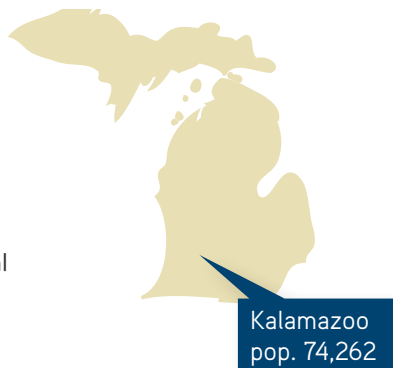
EDITOR’S NOTE: Case has been appealed to the Michigan Supreme Court.

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.

Kalamazoo Enlists Residents to Help Find Revenue Sources

By Rick Haglund

Many municipalities would love to have Kalamazoo's assets, which include a university and several colleges, two large health care systems, major pharmaceutical and medical device manufacturers, and a burgeoning, entrepreneurial life sciences industry.



But despite all the city's attributes, Kalamazoo's city government is struggling with financial shortfalls resulting from years of declining property tax revenues, escalating costs of providing services, revenue-sharing cuts, and state caps on revenue growth. There's even been occasional talk of potential bankruptcy unless the city's fiscal course is reversed.

City officials are determined not to let Kalamazoo fail. In what may be a first in local government, the city earlier this year assembled a 21-person panel of residents, business leaders, educators, and nonprofit officials with this charge: find new ways of boosting revenue. Operational cuts, consolidations, and reorganizations were off the table.

"The ground rules we established were that we were not going to cut ourselves to prosperity," said City Manager Jim Ritsema, who established the Blue Ribbon Revenue Panel in April. Ritsema said without more revenue, he will have to "gut the organization" to eliminate a projected cumulative deficit of \$24 million over the next six years—in a city with an annual general fund budget of about \$52 million.

Panel members met monthly in a remarkably open fashion.

A website was created for the public to view meeting agendas and minutes, as well as a raft of financial information and proposed new revenue options. Links to videos of the meetings on YouTube also were provided.

The city also contracted with the Upjohn Institute for Employment Research and Plante Moran, a financial consulting firm, to assist the panel. Ritsema, City Attorney Clyde Robinson, and other officials also attended the meetings. "This is a lot more transparent and inclusive process than just having the city manager offering options to the city commission," Ritsema said.

But the panel came up far short of what city officials were hoping for, reflecting the difficulty of persuading even the most informed citizens to support more money for government services.

Prior to a final meeting in November in which the panel voted on revenue recommendations, it appeared its top choice would be the creation of a 1 percent city income tax that also would levy 0.5 percent for non-residents working in the city.

But the recommendation was defeated. Instead, the panel proposed five options involving selling the city's parking system, promoting new housing development on vacant property near downtown, and regional consolidations of various law enforcement, and water and sewer services. Regional consolidation of services would require approval of surrounding communities.

"We did not solve the problem," said Sheri Welsh, a citizen representative who chaired the panel. "We haven't given the city commission much to work with. That's my disappointment. I'm not sure we answered the call."

Deputy city manager Jeff Chamberlain said it is unclear how much new revenue the city might get if the five recommendations were implemented. The city commission will consider them in January. The commission could vote to implement them, reject them, or consider a hybrid of the options, Chamberlain said.

Welsh, a longtime Kalamazoo resident who owns an executive search firm, supported the income tax, combined with a cut in property taxes, as a way of maintaining the city's attractiveness and financial viability. "The city has done a phenomenal job under (Ritsema's) leadership of doing all you can do" to control expenses, she said.

But other panel members said they believed the city could do more to cut costs while considering ways of boosting revenue. "Clearly the city of Kalamazoo is challenged by revenue," said Tom Huff, a Kalamazoo native and prominent downtown property developer. "But I think there are expense issues as well. I think (city officials) should be taking a fresh look at how they operate the city."



Kalamazoo's Blue Ribbon Revenue Panel at work.



Downtown Kalamazoo Art Hop

Huff said Kalamazoo needs to reduce the cost of its unionized public safety workforce that accounts for 60 percent of the city's general fund budget. "You can't do anything without renegotiating those union contracts, but nobody wants to hear that," he said.

Another problem Kalamazoo faces is that 52 percent of property in the city is not on the tax rolls because of the large number of education, health care, and other nonprofit entities in the city.

Ritsema doesn't discount the need for continually improving the way Kalamazoo operates. But he said the city has taken numerous actions to trim overall labor and other costs since he became city manager in 2013.

A recent early retirement offer trimmed 216 employees from the city's payroll. It hired 120 new workers but at lower wages, Ritsema said. The city has 633 employees, down 20 percent from 2009.

Kalamazoo also has cut the number of public safety workers, including police, fire, EMS and dispatch, by 16 percent since 2008. It currently has 254 public safety workers. Of those, 212 are cross-trained, sworn police officers and firefighters. The city had 249 sworn officers in 2008.

Last year, the city raised about \$90 million in a bond issue to fund retiree health care benefits. Current employees pay

20 percent of their health care costs, as required by state law. And its pension fund is more than fully funded.

"There are a lot of great things that Kalamazoo offers," Ritsema said. "It's a great community, but underlying the challenges to the city is a broken revenue model." Property tax revenues last year were down more than \$5 million from the \$33.8 million levied in 2009, and could take 15 years to recover, he said.

Although the Blue Ribbon Revenue Panel did not find a comprehensive solution to the city's revenue problems, city officials insist it was a valuable exercise that will help guide the city as officials working to put it on a stronger financial footing.

"We're looking at this as a learning opportunity and an important step in a long-term process," Chamberlain said. "I think it was an absolute necessary step. There are no easy answers. There is no low-hanging fruit."

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



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BOYNE CITY MAIN STREET

By League Staff

Boyne City Main Street is a volunteer-driven organization led by an appointed board, a full-time Main Street manager, and supportive leadership from community institutions such as the public school system, the Chamber of Commerce and city government. It focuses its efforts around the National Trust for Historic Preservation's Main Street Four-Point Approach®: promotion, design, organization, and economic restructuring.

Boyne City was one of the first communities to participate in the program under the auspices of the Michigan Main Street Center and it has been one of the most successful—recognized twice as the state's Main Street of the year, listed in the National Register of Historic Places, and once selected as a Great American Main Street semifinalist. Much of Boyne City's success is predicated on consistent collaboration between major community organizations such as city government, chamber of commerce, school district and the district library, with financial and technical support from state government agencies.

Actions Taken

1) EDUCATE KEY COMMUNITY LEADERS

After first learning of the National Trust's Main Street program in 1999, the city and Downtown Development Authority created a local study group and sent several community leaders to the national conference each for a few years. This built momentum locally, taught the participants about best practices from around the country, and put the city in a strong position to obtain assistance from state agencies.

2) IDENTIFY A COMMON CAUSE AND WORK TOGETHER

The list of local organizations supporting Main Street and participating in Team Boyne is impressive. This resulted from leadership of all those entities recognizing that they had a common interest in the success of downtown.





3) SOLICIT SUPPORT FROM REGIONAL AND STATE ORGANIZATIONS

When the State announced it was launching the Michigan Main Street program, Boyne City already had its foot in the door, thanks to relationships it had been building with state agency staff and assistance from the Northern Lakes Economic Alliance. Boyne City was selected in 2003 as one of the first communities to participate in Michigan Main Street.

4) MAKE A FRESH START

The Boyne City Downtown Development Authority, like many DDAs, had political and historical baggage from previous efforts. After deciding to launch the Main Street program, the DDA and city decided to clean the slate and start anew. As Kelly Larson, the first Main Street manager for Boyne City, put it, “If everyone thought this was just more of the same, it had no chance of making a difference.” All the DDA board members voluntarily resigned and a new DDA/Main Street board was appointed from scratch. This allowed old political issues to be put to bed and provided motivation for new people to get involved.

5) DECIDE ON THE RIGHT ORGANIZATIONAL STRUCTURE

City and chamber leadership initially wanted to house the program in one of those organizations, but ultimately decided,

with guidance from the state’s Main Street program staff, to give it more independence. The city, chamber, and other organizations still provide support to the program.

6) GO FULL-TIME

In 2003, the Main Street board hired its first coordinator. City Manager Michael Cain identifies the decision to hire a full-time, rather than part-time, staff person as a “huge” step. It may be difficult, Cain says, for local governments to cobble together funding for a full-time person, but the return on that investment is worthwhile.

7) FIND TALENTED VOLUNTEERS AND TURN THEM LOOSE

The Main Street approach is difficult to execute without a deep, dedicated roster of willing volunteers. Larson describes her early months as being full of cold-calling potential participants. She says it was important to identify a mixture of businesspeople and those with other interests in the downtown, so that the organization doesn’t become too single-minded. Main Street has also benefitted from the creativity of the local high school’s television and film students who have developed a number of promotional videos.



8) BUILD BUZZ WITH EVENTS

The program started out with a very limited budget, so early efforts were focused on low-cost events to increase activity. Stroll the Streets, a Friday evening summer music program, started in 2003. Main Street Coordinator Hugh Conklin describes it as “our signature event” and “hugely successful.” This was followed by Boyne Thunder, an annual boating event that is now a major fundraiser for the program.

9) INVEST IN PHYSICAL IMPROVEMENTS

Successful events build momentum and support for increased investment in the physical condition of a place. The Main Street harnessed this momentum by investing in façade and streetscape improvements and supported businesses increasing their investment in the downtown.

10) CELEBRATE SUCCESS

Boyer City takes every opportunity to publicly celebrate Main Street successes, including anniversaries, milestones, project launches, and grant awards. This shows the value of the investments that have been made and builds public support for the program.

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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Q. What is a quorum?

A. A quorum refers to the minimum number of members who must be present in order that business can be legally transacted. In municipal government, the definition of a quorum can vary. For general law villages, of which there are 208 in Michigan, the General Law Village Act defines a quorum and a majority. For home rule cities and home rule villages, the definition of a quorum will be in your city or village charter.

General Law Villages

“Quorum” means, except as otherwise defined, one of the following: (i) Three council members, if the village has adopted an ordinance reducing the number of trustees under chapter II. (ii) Four council members, if the village has not adopted an ordinance reducing the number of trustees under chapter II. (MCL 61.1a) A majority of the members of council shall be a quorum for the transaction of business. (MCL 65.5) In all votes for which not less than a majority vote of council is required, the calculation of the number of votes required shall be based on the maximum number that constitutes council. (MCL 62.1)

Q. How do you break a tie vote?

A. There is no way to “break” a tie vote. A tie vote means that the motion failed to pass.

Q. What can a council do if a quorum is not present?

A. The only action that can be taken is to: 1) fix the time to which to adjourn, 2) adjourn, 3) recess, or 4) recess to take steps to obtain a quorum.

Q. If a motion is made but not seconded, can it be voted on?

A. No, unless it is a specific parliamentary motion that does not require a second. However, after debate has begun, or if there is no debate after any member has voted, the lack of a second is immaterial. If a motion is considered and adopted without having been seconded, the absence of a second does not affect the validity of the motion’s adoption.

Q. What are the rules for abstaining from a vote?

A. Unless council rules have been adopted defining abstention, a member can abstain at any time. Although it is the duty of every member who has an opinion on a

question to express it by vote, a member can abstain since a vote cannot be compelled. No member should vote on a question in which he or she has a direct personal or pecuniary interest not common to other members of the organization. The rule on abstention, however, does not mean that a member is prevented from voting for himself or herself for an office or other position to which members generally are eligible, nor from voting when other members are included with him or her in a motion.

Q. Must the person who makes a motion vote for it?

A. Unless council rules state otherwise, the maker of a motion may vote against his or her motion but may not speak against the motion. The maker does not need to speak at all but if he or she does, he or she is obliged to take a favorable position.

Q. A citizen wants to videotape our council meeting. Can we allow this? Do we have to allow this?

A. According to the Open Meetings Act (MCL 15.262(1)), the right of a person to attend a public meeting includes the right to tape record, videotape, or telecast the proceedings. However, the council may establish reasonable rules so that the meeting is not unduly disrupted. Reasonable rules may include designating the spot/placement of the camera where it is the least obtrusive or distracting, for instance.

Q. What is Mayor’s Exchange Day? Our city used to participate, but it was a long time ago.

A. Mayor’s Exchange involves two cities or villages visiting each other’s municipality. Mayors and presidents have expressed the networking, learning, and mentoring during Mayor’s Exchange to be invaluable. The League matches up cities/villages based on interests and geography; past pairings included cities with their own electric utility, and a village interested in cityhood paired with a village that recently incorporated as a city. There are numerous possibilities and opportunities to learn about best practices and municipal operations in general. Visit the Michigan Association of Mayors website at www.michiganmayors.org for more information.

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

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Citizen Interaction Design

New information tools have transformed many industries in the past several years, but have rarely been applied to interactions between local governments and their citizens. New information tools could change one of the critical issues facing local governments: how to better enable citizens to engage with their local officials and neighbors in constructive, effective ways.

Citizen Interaction Design (CID) is a three-year partnership between the University of Michigan School of Information and the City of Jackson in which university staff and students work with government officials to design information-based solutions to community issues.

In our first two years, the CID program has provided nearly 100 masters students, working over 10,000 hours collectively on 18 projects, including:

- The DigJackson website (digjackson.com) and information campaign, communicating critical information on a major downtown construction project,
- The Distressed Property Report (dpr.cityofjackson.org), mapping the locations and processes of condemnation and demolition, and
- An Open Data initiative, including Michigan's first Open Data ordinance and an administrative policy to make government data easily available to the public.

Students and city staff collaborate to create products like these that are efficient and sustainable. But most importantly, these tools approach civic issues from the perspective of a citizen



of the 21st century, who relies increasingly on information to understand and participate in their community.

People are increasingly engaging in an economy of information sharing, and they will seek to live and work in the places that recognize and support that demand. Through CID, Jackson has begun to recognize the role for municipalities in this information economy, and this partnership has prepared us to better use public data and information tools to attract and engage tomorrow's citizens.

CID is currently recruiting new community partners. Visit citizeninteraction.org or email them at umsi.citizeninteraction@umich.edu for more information.



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