

# the review

January / February 2018

the official magazine of the  michigan municipal league

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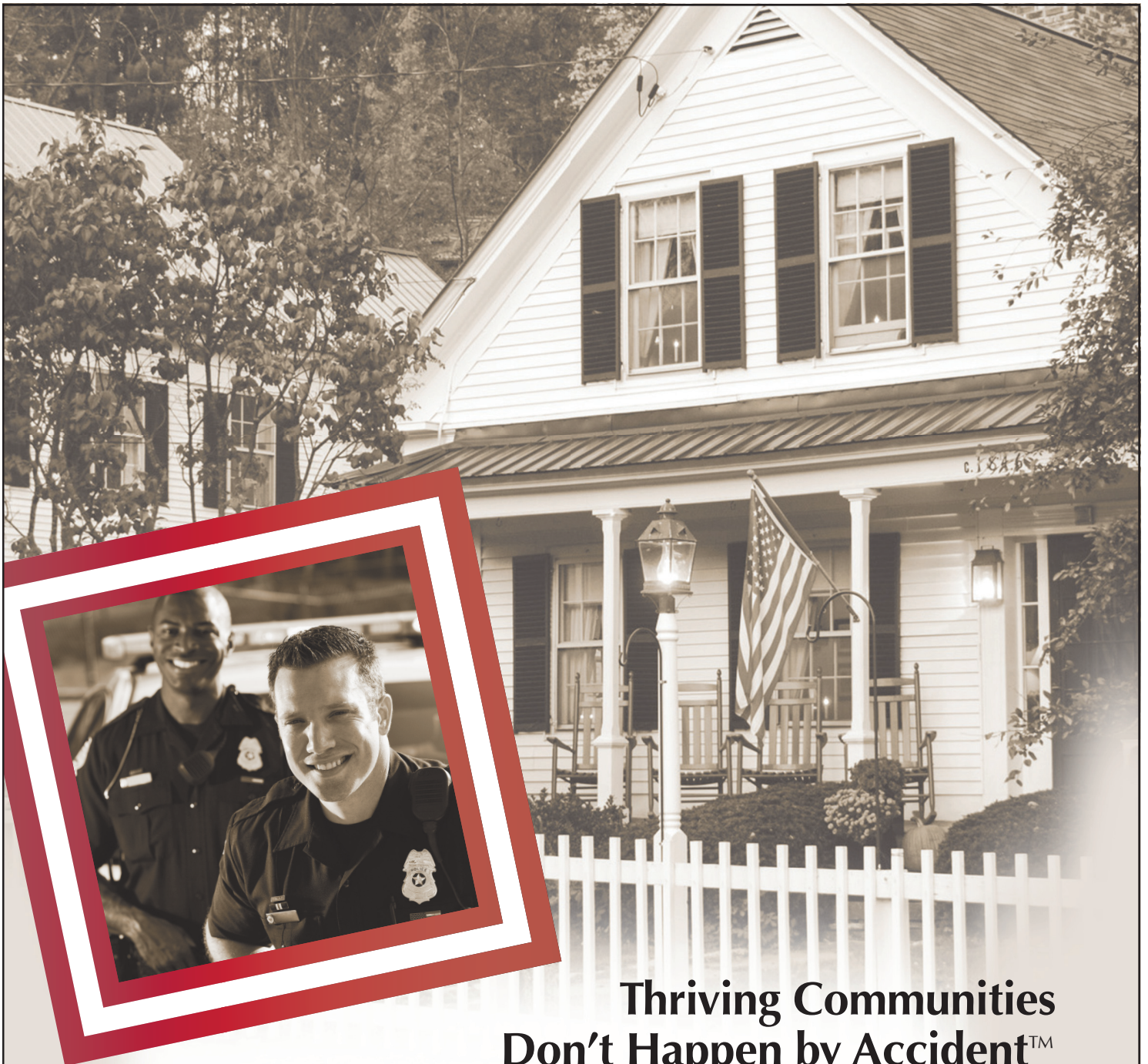


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# the review

The official magazine of the Michigan Municipal League

Volume 91, Number 1

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*The Review* (ISSN 0026-2331) is published bi-monthly by the Michigan Municipal League, 1675 Green Rd, Ann Arbor, MI 48105-2530. Periodicals postage is paid at Ann Arbor MI. POSTMASTER: Send address changes to THE REVIEW, 1675 Green Rd, ANN ARBOR, MI 48105-2530.



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## Finding Civility in Politics

Happy New Year! League staff and I want to extend our congratulations to all the newly elected officials and welcome you to the League. It can be daunting as you navigate through those first few months, so to get you started we are introducing you to some basic local government topics, as well as presenting articles of interest on our ongoing policy and placemaking work.

Serving as an elected official can be a challenge in these contentious political times. Whatever drew you to public service, I applaud your leadership, passion, and commitment to your communities. It won't always be easy, but it will be rewarding.

One can try, but it's difficult to ignore the divisiveness that exists in the political arena at all levels of government today. Although discord and rancor have always been a part of the political stage throughout history, social media has allowed it to feel particularly invasive in our everyday lives. We've lost our civility in solving problems. We often don't listen to each other, and it's become a win-lose game.

A while back, a friend forwarded me an op-ed from the *New York Times* ("How to Fix Politics" by David Brooks, April 12, 2016). Several of the author's points still resonate with me. The crux of what he says is that "the roots of political dysfunction lie deep in society. If there's truly going to be improvement, there has to be improvement in the social context politics is embedded in." He goes on to say that we used to be a society that was once deep-seated in a sense of community, which shifted to a mind-set that was more individualistic following World War II. People often don't even know their neighbors anymore and civic life has deteriorated. He states that by 2005, 47 percent

of Americans reported that they knew none or just a few of their neighbors by name. Brooks references a book titled *The Vanishing Neighbor* by Marc J. Dunkelman that talks about middle ring relationships—the PTA and the neighborhood watch, for example. He says that this is where people become skilled at deliberation with people who have different political opinions, but still get things done. But, he says, with these middle ring relationships deteriorating, Americans have become worse at public deliberation. People are finding it easier to ignore inconvenient viewpoints and facts.

This is where our challenges come in—and more importantly, opportunities—to change the political discourse. We all want the same thing for our communities and residents—jobs, safety, good schools, recreational and cultural opportunities, and vibrant downtowns, to name a few. Setting aside our differences and connecting with our fellow residents, being flexible and open-minded, is something for all of us to work towards. Brooks says that if each of us fulfill all our discrete individual desires, we end up with a society that is not what we want at all.

Make plans to attend the League's Capital Conference, which takes place in Lansing on March 20-21! It is important to get to know your state representatives and share your concerns with them. Some of the topics that will be on the agenda include Medical Marihuana, Michigan Election Law, Other Post Employment Benefits (OPEB), Smart Cities, and Civility and Civic Discourse.

One final note: seminars for newly elected officials are taking place in January. Be sure and check out the League's training calendar at [www.mml.org](http://www.mml.org).



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# SENDING YOUR BOAT OUT TO MEET *the Tide*

*Because recreation is an economic driver in Sandusky, the city chose to pursue a Five-Year Recreation Plan on its own to complement the Rising Tide planning efforts. Photo courtesy of Michelle Bennett, Beckett & Raeder, Inc.*

By Leah DuMouchel

“How do we help our smaller communities in Michigan, that may not have been included in the great economic comeback... participate [in that comeback]?” This question, asked by Governor Rick Snyder during the 2017 State of the State address, was the one that launched the statewide Rising Tide economic development program two years earlier.

To balance and complement the much-needed central core revitalization of our state’s largest and oldest communities, Rising Tide sought to refocus a portion of the state’s resources in talent, housing, and economic development on a different type of community—less populous and often less urbanized, with an operational relationship to its rural surroundings, and characterized by indicators of economic distress such as poverty, unemployment, and high rental occupancy and vacancy. Based on these statistics, one village or city in each of the State’s ten prosperity regions was selected: Newberry, Central Lake, Grayling, Evart, Harrison, Sandusky, Charlotte, Paw Paw, Hillsdale, and River Rouge.

All of the program’s components are available to any community; its success is propelled by the sustained focus and hands-on guidance of the Rising Tide framework. Local leadership, including business, residential, and agency representatives, in addition to elected officials and staff, was paired with Michigan Economic Development Corporation (MEDC) staff from its regional Community Assistance Team and the Redevelopment Ready Communities® (RRC) program in which nine of the ten communities are engaged. The RRC program, which connects planning efforts directly to redevelopment success, served as the organizing principle. After each community’s initial assessment and identification of needs, MEDC contracted with a team of consultants

led by Beckett & Raeder, Inc. to help execute initiatives related to planning and design, economic development and communications (with Place & Main Advisors), housing (with Land Use USA), and implementation (with Advanced Redevelopment Solutions). The League hosted and facilitated training for the participating communities, giving them a chance to build expertise and share with each other.

## Finding Capacity

The biggest challenge faced by Rising Tide communities will be familiar to many: lack of capacity. Almost never are there staff hours available for anything beyond the daily putting out of fires—frequently, even that is a challenge. Proactive practices are therefore nearly out of the question, whether this means adopting a regular “good news” communications outlet or actually reviewing the master plan every five years. Unfortunately, success without proactivity is a myth, and so this capacity simply must be found or developed.

The conversion of stakeholders into capacity through education is a strategy that can be adopted anywhere. It may be the single most effective tool for small communities to realize their aspirations. Each Rising Tide community’s Leadership Team met regularly, offering structure and access to this additional capacity as well as a critical opportunity to share information and align goals. Here, communities such as Grayling and Charlotte, which are engaged in the Michigan Main Street program, have a considerable advantage in the volunteer base developed by the program. It will be these Leadership Teams that determine whether the successes gained with the help of Rising Tide continue to propel these communities forward.



Internal organization was another source for “found” capacity. Across the various boards and commissions in any community, it is not uncommon to find duplicated efforts, missed opportunities, and cross purposes. These can be reduced, and precious resources conserved, by reviewing the groups’ missions and activities with the community’s vision in mind.

For example, Hillsdale’s new downtown form-based code, recommended for adoption by the Planning Commission, took direction from a design study commissioned by its TIF Authority outside of Rising Tide. An educational PowerPoint prepared during the project offers key recommendations to common and unique organizational challenges among the Rising Tide communities. A similar organizational approach can help extract the most relevant assistance from state and regional agencies, including MEDC.

While there is an impressive array of resources available to help communities with nearly any issue, securing them does require an investment of time and knowledge. Here a good example is River Rouge, which has taken on grant-assisted environmental and placemaking projects on top of its RRC-focused planning and economic development efforts, committing administrative resources in exchange for enhanced results.

In other cases, the most effective method of adding capacity is to purchase it as needed via consultant contracts, a function served by the technical assistance team retained by MEDC. This consultant relationship can remind communities, perhaps accustomed to thinking of themselves as cash-strapped, that there can be a substantial return on such investment. Both Harrison and Sandusky elected to add Recreation Plans to their suite of planning documents at their own expense, in order to both ensure that their substantial recreation assets are appropriately deployed, and to maintain eligibility for Michigan Department of Natural Resources grant funding.

### The Value of Planning

The Redevelopment Ready Communities® program’s direct connection between planning and economic development clarifies a link that can be murky in regular practice. Early on, each community identified prime redevelopment sites with the potential to impact the overall economic picture. These sites



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“...each individual success was built with tools available to all.”

Representatives from the Mammoth Distilling Company sat on Central Lake’s Rising Tide Leadership Team. The project helped them expand from Ann Arbor into Central Lake. Photo courtesy of Joe Borgstrom, Place & Main Advisors.


were then addressed in the planning efforts, which varied by the community's needs: Newberry and Evert incorporated them into their newly written master plans; Charlotte and Pau Paw created sub-area plans specific to the sites; Central Lake incorporated the site owners into the Leadership Team. The information gleaned from these activities was easily translated into marketing documents, and word spread through the local Rising Tide network. To date, several redevelopment opportunities have been capitalized upon.

### The Housing Connection

Findings from the Rising Tide communities also demonstrated the close link between economic development and housing, effectively showing that what happens downtown, happens everywhere. Housing context can curtail efforts to increase jobs and prosperity, regardless of whether the problem is poor condition, undesirable format, or insufficient supply.

Leadership in several communities reported that potential employers have brought the issue of inadequate housing to them, and interviews with representatives of all 10 Michigan Works! regional offices confirmed that the concern is

widespread across the state. Target Market Analyses showing that mixed uses and housing format choice that are appropriate for communities of any size can increase supply by demonstrating overall demand to risk-averse developers and lenders. They can also expand the range of housing choice beyond high-rise apartments and single-family detached dwellings. An educational PowerPoint presenting the results of a statewide survey on rental inspection programs helps communities consider such a program to raise the quality of their rental offerings.

While it's certainly true that the Rising Tide communities have benefited from the coordination and technical assistance built into the project, each individual success was built with tools available to all. An established community vision; a committed, flexible group of leaders brought together in a structured way to serve it; and seeking out well-managed partnerships made the difference every time. 

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# Medical Marihuana Facilities

*To Opt In or Not, That is the Question*

By Clyde J. Robinson

Photo courtesy of Matt Bach, Michigan Municipal League.



As this article was being drafted, the Bureau of Medical Marihuana Regulation within the Michigan Department of Licensing and Regulatory Affairs and the Marihuana Licensing Board established under Public Act 281 of 2016, issued emergency rules in anticipation of the State accepting medical marihuana facilities licensing applications on Dec. 15, 2017. Those emergency rules provide a clearer picture of the state requirements governing medical marihuana facilities as well as some guidance to local communities that choose to opt in to the Michigan Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 et seq.

The MMFLA does not replace or repeal the voter-initiated Michigan Medical Marihuana Act, MCL 333.26421 et seq., which created a system of registered qualifying patients and primary caregivers. That law remains intact. In fact, only registered patients and caregivers, or about 2 percent of Michigan's population, will be eligible to purchase medical marihuana or marihuana-infused products under the MMFLA.

A community is not obligated to permit the establishment of a medical marihuana facility within its borders. To opt in to the MMFLA, a community must adopt an ordinance authorizing the establishment of medical marihuana facilities. Many communities, given the absence of promulgated State regulations and the legal and practical uncertainties of permitting a business which traffics in a commodity whose possession, sale, and use is unlawful under federal law, are taking a wait and see approach. Other communities view the commercialization of medical marihuana as consistent with residents' desire and/or an economic development opportunity, and have chosen to embrace the commercialization of medical marihuana.



However, before making the decision to opt in, there are several questions a community should consider; 1) The number and types of facilities permitted; 2) Where should each type of facility be permitted? 3) What local regulations can be or should be imposed on the operation of facilities? and 4) Is it worth the effort? This article explores those questions.

### Dispelling the Revenue Windfall Myth

Some in the medical marijuana industry may claim that a community will see a significant increase in revenue by opting in to the MMFLA. The truth is that such increases are likely minimal and will be offset by additional administrative and enforcement expenses. Many in the industry are looking to lease older, obsolete buildings, and while this may yield an increase in taxable value of the real property, any increase is mitigated by constitutional limitations. And while the MMFLA permits a community to charge “not more than \$5,000” to a licensee to help defray the cost of administration and enforcement, under Michigan law a fee must approximate the cost of providing the service. Fees which exceed that cost are an unlawful tax.

Another source of revenue that cities will receive comes from the 3 percent excise tax that will be levied on commercial retail sale of medical marijuana and processed marijuana-infused products. However, at this point no one can provide an accurate idea of that revenue stream as it depends on the gross amount of sales and the total number of medical marijuana facilities in the State. Best guesses range from \$25,000 to \$75,000, assuming that your community has 1 percent of the total number of statewide medical marijuana facilities.

### Zoning Ordinance

To opt in, your community will need at least two separate ordinances. The first is an amendment to your zoning code to identify where a medical marijuana facility may locate by either right or special use. This requires an examination of the

nature of each type of medical marijuana facility operation. The various types of facilities are: growers, which are further subdivided into small Class A (500 plants), medium Class B (1,000 plants), and large Class C (1,500 plants) classifications; processors; safety compliance centers (testing labs); secure transporters; and provisioning centers (dispensaries). In the case of growers, the decision of where they can be located has already been made by the Legislature; MCL 333.27501 provides that grow operations may only be located in industrial, agricultural, or un-zoned areas. However, by opting in, a community need not permit every type of medical marijuana facility.

A zoning ordinance should address the locations and types of zoning districts where the various types of facilities would be a good fit. In particular, grow and processing operations may come with other concerns such as increased water use, odor issues, chemicals being disposed of in the wastewater effluent, and an increased carbon fuel footprint, given that the heat and light used in indoor grow operations are akin to manufacturing and industrial zones. On the other hand, compliance centers and secure transporters more closely resemble low-intensity commercial and office uses, while provisioning centers are a retail operation.

In determining where medical marijuana facilities may locate in your community, thought should be given to whether they should be dispersed or congregated. It has been argued that it's more

secure to permit growers and processors, in particular, to co-locate on the same or adjacent parcels. On the other hand, it may be desirable to disperse provisioning centers, so that one neighborhood does not bear the brunt of the effects of such businesses. Your ordinance may also provide that medical marijuana facilities, particularly provisioning centers, should be some distance apart from churches, schools, libraries, day care centers, and drug treatment centers.



*Photo courtesy of Matt Bach, Michigan Municipal League.*



Finally, some thought must be given to whether a medical marihuana facility may locate on a parcel as a matter of right or through obtaining a special use permit. While the latter approach provides more control, it also requires the exercise of some measure of discretion and subjective judgement. This may very well leave your community and planning commission open to legal challenge from an unsuccessful applicant or a neighbor who opposed a successful applicant. And the grant of a special use permit may not impose conditions unrelated to use of the land.

### Police Power/Licensing Ordinance


In addition to a zoning code amendment, a community will also need a general police powers ordinance which sets forth the process of licensure, requires certain standards to be met, and contains a statement of purpose and intent. The MMFLA grants a great deal of local regulatory discretion to municipalities; they are only prohibited from addressing the purity or pricing of marihuana, or adopting regulations that conflict or interfere with state regulations.

Therefore, a local ordinance should address security fencing and lighting, and nuisance concerns by addressing air-handling standards, energy consumption, and other environmental and safety issues. This is also where, unless there is to be no limit, the number of each type of permitted medical marihuana facility should be declared. If there is a cap or limit on the number of facilities, the ordinance should spell out how these licenses will be awarded, be it first come, first eligible, a random approach such as a lottery, or an evaluative merit-based process. The ordinance should set forth

**“...the regulatory landscape continues to evolve as the Bureau of Medical Marihuana Regulation has issued several advisory bulletins addressing how it will implement the MMFLA.”**

objective, quantifiable standards in order to limit or eliminate the amount of discretion that needs to be exercised by the official or board granting the local license in an effort to minimize legal challenges. These licenses are akin to receiving Willie Wonka’s Golden Ticket. Those who don’t receive a license have the monetary means to bring an action if they feel the licensing process was unfair or flawed.

This article attempts to call attention to the most basic questions facing a community that is deciding whether or not to permit medical marihuana facilities. And the regulatory landscape continues to evolve as the Bureau of Medical Marihuana Regulation has issued several advisory bulletins addressing how it will implement the MMFLA. As such, communities are advised to consult with their legal counsel prior to drafting ordinances.

The author would like to thank Thomas R. Schultz of Johnson, Rosati, Schultz and Joppich and Lauren Tribble-Laucht, city attorney for Traverse City, for sharing their materials on this topic. 

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# Six Ways to Improve Your Budget Process and Increase Transparency

By Denise Buckley & William Brickley

A good budget reflects the priorities of government and its elected officials, such as public safety and other community programs. Government leaders have to make choices about the services that are important and the plans to finance daily operations and capital items. These choices are reflected in the dollar amount of appropriations that are ultimately voted on and approved in each year's budget; but the numbers themselves do not generally communicate the thought process behind those appropriations.

The minimum requirements of Michigan's budget act (P.A. 2 of 1968, as amended) are relatively sparse. We'll help you expand beyond these minimum requirements to build a robust process that provides a written record of your policy reasoning, and greater transparency to your constituents—the citizens, bond holders, business leaders, government employees, elected officials, and surrounding communities (Be a good neighbor!).

Before a government can legally incur obligations to spend any resources, Michigan requires annual budgets for the general fund and all special revenue funds. Many governments also budget for other operations to show there is a plan in place and to establish accountability, efficiency, and limits on what can be spent. Multi-year budgets also allow governments to view future expected financial impacts and adjust them sooner. For example—a declining revenue source that may not be felt now but will require future adjustments. Changes can gradually be made to the budget, rather than abruptly down the road when the issue is more pressing. Because circumstances are always changing (new laws, changing property tax

## The Goals of Transparency

- Provide information in a clear and easy to understand manner
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base, lawsuits, union negotiations, etc.), a budget can help decision-makers navigate the impact each change has on their ability to deliver services.

Additionally, many communities use their budget as a communication device. They spread their message through citizen focus groups, town hall meetings, public budget workshops, video presentations, website feedback, and even social media. Since the budget puts policy decisions in writing, getting the message out there helps government decision-makers gain support and trust for their mission. The budget process and budget documents should focus on transparency. This means not only providing access to the information and data, but the process itself should be transparent.

### The Value of Transparency

Why should transparency be taken into consideration? It enables citizens to 1) actively participate in policy discussion, 2) give feedback to elected leaders, and 3) hold government decision-makers accountable for their actions. The budget process and document is a link from the citizens' needs and desires in the community to the government leaders acting on

their behalf. Utilizing the budget process effectively will convey the government's policies and financial plan to those it serves.

### Practical Guidelines

Here are some practical ways to produce a budget document that is transparent and easily understood:

- **Develop a timeline:** The timeline should start early enough to allow citizens and other stakeholders to voice their opinions. The process should start at least six months before the budget is approved to allow sufficient time for all levels of review and input.
- **Establish a strong message:** Communicate the importance and priorities of the budget to department heads.
- **Review the budget centers:** Do budget centers align with how each operation is managed? Does the budget make your department heads responsible? This is the time to make changes to consolidate or create more budget centers.
- **Determine target fund balance goals:** Addressing this up-front will help determine spending limits.







- Develop a solid financial budget for each fund: Ensure planned expenditures align with the revenue sources/fund balance available. Are the broad organizational goals of the community being met? Present your financial plan in an easily understood format. Consider the audited financial statements and use similar formats.
- Provide a clear and concise written message: This might include an executive summary to highlight the mission of the budget and priorities. It's also helpful to have individual fund summaries stating the purpose of the fund and budgetary highlights. Pictures and charts can make the budget more interesting to nonfinancial readers.

### Moving the Budget Process from Basic to Robust

Does this all seem like too much? One common complaint we hear is when a council person looks at their neighbor's budget document and process and says, "This is all too much—this is too much time and effort for our community!" We get it. You don't just go from a skeletal budget process to a robust process overnight. The good news is that you can gain a significant portion of the benefits by starting with the low-hanging fruit:

- Start with an executive summary for your budget. Keep it relatively short. In just two or three pages, most communities can lay out the essence of their financial plans and outlook. This by itself can allow constituents to gain a basic understanding of the local unit's financial overview.
- Next, ask each department head to write a short description (one-half to two pages) of what that department is doing and its budget impact. This can be included within the budget document next to each department's budget proposal.


From there, you're free to expand the process to the point where you feel the benefits match the effort. Preparing a good budget takes some work, but the benefits certainly pay off. Leading a government and protecting its resources is an important job. Having a strong budget that maintains financial health and delivers excellent services is something in which the entire government can take pride. 🍷

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# GUN REGULATION

BY LOCAL GOVERNMENT By Kim Cekola



Senate Bills 584  
and 586 would  
allow people to carry  
concealed, loaded handguns  
on Michigan elementary, middle,  
and high schools' premises.  
SB 584 would also allow people  
to carry concealed, loaded handguns  
into college classrooms and  
dormitories, sports arenas,  
bars, and other locations  
throughout the state.



After the October 2017 shooting in Las Vegas and the November 2017 shooting in Texas, municipal officials may be wondering what they can do to regulate guns. The answer is: very little. In 1990, the Michigan Legislature enacted the Firearms and Ammunition Act (PA 319) to put limits on what municipalities could control when it came to guns. Specifically, "A local unit of government shall not enact or enforce any ordinance that regulates, in any manner, the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms." (MCL 123.1102).

Almost a decade ago, in 2008, a man barged into the Kirkwood, Missouri city council meeting and shot and killed five people and wounded two others. This is terrifying for people who think public meetings are a safe place to conduct government business. Though there may be a sergeant-at-arms present to keep the peace, traditionally council meetings might have some hot-headed shouting and other disruptive behaviors, not life-threatening danger. If you are wondering if municipalities can ban the possession or carrying of guns in municipal buildings, the answer is "no"—at least not by the public. What about guns in polling places? The spokesman for the Michigan Secretary of State, which oversees elections, said, "State election law does not

address firearms laws in polling locations, so normal rules for carrying laws apply." (*Ann Arbor News* Nov 4, 2016)

In addition to the state pre-empting the field of gun control, Michigan is an open carry state—meaning, under state law, an adult may openly carry any legal firearm. The concept of openly carrying firearms in a library, school, or city hall can make people uncomfortable. There have been several cases in Michigan resulting in fine-tuning the area of gun control and municipalities.

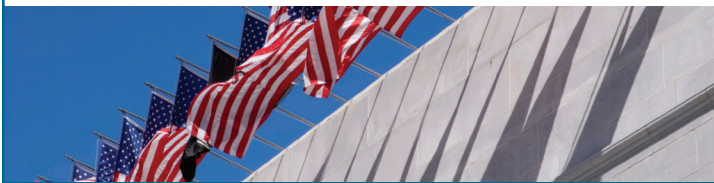
## Court Cases

In 2001, the City of Ferndale passed an ordinance prohibiting the possession or concealment of weapons in all city-owned or city-controlled buildings (with exceptions for law enforcement officers, and auxiliary and retired police officers). The ordinance was challenged by the Michigan Coalition for Responsible Gun Owners, a group that promotes the safe use and ownership of firearms through education, litigation, and legislation. The case was decided by the Court of Appeals, and due to pre-emption by the state on firearm regulation, the ordinance was found invalid.

Another case, *Michigan Gun Owners v Ann Arbor Public Schools*, was decided in 2016. In this case, a person came to a theater performance at a local high school openly carrying. The school district had passed rules banning the possession

# Mika Meyers PLC

Attorneys at Law

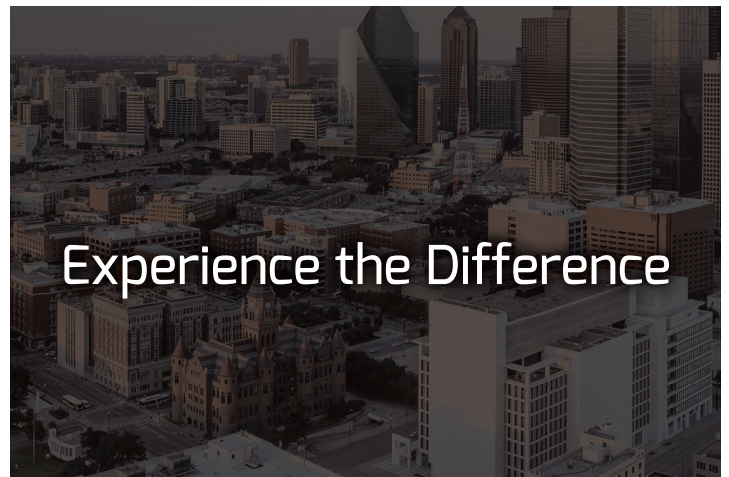


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of firearms on school property and at school-sponsored activities. The rules were unsuccessfully challenged due to a school being found to not be a “local government,” nor are schools controlled by local governments. Subsequently, the school’s rule was not pre-empted by state law.

Back to the library scenario. In 2012, *Capital Area District Library v Michigan Open Carry* centered on whether library staff could ask open carry patrons to leave the premises, as their presence, particularly in the children’s reading area, was making other patrons very uncomfortable and upset. The library had passed regulations banning firearms. When challenged, the Court of Appeals found the rule to be pre-empted by state law.

## Permissible Local Regulation

So, what are municipalities allowed to control when it comes to firearms? The Firearms and Ammunition Act (PA 319 of 1990) allows a local unit of government to prohibit or regulate the transportation, carrying, or possession of guns by employees of that local unit in the course of their employment. The League has collected several sample city and village personnel policies addressing this permissive action. In full expression of home rule, some municipalities allow it and some ban it—it is a matter of local choice. It is recommended that cities and villages decide how they want to handle possession of guns by employees and then establish a policy (not an ordinance) regarding that position. In addition, PA 319 allows cities and charter townships (but not villages or general law townships) to regulate the discharge of firearms and pneumatic guns in city/township limits.

In *Czymbor’s Timber v City of Saginaw*, the city enacted an ordinance prohibiting the discharge of firearms and bows and arrows in city limits. The ordinance did not provide for the discharge of firearms for hunting, and it was challenged due to hunting being pre-empted by state law and regulated by the Department of Natural Resources (DNR). The Court of Appeals found that the DNR rule did not pre-empt a city from taking measures to assure public peace and safety as authorized under the Home Rule City Act. The case went to the Michigan Supreme Court and held.

## Open Carry

To reiterate, open carry is legal in Michigan. Therefore, a person may open carry in a public place as long as the person is carrying with a lawful intent and the firearm is not

concealed. There are areas, however, where open carry is not allowed (MCL 750.234d):


- depository financial institution
- church/house of religious worship
- court
- theatre
- sports arena
- day care center
- hospital
- an establishment licensed under the Michigan Liquor Control Act

## Concealed Carry

A person with a concealed pistol license may carry a concealed pistol anywhere in the state, except on certain premises (MCL 28.4250):

- schools or school property
- day care center or child placing agency
- sports arena/stadium;
- bar/tavern
- church/other places of worship
- entertainment facility
- hospital
- dormitory and classrooms of community college/college/university
- casinos

## Conclusion

Under Michigan law, it is legal to openly carry firearms almost everywhere (exceptions listed above) and it is legal to carry a concealed pistol anywhere (exceptions listed above). The only gun regulations all local governments can enforce are the possession of guns (for or against) by their employees at the municipal worksite (with exceptions for law enforcement, of course) and for cities and charter townships, whether to prohibit the discharge of firearms in their respective municipal boundaries. 

*Kim Cekola is the research specialist editor for the League. You may contact her at 734.669.6321 or [kcekola@mml.org](mailto:kcekola@mml.org).*





# Michigan Supreme Court Refines Property Tax Exemption Rules for Charities

By Laura Genovich

Property tax exemptions can have a big impact on local communities. Exempt properties do not generate tax revenue for local units or tax-sharing units (such as schools and libraries), but exempt properties still use tax-funded services, like police and fire protection. An increase in tax-exempt properties can, in turn, increase the strain on local budgets.

With that in mind, a recent Michigan Supreme Court decision has caused concern among many local taxing units as it potentially opens the door to more properties receiving exemptions as “charitable institutions.”

In *Baruch v Township of Tittabawassee*, the taxpayer operated an adult foster care facility with an “income-based” program, which required applicants to have made a minimum of 24 full monthly payments before being eligible for a reduced room rate. In other words, residents would first have to pay two years of full payments before qualifying for an income-based “charitable” rent reduction. The taxpayer sought a property tax exemption as a “charitable institution.” The township denied the exemption.



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The Michigan Tax Tribunal and Court of Appeals agreed with the township and denied the exemption, applying a six-part test previously established by the Michigan Supreme Court in *Wexford Medical Group v City of Cadillac*. In simple terms, that test provides that a charitable institution is exempt if it:

1. is a nonprofit institution;
2. is organized chiefly—if not solely—for charity;
3. does not offer charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services;
4. lessens the burdens of government;
5. charges not more than what is reasonably necessary; and
6. has an overall nature that is charitable, regardless of its budget.

The Tribunal found that the taxpayer failed to satisfy the third prong of the test because its admissions policy differentiated between individuals with and without the ability to pay.

But the Michigan Supreme Court reversed. The Court held that the third prong of the *Wexford Medical Group* test bans restrictions or conditions on charity that bear no reasonable relationship to an organization's legitimate charitable goals. This "reasonable relationship" test is to be construed "quite broadly to prevent unnecessarily limiting the restrictions a charity may choose to place on its services."

### In clarifying the third prong, the Court offered the following example:

A low-cost daycare organized to provide services to low-income families could reasonably prioritize the applications of single-parent families. Single-parent households might often, for wholly obvious and understandable reasons, have lower income than households with two parents. Single-parent households might also be less likely to have a parent able to stay home with the child and, therefore, are again more likely to be in need of daycare services. This restriction would thus bear a reasonable relationship to the organization's charitable goals because it seeks to provide its services to those most in need of such services.

By contrast, a low-cost daycare that prioritizes the applications of families who cheer for a certain baseball team should fail this test if the daycare cannot show how the restriction bears a reasonable relationship to a permissible charitable goal. That is not to say that such a restriction would not be permissible under any circumstances. Suppose a scholarship, which is funded through a baseball team's charitable foundation, restricts its applications to fans of the team. If the foundation can show that its fundraising is more successful when the application process is limited to fans of the team, then even this restriction might pass the test articulated today because the baseball team cannot offer scholarships if it is not able to gain the necessary donations to fund them.






## Wexford Test as Modified by Baruch

1. The institution must be a nonprofit institution.	<i>Baruch</i> does not modify this factor.
2. The institution must be organized chiefly, if not solely, for charity. <i>Baruch</i> does not modify this factor.	<i>Baruch</i> does not modify this factor.
3. The institution does not offer its charity on a discriminatory basis by choosing who among the group it purports to serve deserves the services but rather serves any person who needs the particular type of charity being offered.	<i>Baruch</i> held that this factor is “intended to exclude organizations that discriminate by imposing purposeless restrictions on the beneficiaries of the charity.” The correct interpretation of this factor is that a charitable institution may not impose restrictions or conditions on charity that “bear no reasonable relationship to an organization’s legitimate charitable goals.”
4. The institution brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.	<i>Baruch</i> held that “whether a charitable institution has a permissible charitable goal is evaluated in factor four[.]” If the institution’s restriction is reasonably related to a goal that meets this standard, then it is acceptable under factor three.
5. The institution does not charge for its services more than what is needed for its successful maintenance.	<i>Baruch</i> held that the analysis of a charitable institution’s fees should be conducted under this factor, not factor three.
6. The institution need not meet any monetary threshold of charity if the overall nature of the institution is charitable.	<i>Baruch</i> does not modify this factor.

In sum, a charity can satisfy the third prong—requiring that charity be offered without discrimination—even if it imposes restrictions on who receives charitable benefits, so long as the restrictions are reasonably related to the charity’s goals.

The Court also clarified aspects of the fourth and fifth prongs of the Wexford Medical Group test, as summarized on the chart above.

Many believe that *Baruch* will result in more properties qualifying for the “charitable institution” exemption, as it expressly allows organizations to impose conditions and restrictions on who can receive charitable services. At a minimum, the decision provides guidance to local assessors when reviewing exemption requests for charities. 

*Laura Genovich is a shareholder at Foster Swift Collins & Smith PC. You may contact her at 616.726.2238 or lgenovich@fosterswift.com.*



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# AVOID CHARTER CONFLICTS WITH MICHIGAN ELECTION LAW

By Chris Hackbarth

With the November 2017 elections now behind us, League members are urged to review their charters for possible conflicts with Michigan Election Law.

In 2012, the Legislature amended Michigan Election Law (PA 276) to provide for a uniform filing date for nominating petitions of 15 weeks prior to an election. Prior to this change, state law had set that deadline as 12 weeks prior to the election. This 15-week deadline supersedes any charter provisions.

Earlier this year, a number of Michigan communities found themselves in a situation where these now-obsolete references to filing deadlines within their charter placed them in a difficult situation. Their candidates were ineligible for the November ballot because they had relied on inaccurate filing information. Working with some of these communities and their state legislators, the Michigan Municipal League was able to promote a legislative solution that mirrored a similar occurrence in 2015. Michigan Election Law was amended to allow a community that had published incorrect filing deadlines—that candidates then relied on—to place the otherwise eligible candidates on the November ballot. Those communities would be subject to a series of accountability measures between the local clerk and the Bureau of Elections for additional training and election process audits.

## Update Your Election Deadlines

Communities utilizing filing deadlines or other election dates within their charter need to be aware of state election law changes and make the necessary adjustments to their internal processes or charter amendments to protect themselves from encountering this same issue in the future. The Secretary

of State's Bureau of Elections publishes an election calendar each year with all the relevant filing and election process dates outlined. The Bureau encourages communities to track these dates closely to avoid being out of compliance with state law. For those communities with obsolete filing deadlines in their charter, there are several options to help address this situation, short of amending their charter.

- **Resolution:** Under the Home Rule City Act, MCL 117.3(b)(3), a city can pass a Resolution to align their deadlines with state law:

*Notwithstanding any charter provision, the city may provide by resolution for any election provision that is consistent with the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.*

- **Charter Annotation:**  
A community can annotate their charter to reflect the status of state law by contacting the codification company responsible for maintaining their charter online. For example:

### November odd year election, no primary

*The charter language pertaining to filing nominating petitions for the regular city election is superseded by Michigan election law MCL 168.644e as amended under PA 276 of 2012. The candidate nomination petition filing deadline is 4:00 p.m., 15th Tuesday prior to odd-year November election.*

*For cities with elections other than November odd year (no primary), similar language can be crafted to reflect the specific situation for use in the annotation.*

*To help the League keep its charter database up to date, please email a copy of any Resolution adopted to accomplish these changes to Kim Cekola at [kcekola@mml.org](mailto:kcekola@mml.org).*

*Chris Hackbarth is the director of state and federal affairs for the League. You may contact him at 517.908.0304 or [chackbarth@mml.org](mailto:chackbarth@mml.org).*





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*Capital Conference*

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**Q:** Can municipalities require employees to live within the city limits?

**A.** PA 212 of 1999, the Residency Act, restricts public employers from requiring that certain employees reside within certain geographical boundaries as a condition of employment or promotion. The Act does not apply to volunteer or paid on-call firefighters, elected officials, or unpaid appointed officials. The exceptions are:

1. A public employer may require that the person live no greater than 20 miles from the nearest boundary.
2. If such a requirement is made, it does not apply to a married person whose spouse also works for a public employer with a restriction that, if not for the Act, would require him or her to reside a distance of less than 20 miles from the nearest boundary of his or her employer.

See the League's Fact Sheet: The Residency Act at [mml.org](http://mml.org)

**Q:** Our Fiscal Year begins on March 1 and we adopted our budget based on what we believed would be the maximum allowable millage under Headlee. However, after receiving our L-4029 from the county, we find the Maximum Allowable Millage Levy is greater than we anticipated. How do we increase the millage rate?

**A.** You can raise the millage and then amend the budget by holding a separate Truth in Taxation Hearing. The Department of Treasury has provided a specific form outlining the procedure: [https://www.michigan.gov/documents/868f\\_2682\\_7.pdf](https://www.michigan.gov/documents/868f_2682_7.pdf). The legislation it refers to can be found at <http://legislature.mi.gov/doc.aspx?mcl-211-24e>. Note that the public notice requirements are much more detailed than if you are doing this as a part of the budget hearing.

**Q:** Who is responsible for putting items on the agenda for a council meeting?

**A.** The procedure for placing an item on the agenda is a local rule. The offices typically responsible are the clerk, mayor/president, and the manager. Combinations of these offices are also common.

A typical agenda preparation provision looks like this (City of Fremont): "The City Manager and City Clerk shall prepare an agenda for each regular or special meeting of the City Council. The deadline for submitting items to the City Manager or City

Clerk for inclusion on the Council agenda is 12:00 noon on the Thursday preceding the Monday of the Council meetings. Agenda items from Councilmembers should be submitted in writing by the same deadline. Depending on the complexity of the issue, and the need for any research and preparation, staff will attempt to include requested items on a meeting agenda within two meetings after receipt of the request."

There are variations, such as in the city of Portage's:

"Any Councilmember, Mayor or City Manager may prepare items for consideration on the agenda of Council meetings. The Clerk shall prepare copies of the agenda of the business to be considered at each regular council meeting. No business shall be placed on the agenda by the Clerk unless received not later than 12:00 o'clock noon on the Friday preceding the meeting, except upon the approval of four (4) or more members of the Council."

And the village of Berrien Springs' council rules:

"The Village President, the Village Clerk and/or other responsible administrative officers or employees at the Village Hall, shall prepare the agenda or business for regularly scheduled Council meetings. Any other member or representative of committees, boards or commissions desiring to place a matter on the agenda shall notify the Village President, the Village Clerk, and/or other responsible administrative officers or employees at the Village Hall of such items by 4:00 p.m. on the Thursday preceding the next meeting. Items that the Village President or the Village Clerk does not receive by the stated deadline shall not be considered by the Council except upon the unanimous consent of the members present."

The League has over 50 sample council rules of procedure. We can customize a search and send you samples with specific provisions. We also have sample agenda item request forms.

**Q:** I sent a question to [inquiry@mml.org](mailto:inquiry@mml.org) and did not receive a reply. What happened?

**A.** The email address to reach the League's Inquiry Service is [info@mml.org](mailto:info@mml.org). An email sent to [inquiry@mml.org](mailto:inquiry@mml.org) would not have reached us. We are sorry that you reached out and did not receive a reply. We have now created [inquiry@mml.org](mailto:inquiry@mml.org), so either email address will reach us.

*The League's Information Service provides member officials with answers to questions on a vast array of municipal topics. Call 1.800.653.2483 or email [info@mml.org](mailto:info@mml.org) or [inquiry@mml.org](mailto:inquiry@mml.org).*



**COMMUNITY**  
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# Hudsonville Terra

## 2017

Success Grows Far Beyond Unique Building Transformation

By Lisa Donovan

“The Terra Square project already means so much to our community... The award itself is a cherry on a lot of whipped cream.”



# Square CEA WINNER!



Terra Square Farmers Market. Photo courtesy of Michelle Fare, City of Hudsonville.



Chef Nicholas Rusticus puts his culinary expertise to work at Terra Square's Sonder Eatery. Photo courtesy of Nicholas Rusticus.





## COMMUNITY Excellence Awards

**S**hiny new cars and eager salesmen filled Hudsonville's Hartman Chevrolet throughout the 1950s and 60s. But when the dealership closed, the years began to take their toll on the building. Not content with that outcome, city officials set about transforming the site into Terra Square, Hudsonville's freshest, multi-purpose community venue. That forward-thinking conversion propelled Hudsonville into the top spot in the Michigan Municipal League's 2017 Community Excellence Awards competition!

"The Terra Square project already means so much to our community. We have a farmers market, a restaurant, a reception hall, and a place for businesses to launch activities, so it's already had a major impact on the city," said Hudsonville Mayor Mark Northrup. "The award itself is a cherry on a lot of whipped cream."

## Sowing the Seeds

Just like the crops growing in this "Salad Bowl City," bringing Terra Square to light required a lot of time and effort. In fact, the seeds for the project were planted as far back as 2005. That's when Hudsonville partnered with Ottawa County on the Urban Smart Growth Demonstration Project, designed to show that quality design and smart placemaking could help cities like Hudsonville attract and retain residents.

Over the next 10 years, the city sought input from residents and business on a variety of other initiatives, including an Architectural Design Elements Portfolio, Downtown Master Plan, and Downtown Zoning Ordinance. The culmination was 2015's award-winning Imagine Hudsonville 2030 Plan. The plan sets out four overarching goals for the city to strive for by

the year 2030: be a city that's more distinctive, more livable, more vibrant, and more connected. The city is committed to making those goals part of residents' everyday thinking about the community's future.

"Those are our buzz words," said City Manager Patrick Waterman. "We use them all the time when we refer to projects we're working on. We say 'That's a connected project or this idea will make us more vibrant.'"

## Top of the List

To begin implementing the Imagine Hudsonville 2030 Plan, the city established several quality of life enhancement projects, including Terra Square, a "woonerf" (European-themed living street) along Harvey Street, beautification of Chicago Drive and Service Road, and the extension of a non-motorized pathway connection under Chicago Drive.

Terra Square got top billing after an Imagine Hudsonville community survey showed a strong desire for a permanent farmers market. Primary funding for the project came from a \$4.6 million bond, strategically issued to avoid any increase in the overall tax millage rate. But in typical Hudsonville fashion, they got the community involved in the funding, as well. A local fundraising effort generated over \$180,000 in donations from residents, local businesses, service organizations, local foundations, and regional employers.

"It gave us community buy-in. People wanted to have a stake in this project," said Waterman. "It also allowed us to finish the building with higher quality amenities than we had originally planned."

The community's support was evident on opening day—June 3, 2017—when more than 2,700 people showed up for the ribbon cutting!





## Evolving Project

Creating a farmers market was the original intent for Terra Square, but it has evolved to include a farm-to-table restaurant, co-working space, and event space. The farmers market has already met with great success, with the number of vendors doubling in the past year. Andrea and Steve Moorman of Moorman Family Farms, are pleased to be among those vendors. They bring products such as beans, tomatoes, squash, and corn to the market, and supply crops to Sonder Eatery, the on-site restaurant.

"It's very consistent. We have people who come every week," said Andrea. "We grow everything organically and we've reached a huge audience in Hudsonville that really likes that. Based on what we did this year, we're expanding our products and CSA (Community Supported Agriculture) members next year."

At Sonder Eatery, Chef Nicholas Rusticus features products from a variety of local farms in his dishes. "It's a very welcoming, comforting, chef-driven, locally inspired eatery," said Rusticus, who trained in the Culinary Arts program at The Art Institute of Phoenix. "My hometown is putting all the time and energy and investment into the farmers market and a co-working space that you usually see in big cities. I wanted to be part of that and really grow my business in the next 5-10 years."

The co-working space has also been a big hit. For \$100 per month, members have 24/7 access to features such as high-speed Internet and a conference room/work room as well as a printer/copier/fax. The initial 10 memberships sold quickly, and more people are on the waiting list.

"The space is phenomenal," said member Christian Converse, a senior catalog developer for OFS Brands who used to work from home. "And I love the fact that I get to connect with other people. A few are in the furniture manufacturing business like I am, so I feel like I am part of the community more."


As for the event space, you only have to glance at the reservations calendar to know it's popular. It's already booked for every Saturday for the next year!

## Reaping the Rewards

Terra Square's success can be measured in a number of ways. Users are clearly pleased based on positive comments and the continual hum of activity in the building. That success has several spill-over effects for the city. The first comes from Terra Square's multi-use design. From the farmers market to the restaurant and the co-working and event spaces, each element generates a revenue stream for the city and increased exposure for the other elements. In fact, Terra Square has already exceeded expectations in that regard.

"The goal was for the building to be self-sustaining," said Waterman. "We thought that would take three years, but we're already predicting it will be self-sustaining in its first year."

And perhaps the biggest benefit is coming in the form of increased private investment interest in the city's downtown. Hudsonville Winery/Pike 51 Brewery decided to relocate and build a full-scale restaurant and brew pub/winery just a block from Terra Square. A private developer is planning to build a mixed-use, two-story building adjacent to Terra Square. Pizza Ranch underwent a \$1.5 million remodel, and other nearby businesses are improving their properties. And the city now gets frequent calls from people interested in growing their business or investing in downtown Hudsonville.

"This is our new norm, our new identity. I routinely get asked what's going on at Terra Square," said Northrup. "It brings home what a good plan with a lot of community input, effort, and marketing can do. This is the fruits of all that labor." 

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*Lisa Donovan is the communications specialist and editor for the League. You may contact her at 734.669.6318 or [ldonovan@mml.org](mailto:ldonovan@mml.org).*

# THE LEGALITIES OF SOCIAL MEDIA

By Steven Mann



In today's world of technology and communications, communities are increasingly reaching their residents and marketing their services through social media. It has become common for cities, villages, and nearly all forms of local, state, and federal government to have an active presence on Facebook, Twitter, Instagram, LinkedIn, and other popular social media sites. This presence provides communities with an efficient and economical way to communicate with constituents, market events, operate transparently, and distribute important or urgent public service announcements. Maintaining a social media presence, however, may subject your community to unexpected consequences.

This article will explore certain legal requirements implicated by a governmental entity's use of social media. Use of social media can have unintended legal consequences: a duty to provide copies of social media communications in response to a request for records, a duty to retain posts or communications transmitted via social media, and a responsibility to ensure social media communications by members of the city or village council do not run afoul of the Open Meetings Act.



## Social Media Communications Are Subject to FOIA

The Freedom of Information Act ("FOIA") subjects all "public records" to disclosure, unless specifically exempted by an express statutory exemption. As a self-proclaimed pro-disclosure statute, exemptions from disclosure under FOIA are construed narrowly. FOIA, although written decades before social media was even created, defines the term "public record" so broadly that it encompasses social media communications.

Under FOIA, a "public record" means a "writing" that is, among other things, "prepared, owned, used, in the possession of, or retained by a public body in the performance of an official [as opposed to personal] function." Likewise, the word "writing" is broadly defined to mean a "typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols..." Just as the courts have found that text messages satisfy the statutory definition of a "public record," electronic communications through social media also constitute public records under, and subject to, FOIA.

## Retaining Social Media Communications

Perhaps more concerning is the fact that electronic communications through social media, like any other public record, must be retained by the public body pursuant to record retention laws. Public records of local government entities





actually belong to the State and may only be disposed of in accordance with a duly adopted record retention schedule. Failure to properly preserve public records can constitute a misdemeanor criminal act.

As you can imagine, retention of social media communications can present practical challenges, especially with social media messages or content which are only momentary or automatically deleted (i.e., Snapchat). Proper retention requires that the communications be preserved, either electronically or in paper format. Preserving Facebook, Instagram, Twitter, and LinkedIn communications generally requires archiving tools and a staff to store printed or digital copies, or engaging a company to provide social media archiving services. For Snapchat or other similar social media where the communication is ephemeral, a retention copy of the communication needs to be made before the content vanishes (i.e. prior to posting).

### The Open Meetings Act

Social media communications can also present serious concerns with respect to open meeting requirements under the Open Meetings Act ("OMA"). As with FOIA, the OMA intends to promote accountability in government, and the Act is construed liberally in favor of openness. The OMA is written so broadly that it can apply to members of a governing body sharing views or exchanging ideas through social media communications.

Under the OMA, all meetings of a public body must be open to the public, and all deliberations of a public body must take place at an open meeting.

The courts have interpreted "deliberations" very broadly to mean simply "exchanging views" or "discussing" matters.



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“Maintaining a social media presence, however, may subject your community to unexpected consequences.”

The Michigan Court of Appeals recently applied these requirements to group emails between members of a publicly elected parks commission, finding that the email exchanges constituted private, closed meetings and impermissible deliberations in violation of the OMA. The facts of the case involved four parks commissioners exchanging numerous emails regarding matters which would soon come before the parks commission for consideration. The members actively engaged in thoughts and plans on how to handle the matters. At subsequent meetings, the matters were handled just as had

been discussed in the emails. The court found that the group emails constituted an unlawful “meeting” under the OMA and that the defendants had violated the OMA by “deliberating” outside of a meeting open to the public.

Although in this case the communications by the parks commissioners took place by email, had the communications been in some other electronic form, such as through social media posts or messages, the results would be the same. In order to comply with the OMA, the communications by the parks commissioners would have needed to take place at a meeting open to the public, following proper posting of public notice, and otherwise complying in all respects with the OMA.

Communities should recognize that record retention requirements extend not only to email and text messages but to all forms of electronic communications—including social media. Communities should consult with their legal counsel to adopt social media policies addressing all aspects of use of such services by the community, its employees, and members of its governing body. Public officials should tread cautiously when engaging in social media communications regarding public business to avoid any contravention of the OMA. 

*Steven Mann is a senior principal with Miller Canfield practicing in the areas of public finance and municipal law, with a special focus on the Open Meetings Act and Freedom of Information Act. You may contact him at 313.496.7509 or [mann@millercanfield.com](mailto:mann@millercanfield.com).*

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# What's the Real Price of a City Income Tax?

By Rick Haglund

**B**enton Harbor voters narrowly approved a city income tax in November, the first Michigan city to do so in 24 years. But the economically struggling community could end up losing for winning.

Whirlpool Corp., the appliance maker founded in Benton Harbor 106 years ago and still the major employer in the city, said before the election that it wouldn't bring any more jobs to Benton Harbor, should the income tax pass. The income tax proposal also was opposed by the Cornerstone Alliance, Berrien County's public-private economic development agency.

"In an already ultracompetitive environment, the proposed income tax will make it more difficult to recruit new businesses to Benton Harbor," Cornerstone Alliance CEO Rob Cleveland wrote in an op-ed in *The Herald-Palladium* newspaper prior to the election. "It will cost residents money and will eliminate jobs in the City of Benton Harbor."

In East Lansing, business groups and other employers helped defeat an income tax proposal in November. The Lansing Regional Chamber of Commerce pushed to have the proposal removed from the ballot. Michigan State University, East Lansing's largest employer, also opposed the income tax and instead offered the city \$20 million over 10 years to help it maintain services and reduce debt. East Lansing rejected the offer as insufficient.

The income tax would have raised about \$10 million a year and was paired with a \$5 million property tax cut. The additional revenue would have helped pay down nearly \$200 million in city debt, much of it in pension and retiree health care obligations.

Ann Arbor also is considering putting an income tax proposal before voters because of state revenue sharing cuts and property tax revenues that aren't keeping up with inflation.



Photo by Don Campbell/The Herald-Palladium

## Seeking a Solution to the Municipal Finance Crisis

But rather than fight tax proposals and merely suggest that cities need to become more efficient in providing services—something most cities have been doing for years—business leaders need to become more engaged in helping end Michigan's municipal finance crisis.

The problem has been well-documented. Cities experienced huge declines in property values during the Great Recession, which led to severe reductions in property tax revenues, the major source of funding for most cities. Although property tax revenues are growing again, the state limits how much local governments can capture. On top of that, state government has shorted municipalities \$7.5 billion in expected revenue-sharing payments since 2002.

Faced with this financial squeeze, cities have cut services and underinvested in streets, parks, transit and other amenities that contribute to their economic vitality, and attract new workers and residents. These are the kinds of placemaking investments that companies such as Amazon, which is looking to establish a second headquarters employing 50,000 workers, are seeking when considering where to invest. "The bottom line is that something has got to give," said Eric Luper, president of the Citizens Research Council of Michigan. "Local governments are doing all they can with less money. It's affecting the quality of life for these communities."

## Supplementing Declining Revenue

Benton Harbor is planning to use its new income tax revenues to improve its crumbling neighborhood streets, sidewalks, and sewers that even Cleveland admitted “are in terrible condition.” Residents and businesses will pay 1 percent of their income to the city, while nonresidents will pay 0.5 percent. The tax is expected to raise about \$2 million a year, an amount equaling 29 percent of the city’s \$7 million general fund budget. The Cornerstone Alliance advocated for using a special assessment or millage to pay for infrastructure improvements.

Twenty-two other Michigan cities levy an income tax. Most were implemented by city council-enacted ordinances in the 1960s and early 1970s. Assessing an income tax became more difficult after passage of the 1978 Headlee Amendment, which required voter approval of new taxes. Ionia became the last city in the state to adopt an income tax, in 1993.

Ionia City Manager Jason Eppler said the income tax has diversified the revenue base and kept the city solvent. “It has really been beneficial to the community,” he said. “In 1993, the city was levying the maximum millage it could, 15 mills. But property values were stagnant and the property tax was not providing enough money to operate the city.”

Today, Ionia has a 9-mill property tax and is expected to collect \$2.3 million from the income tax. Property taxes are projected to fund just \$428,000 of the city’s \$5 million current fiscal year budget. Eppler said the income tax is advantageous to Ionia because a large number of people subject to the tax are nonresidents who work in the city.

## Are the Disadvantages Worth the Gain?


Critics say a local income tax puts a city at a competitive disadvantage in attracting new residents and business investment compared to neighboring locales that don’t have one. That has long been the argument of tax opponents in Benton Harbor, which is just across the river from

St. Joseph, a much more prosperous city that does not assess an income tax.

One notable exception to that argument is Grand Rapids, which implemented a city income tax in 1967 and boosted the rates in 2010. Residents and businesses pay 1.5 percent of their income, while nonresidents are taxed at 0.75 percent of income, up from 1.3 percent and 0.65 percent, respectively.

The income tax has helped Grand Rapids invest in infrastructure and amenities, contributing to making the city one of the most vibrant and attractive to talent in the state, if not the country.

Business leaders are becoming more cognizant of the municipal finance crisis and its impact on their ability to attract talent, which many say is their biggest challenge. Chris Hackbarth, the Michigan Municipal League’s director of federal and state affairs, said the League has had encouraging discussions with chamber of commerce leaders in Grand Rapids and Detroit, Business Leaders for Michigan, and the West Michigan Policy Forum. “I think they have a greater understanding of where we are trying to get to,” he said.

Most business groups dislike local income taxes. But rather than fighting them, business leaders must join local communities in pushing recalcitrant state lawmakers to revamp a broken municipal finance system. 

*Rick Haglund is a freelance writer. You may contact him at 248.761.4594 or [haglund.rick@gmail.com](mailto:haglund.rick@gmail.com).*



“The bottom line is that something has got to give,” said Eric Luper, president of the Citizens Research Council of Michigan. “Local governments are doing all they can with less money. It’s affecting the quality of life for these communities.”



# Communities Honored for Creative Responses to Housing Challenges

By Sarah Lucas

**N**orthwest Michigan's housing shortages have reached a crisis point, with affordable workforce housing so scarce that many businesses are being forced into difficult decisions about how to accommodate a smaller workforce. While the need for new housing is uncontested, it's becoming harder and harder to actually build it. Increasing development costs, high land values, a shrinking construction workforce, public opposition, and state and local policy barriers are high hurdles for the communities, developers, employers, housing agencies, and others that are working to build the housing that's needed.

It's been said that for every complex problem, there's a solution that's clear, simple, and wrong. Nowhere is that truer than in the region's current development landscape. While there are many fixes for development challenges, there's not a "silver bullet," or even a single entity, that can address them all at once. The problem requires multiple sectors coming together to overcome cost and regulatory issues: private developers need partnerships with communities and nonprofits to offset costs, while advocates and housing organizations must work to build support for new housing development.

This "all hands on deck" approach works, but it requires careful negotiations, relationship building, and a stick-to-it-iveness that can be hard to, well, stick to, when one or more of those housing hurdles is raised a little higher. Fortunately, Northwest Michigan is home to many passionate individuals, advocates, businesses, and organizations that are leading the collaborative solutions we need. At the October 2017 Northwest Michigan Housing Summit, the Housing Cornerstone Partnership Awards recognized three communities for their collaborative, proactive action to address complex, critical housing issues. Award recipients are working in cross-sector partnerships to lead new initiatives and explore creative solutions—and creating inspiring models for action that can be replicated throughout Michigan.



*The members of Leelanau REACH put their heads together to help develop creative housing solutions.*

## Leelanau County

One award went to the housing nonprofit Leelanau REACH, for its educational efforts, collaboration, and partnerships. REACH's efforts to build housing and address housing barriers in Leelanau County have accounted for the fact that housing solutions won't come just from government, the market, or advocates alone. REACH embodies the idea that all parts of the community must play a role in housing solutions, bringing passionate representatives together from across sectors to identify development opportunities, build partnerships, and create replicable models for workforce housing development.




### City of Charlevoix

A regulatory and advocacy approach in the City of Charlevoix, championed by the city's Main Street program, Convention and Visitors Bureau, Chamber of Commerce, and the city, was recognized for promoting dialogue and action on housing shortages. Local business interests have advocated for zoning solutions to workforce housing shortages, leading to changes that allow homeowners to rent out single rooms for workers, and a Home Share website that provides an avenue for renters and homeowners to connect. Meanwhile, the city continues to work with stakeholders and explore zoning changes that address development hang-ups.

### Benzie County and City of Frankfort

Understanding that workforce shortages are integral to Northwest Michigan's housing challenges, the City of Frankfort and a citizens group known as the Advocates for Benzie County were recognized for convening schools, government, business, and development interests around the issues of workforce development and housing production.

These partners have collaboratively identified development sites and opportunities to attract new business and jobs, and for students to learn construction trades while building affordably priced homes for the workforce. Their advocacy efforts, meanwhile, have made housing solutions an important priority County-wide, and have helped build multi-sector partnerships and engagement.

Northwest Michigan communities are looking high and low for realistic, replicable solutions to their housing and workforce shortages. The Partnership Award recipients provide the best practices they need, and pathways to follow in today's complex development landscape—hurdles and all. For more information on the Housing Summit, including presentations and materials, please visit [www.nwm.org/housingsummit](http://www.nwm.org/housingsummit). 

*Sarah Lucas is the director of community development for Networks Northwest. You may contact her at 231.929.5034 or [sarah.lucas@networksnorthwest.org](mailto:sarah.lucas@networksnorthwest.org).*





# Is RFQ the Tool for You?

Ideas, initiatives, and activities from the League's Civic Innovation Labs

By Richard Murphy

Communities around the state have embraced placemaking approaches in their downtowns and neighborhoods. While some have seen property owners and developers respond quickly to public space improvements, others have found that getting private sector investment requires a little extra work. And, without that participation from private developers, the impact of public efforts is limited.

Over the past year, the League's Civic Innovation Labs staff have been working to improve communities' engagement of private developers in the "placemaking implementation" process. With financial support from MSHDA, we found that many of our members needed help identifying and reaching out to developers. We reviewed communities' past efforts at marketing high-priority sites, and partnered with a few communities to pilot some new approaches.

## First Test: Ypsilanti

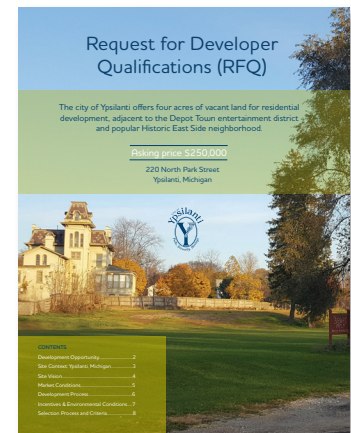
Our first iteration on this process was in Ypsilanti.

The city identified a 4-acre parcel in the historic neighborhood adjacent to their Depot Town district. The city had been attempting to sell the parcel for some years, but with little success. Having recently demolished a vacant structure on the property, and with home sales heating up nearby, the city was ready to try a new approach.

Beckett & Raeder, Inc.'s (BRI) designer, Christy Summers, drafted three site concepts based on the city's recently adopted form-based code and city staff's summary of previous neighborhood engagement.

We presented these concepts, along with a financial analysis, at a joint meeting of the Planning Commission, Zoning Board of Appeals, and Historic District Commission, hoping to identify any major objections before advertising the concepts, rather than waiting until a developer was at the table.

The eight-page RFQ document included these concepts and a list of the city's goals for the site, along with a community profile, a summary of the master plan and zoning designations for the site, available incentives, and relevant information from the market analysis. Giving developers two months to submit proposals, the city received five responses—including better proposals than they'd received in years of listing the property traditionally.





Site plan courtesy of Beckett & Raeder, Inc.

## Muskegon: Poised for Opportunity

In Muskegon, the city asked us to look at a site where a project had just fallen through. The property is very attractive—a vacant lakefront site adjacent to the municipal marina, a short walk from downtown—but due to a complicated set of easements on the property, the original developer was unable to physically fit their design onto the site.

As a result, outside design assistance was especially valuable. BRI was not only able to come up with a set of concepts that could fit onto the site in a way that respected easements, but also suggested ways that the site could better interact with the marina and surrounding streets.

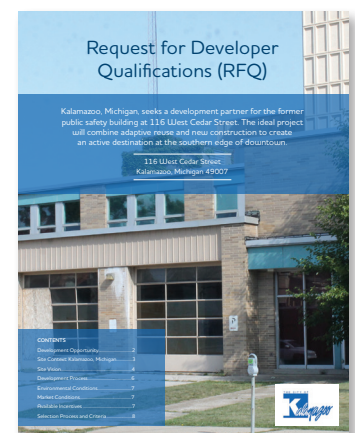
While we were creating the RFQ, a developer approached city staff looking for sites. The staff used the concepts that BRI provided and the conversations we'd had to show the potential of this site, and it was quickly under contract.

This showed the power of having pre-development conversations at the staff level before a developer was at the table. The city had already thought about how the site could work to advance public goals, and how to coordinate

development with surrounding assets, so they could effectively pitch it to a developer. In some cases, though, this might be too fast a process: if the site was one that multiple people already had interest in, a slower process that invited competition could be more appropriate.

## Kalamazoo: Getting Public Buy-in for a Public Site

Kalamazoo offered a site that did have a lot of known interest—a brownfield authority-owned former fire station on the southern edge of downtown. However, past inquiries didn't necessarily represent the highest and best use for the property in the public's eyes. One party wanted to tear down





the existing building to use the site as a parking lot; others proposed to rehab it for private professional offices. However, city staff and the mayor believed the history of the property merited both preserving the building and putting it to some publicly accessible use.

For this property, we not only worked with BRI, but also with an architect to consider site layout as well as fiscally feasible options for reusing and expanding the existing structure. City staff also decided it was important to vet the concepts publicly because of the prominence of the site, so we held a public open house to discuss the various concepts, as well as to collect feedback on preferred uses of the property.

The public confirmed staff's expectations, strongly preferring the preservation and reuse of the existing building, but also the addition of floors to the structure, allowing for more upper-story residential options. With that response in hand, the city could issue an RFQ for the property with added confidence in the vision that document laid out.


### Lessons and Resources

As of this writing, these three sites are still "in process," but some general guidance can be drawn out:

- An RFQ can be an effective process either for a site that hasn't received enough attention, or for one where the

community knows of developer interest and wants to lay out a proactive vision before selecting a partner.

- Whether or not an RFQ is ultimately issued, building consensus around site goals and concepts before marketing a site can help communities more confidently engage developers.
- The amount of public engagement needed on a given site will vary, depending on what work has been done already and the site's prominence. In general, though, it's better to have public conversations that end up verifying what's already known than to skip that engagement and risk concerns arising later.

Based on our experience and feedback, the League has created a "How to" guide on creating developer RFQs for high-priority sites. This guide and a template RFQ are available through the Redevelopment Ready Communities program at <https://www.miplace.org/resources/?filters=68&page=1>. 

*Richard Murphy is a civic innovations program coordinator for the League. You may contact him at 734.669.6329 or [rmurphy@mml.org](mailto:rmurphy@mml.org)*



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## It's simple. We love where you live!



By Kelly Warren

Creating healthy, vibrant communities is at the heart of everything we do at the League. Understanding that, the Membership Engagement team seeks to connect our members to our innovative programs and services, while striving to inspire positive actions that lead to greater prosperity for our communities.

As part of membership outreach, I've stopped by many communities to share information about upcoming events, award nomination deadlines, or to follow up on our directory questionnaire. I've not only been greeted by warm smiles and members thanking me for stopping in, but I've been exposed to some Michigan gems as well.

For example, when I recently stopped in the Village of Union City for a visit, I was greeted warmly by the woman at the counter. She introduced me to the city manager, Chris Mathis, and after chatting with them, I just felt like these two people were really vested in their community. I wanted to be sure to get her name before heading out, so I turned to her and extended my hand and asked her name. She said Linda Waite, then the manager shared with me that she is only the second female police chief in the State of Michigan. How cool is that?!

Besides the people, the other gems that I've come across recently are the Historical Museum in Gibraltar, the pop-up shops in Muskegon, and the Arts District in Benton Harbor. These people and places truly remind me of why we love where you live.

“I've not only been greeted by warm smiles and members thanking me for stopping in, but I've been exposed to some Michigan gems as well.”

### Resources for Elected/Appointed Officials

Are you a newly elected or appointed official? If so, welcome to the League family! I trust that you are getting acclimated to your new position. The League provides a variety of services for you, including the You Won Now What?! Newly Elected Officials Training. This course, offered through mid-January, is beneficial for newly elected as well as seasoned officials. Also, please familiarize yourself with the League's e-publications and sample documents (ordinances, Fact Sheets, and resolutions), which are readily available on our website.

For those new to office, be sure to attend training programs to learn all that you can to assist you in your new role. For the newly elected, it's helpful to participate in our Elected Officials Academy (EOA), which is a voluntary, four-level, recognition program. Recognition ceremonies for graduation from each level take place during the League's Capital Conference in front of your peers. EOA Ambassadors, who are Level 4 graduates and EOA board members, are trained to make presentations at council meetings about the value of participating in the EOA program. There is no cost to enroll, and once you enroll League staff will start tracking your attendance at League events for the purpose of earning credits. To enroll, or for more information about the program, visit [eoa.mml.org](http://eoa.mml.org).

In February, we will hold the Elected Officials Academy (EOA) Core and Advanced Weekenders in the always popular city of Frankenmuth. The Core Weekender is a requirement for those seeking to graduate from Level 1 of the Academy. The Advanced Weekender is for those that have already taken the Core course. It provides the opportunity for EOA members to obtain several elective credits in one weekend.





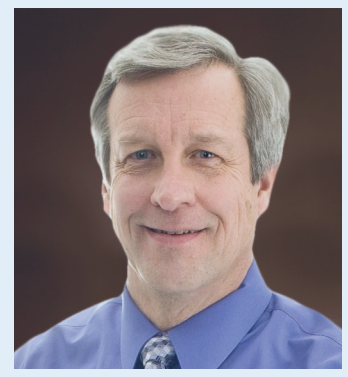
Summer Minnick



Kelly Warren



Emily Kieliszewski




Scott MacInnes

## MEMBERSHIP ENGAGEMENT TEAM

### Want to Get More Involved with the League?

- **Policy Committees:** If you are a seasoned official looking to be more involved with the League, consider signing up to participate in one of our policy committees. These committees consider new legislative ideas and provide positions on legislation as it is introduced. The committees are: Energy, Environment and Technology; Land Use and Economic Development; Municipal Finance; Municipal Services; and Transportation Infrastructure.
- **Affiliate Organizations:** Joining one of our many affiliate organizations offers another way to get engaged with the League. The five core groups that the League provides staffing for are the Michigan Association of Mayors; the Michigan Municipal Executives; the Michigan Black Caucus of Local Elected Officials; the Michigan Association of Municipal Attorneys, and the Michigan Women in Municipal Government. Check out the About page on the League website for a list of additional affiliate organizations. Also, be sure to attend You Need to Know! meet ups, where we cover a hot topic and build in networking time for you to get to know your colleagues from across the state.
- **League On-Site Presentations:** Would your community like to know more about the League? Our staff can attend a council meeting to present a primer on League benefits and services, or a presentation, along with an expert elected official, about the EOA.

Still looking for additional ways to get involved? Give us a call. 

*Kelly Warren is the director of membership and affiliate engagement for the League. You may contact her at 734.669.6310 or [kwarren@mml.org](mailto:kwarren@mml.org).*

## UPCOMING TRAININGS

**Jan. 10 — You Won, Now What?**  
Newly Elected Officials Training  
Westland

**Jan. 17 — You Won, Now What?**  
Newly Elected Officials Training  
Ann Arbor

**Jan. 23 — You Won, Now What?**  
Newly Elected Officials Training  
Coldwater

**Feb. 23-24 — EOA Core Weekender**  
Frankenmuth

**Feb. 23-24 — EOA Advanced Weekender**  
Frankenmuth

**May 18-19 — EOA Core Weekender**  
Grand Haven

**May 18-19 — EOA Advanced Weekender**  
Grand Haven

Sue Jeffers is a legal consultant to the League. You may contact her at [sjeffers@mml.org](mailto:sjeffers@mml.org).

# 6th Circuit Vacates FCC Orders Affecting Municipal Regulation of Cable Companies and Services

## FACTS:

The federal Communications Act (Act) regulates the way cable services, which include video programming, reach viewers nationwide. Under the Act, cable companies may provide cable services only if local authorities (franchising authorities) grant them a cable franchise. The Federal Communications Commission has the authority to make rules as necessary to carry out the purposes of the Act i.e., rules governing how local governments may regulate cable companies and cable services. Under the Act, franchising authorities do not have unlimited discretion in granting a franchise. The Act further provides limitations as to the amount of franchise fee that may be required.

In 2007, the FCC adopted two orders establishing rules impacting how local governments could regulate cable companies and services. The second order, in particular, expanded the rules to include incumbent providers as well as new applicants. Local authorities objected, and in 2015 the FCC finally issued a third order. Several franchising authorities then petitioned the Sixth Circuit for review of the orders on several grounds. In particular, franchising authorities objected to the FCC's expansion of its interpretation of a "franchise fee" to include so-called "in-kind benefits" or exactions with no explanation or rationale, reducing, if not totally eliminating, the franchise fee.

In addition, the FCC had adopted a "mixed-use" rule, which in essence states that franchising authorities can regulate only the provision of cable services over "cable systems" as defined by the Act, even though cable systems can also support telecommunications services (such as phone) and information services (such as certain Internet add-on applications). Local franchising authorities objected on the basis that the rule would prevent them from regulating "institutional networks" or "I-Nets." Institutional networks provide various services to non-residential subscribers rather than just video services to residential subscribers. Although the FCC conceded that its ruling was not meant to prevent local franchising authorities from regulating institutional networks, the question remained as to whether local franchising authorities could regulate other services like "information services" as defined by 47 U.S.C. § 153(24).

Local franchising authorities also objected to the FCC's extension in the second order of the mixed-use rule to incumbent cable operators and not just new entrants.

## QUESTION:

May the FCC adopt a rule regarding franchise fees that could be charged under the Act, which, in effect, undermines the Act, without providing explanation or reasons for such interpretation?

## ANSWER:

NO. The Sixth Circuit held that from a substantive and procedural point of view, the FCC must determine and explain "franchise fees" to determine whether cable-related exactions are, in fact, franchise fees under the Act.

## QUESTION:

Was there any statutory basis for application by the FCC of the mixed-use rule to incumbent cable operators, essentially barring local franchising authorities from regulating the provision of non-telecommunications services by such incumbent cable operators?

## ANSWER:

NO. The extension of the mixed-use rule by the FCC to incumbent cable operators that were not common carriers was arbitrary and capricious.

*Montgomery County of Maryland v FCC, Nos. 08-3023/15-3578, July 12, 2017.*





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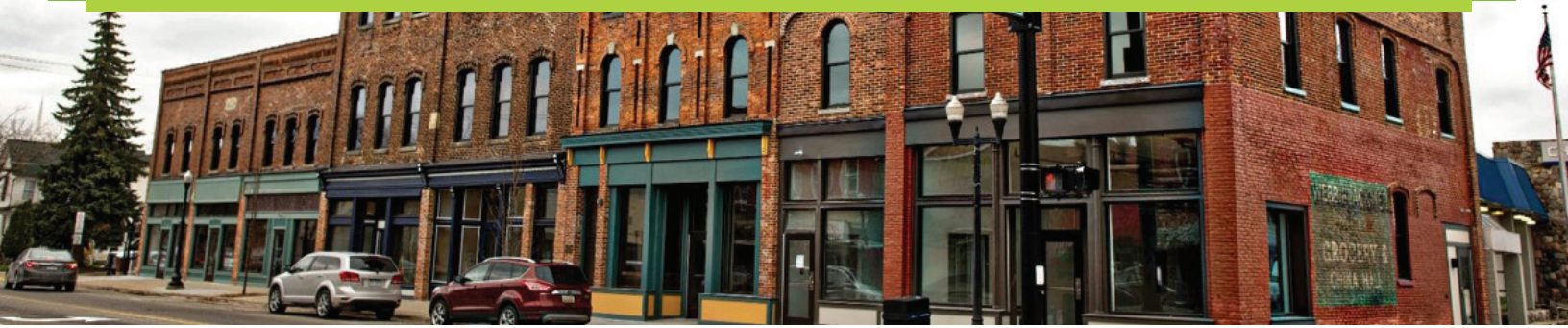
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**T**he redevelopment of the East Main block in downtown Milan was a major project to restore four adjacent and mostly vacant buildings for commercial and residential use for another century.

The original buildings were constructed in 1845, 1871, and 1892. A few buildings had received “new” façades in the 1930s and 1940s and were restored to their original state in the 2015-16 project. The interiors of the buildings were virtually gutted, leaving only the brick walls, most floor joints and base floors. Inside the structure that remained, the four buildings were connected on the second and third stories. Fifteen upscale residential apartments were created in the space on the upper levels. At the street level, eight storefronts remained and were prepared for final buildout for future businesses. The project was accomplished with funds from MSHDA Rental Rehabilitation, MEDC Community Revitalization Program, Federal Historic Tax Credits, private funding and financing.

The project is one that can be replicated in any community across the United States with the right partners and passion. The collaboration between the owner/developer, the City of Milan, the State of Michigan, MEDC, MSHDA and the lending institutions brought all of the pieces of the pie together to create a completed project of which everyone can be proud.

The dollars available from the MEDC for this type of rehabilitation/ redevelopment are available to any qualifying community and the CAD team specialists can assist with the process. In regards to the City, it is imperative to have political and administrative support for projects of this nature.

This project used a compact mixed-use design to take four separate buildings that were originally constructed over 125 years ago and converted them into one structure that houses 15 apartments and 8 street level storefronts. The creative work by the architect took these historic landmarks in our downtown and gave them modern amenities that will provide housing and commercial opportunities for generations to come. You will not find another development that occupies an entire city block anywhere else in the state of Michigan.

This project created a sense of pride across the community among businesses and residents. It has also created a renewed sense of energy, and has led to the successful acceptance of the City into the Michigan Main Street program at the Select level. The redevelopment has increased the population in the downtown, increased traffic, increased revenue for the businesses, and has created a sense of place for all. In addition, the community and the project was recently recognized by Governor Snyder's office as a recipient of the Governor's Award for Historic Preservation.