



ROLES AND RESPONSIBILITIES **OF CITY OFFICIALS**

NOVEMBER 17, 2015

Presented by:

Scott G. Smith
DICKINSON WRIGHT PLLC
200 Ottawa Avenue NW, Suite 1000
Grand Rapids, Michigan 49503
616.458.1300
sgsmith@dickinsonwright.com

CITY OF BATTLE CREEK

ROLES AND RESPONSIBILITIES OF CITY OFFICIALS

- I. General Authority for City Government.
 - A. 10th Amendment to the United States Constitution reserves to the states any rights not delegated to the United States or prohibited to the States by the Constitution.
 - B. Michigan Constitution of 1963 has left local control to cities.
 1. Art. VII, §21, Michigan Constitution of 1963:

“The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.”
 2. Art VII, §22, Michigan Constitution of 1963:

“Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.”
 - C. Concept is “home rule.”
 1. As explained in the record of the 1907 Constitutional Convention:

“These provisions constitute a marked advance from the present constitutional provisions relating to cities and villages by doing away with the principle of classification and with special charters, granted and subject to amendment only by the state legislature. The purpose is to invest the legislature with power to enact into law such broad general principles relative to organization and administration as are or may be common to all cities and to all villages, each

city being left to frame, adopt and amend those charter provisions which have reference of its local concerns. The most prominent reasons offered for this change are that each municipality is the best judge of its local needs and the best able to provide for its local necessities; that inasmuch as special charters and their amendments are now of local origin, the state legislature will become much more efficient and its terms much shorter if the labor of passing upon the great mass of detail incident to municipal affairs is taken from that body and given into the hands of the people primarily interested.

Under these provisions, cities and villages, as under the present Constitution, will remain subject to the Constitution and all general laws of the state.”

Proceedings and Debates of the Constitutional Convention of the State of Michigan, 1432.

2. “Home rule” was intended to grant broad local discretion to cities.

Art VII, §34, Michigan Constitution of 1963 provides, in pertinent part: “The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor.”

3. Home rule is intended to limit the state legislature.

4. However, city authority is limited:

a. Areas of zoning (*e.g.*, with adult foster care and other “group” homes and day care homes), taxation and public debt.

b. More recently the legislature has limited local authority for residency requirements for city officers and employees, gun control, wetlands, private employment issues, “right to farm,” construction codes, right-of-way control (*e.g.*, the Metro Act), etc.

D. In this structure, a city charter can be thought of as the local constitution and its ordinances are like statutes.

1. Home Rule City Act, 1909 PA 279,¹ provides:

a. Required provisions for city charters.

b. Permissive provisions for city charters.

¹ MCL 117.1 *et seq.*

- c. Authority and processes for forming cities.
 - d. Authority and processes for writing, proposing, approving, amending and revising city charters.
2. Other state laws affect city authority.
- a. Taxation is governed by General Property Tax Act, 1893 PA 206,² and myriad other laws.
 - b. Authority and processes for undertaking debt is found in Revised Municipal Finance Act, 2001 PA 34,³ Revenue Bond Act, 1933 PA 94,⁴ and many other statutes.
 - c. Elections are controlled by Michigan Election Law, 1954 PA 116.⁵
 - d. Some statutes expressly supersede local charter provisions.
 - i. Revenue Bond Act and Michigan Election Law are examples.
 - ii. Municipal Partnership Act, 2011 PA 258, allows additional powers despite local charter limits.⁶
3. Concept is that the people of a city confer certain powers and limits of powers upon the city government.

II. Battle Creek Government Structure.

A. Battle Creek has a “commission–manager” (often referred to as “council–manager” or “city manager”), as opposed to a “strong mayor,” form of government.⁷

² MCL 211.1 *et seq.*

³ MCL 141.2101 *et seq.*

⁴ MCL 141.101 *et seq.*

⁵ MCL 168.1 *et seq.*

⁶ MCL 124.119 states in pertinent part, “Except as otherwise provided in this section, if any provision of this act conflicts with any local charter provision or any local ordinance, the provisions of this act shall control. The authority to enter into a contract pursuant to this act shall not be affected by any condition or limitation that may be imposed by any local charter provision or local ordinance.”

⁷ Proponents of a council/commission-manager form of government contend its advantages include:

It frees up the commission to establish policy, rather than engaging in operational matters.

Policy is carried out by a professional city manager and administrative staff.

A city manager working at the pleasure of the majority of the commission diffuses the power of special interests while responding to the policy directed by a commission majority.

Removes (partisan) politics from municipal personnel and contracting decisions and enables the city manager to select department heads based on qualifications and merit.

Each commissioner has an equal voice in policy development.

Proponents of a strong mayor (also called “mayor-council” or “mayor-commission”) form of government contend its advantages include:

1. How do we know?

- a. "There is hereby created a City Commission which shall have full authority, except as otherwise provided herein or by general law, to *exercise* all of the *powers* conferred upon the City, to adopt all ordinances, resolutions or other measures relating to its Municipal concerns, and to otherwise govern its affairs." Charter §2.1.⁸
- b. "In accordance with the City Charter, the City Commission is the elected legislative and policy making body of the City." Code §212.01.
- c. "A City Manager shall be appointed by a majority of the membership of the City Commission...He shall be the chief administrative officer of the City government." Charter §5.1.
- d. "Except for the purpose of inquiry, the City Commission and its members shall deal with the administrative service solely through the City Manager and neither the Commission nor any member thereof shall give orders to any subordinate of the City Manager." Code §212.01.

2. Generally means that the Commission sets the policy and the Manager is the day-to-day administrative officer implementing the Commission's policy.

3. But, each city charter is unique.

B. Duties and authority of the Manager, the Mayor, and the Commission.

1. Manager's duties and authority.

- a. Appointed by and serves at the pleasure a "majority of the membership" of the Commission. Charter §5.1; Code §222.01.
 - i. Is accountable to the City Commission.
 - ii. Directed by actions adopted by a majority of the City Commission.
- b. Chief *administrative* officer of the City.

Day-to-day city operations are overseen by the mayor.
There is more direct accountability to the electors.
Citizens and neighbors know who to address with concerns and requests.
City administrative staff have less control and more accountability.

For a viewpoint, see *Council-Manager or "Strong Mayor," the Choice is Clear*, dated 2009, Document No. 106142 entitled *Forms of Local Government*, dated 1999, from International City/County Management Association's website, <http://www.icma.org>.

Detroit, Lansing and Kentwood have strong mayors. Grand Rapids, Mt. Pleasant, Grand Haven, South Haven, Allegan, Grandville, Wyoming, Muskegon, and Holland have a council/commission-manager form of government.

⁸ In this outline, the City Charter is referred to simply as "Charter" followed by a section number and the City Code of Ordinances is similarly referred to as "Code" followed by a section number.

Charter §5.1.

c. Appoints and may remove certain City officers and employees, and is the personnel director. Charter §§5.3(F) & 5.4; Code §§222.01(f) & 222.02.

i. Charter provided: clerk, treasurer, assessor, police chief, fire chief, public works director, comptroller, parks and recreation director, airport manager, planning director and “such other officers and heads of departments as may be deemed necessary.”

ii. Code list is slightly different: Assistant City Manager-Community Development, clerk, finance director, director of employee relations, police chief, fire chief, public works director, transit manager, airport manager, parks and recreation director “and such other heads of departments or divisions as may be deemed necessary.”

c. Supervises and controls administrative affairs of the City and its departments and department heads. Charter §5.3(A); Code §§222.01(a), 222.02(a).

d. Recommends budgets to the City Commission and carries out policies, budgets, and directives of the City Commission. Charter, §5.3(C); Code §222.01(c).

e. Purchasing. Charter §5.3(E); Code §222.01(e).

f. Personnel director. Charter §§5.6 & 7.13; Code §220.01.

g. Prepare Commission meeting agendas. Code §212.02.VII.

h. Attend City Commission meetings.

i. “Advises the City Commission regarding the policies, affairs, and financial condition and needs of the City, with the right to take part in the discussions relating thereto.” Charter §5.3(B).

j. Preserve public peace and enforce ordinances. Charter§5.3(D); Code §222.01(d).

k. Accept utility easements and to enter into contracts for utility and street light services and extensions of such contracts. Code §222.05.

2. Mayor's duties and authority.
 - a. Executive head of City for ceremonial purposes. Charter §2.9.
 - b. Member of the Commission with equal voice. Charter §2.9; Code §212.02.IV.
 - c. Presides over the Commission meetings. Code §212.02.IV.
 - d. Certain powers in emergencies under state law. *See, e.g.*, MCL 10.31.
3. Commission's duties and authority.
 - a. Works through ordinances, resolutions, or motions. This is the only way the Commission can act.
 - i. Action by ordinance.
 - (A) May be required by law (*e.g.*, to establish some types of authorities or to issue some type of bonds).
 - (B) Is required for all acts for which there is a penalty for violation (*e.g.*, City health, safety, traffic codes, etc.).
 - (c) Is needed for acts where the City wishes to regulate actions or conduct of persons other than City officers, employees and agents.
 - ii. Resolutions are normally limited to internal affairs or concerns of the City government (*e.g.*, approval of contracts), though resolutions may be specifically authorized for other purposes.
 - iii. Motions, by themselves, as opposed to motions to approve a resolution or an ordinance, are generally limited to routine procedural matters and to making decisions placed before the body.
 - b. The Commission works as a body.
 - i. The City Charter refers to the powers of the Commission and nowhere refers to the powers of individual Commissioners.
 - ii. Individual Commissioners have no authority to act on behalf of or represent the City except as approved by an ordinance, resolution or motion approved by the Commission. For example, designation to serve as a delegate to an MML body or to serve as the City's representative on another body.

- c. Sets policy. Charter §§2.1 & 4.1; Code §212.01. Generally, by ordinance and resolution though selection and direction of the Manager and the budget can also affect policy.
- d. Appoints and oversees City Manager and City Attorney. Charter §2.11; Code §212.01.
- e. Adopts budget. Charter §7.4.
- f. Approves contracts. Charter §7.13.
- g. Works through City Manager in dealing with any City offices or staff. Charter §2.8; Code §212.01.
- h. Subject to Code of Ethics for Commissioners in City Code §212.05.
- i. City Commission meetings (generally).
 - i. Regular meetings: 1st and 3rd Tuesday. Code § 212.02.I.
 - ii. Special Meetings.
 - (A) Must provide at least 18 hours' notice in compliance with the Open Meetings Act. Charter §2.9; Code §212.02.II.A.
 - (B) May be called by the Mayor, City Manager, or any 3 Commissioners. Charter §2.9; Code §212.02.II.A.
 - (C) Generally, may only consider matters stated in the notice. Code §212.02(II)(A).
 - iii. A majority of the elected members constitutes a quorum. Charter §2.9.
 - iv. Need at a majority vote of the elected Commissioners to approve an ordinance or resolution. Code §212.02.VIII.
 - v. "Yes" and "no" votes must be recorded. Code §212.02(III)(A).
 - vi. Commissioners must vote on each question unless excused by the unanimous consent of the remaining Commissioners. Code §212.02.III.A.
 - vii. Commissioners may not vote if there is a conflict of interest. Charter §2.7; Code §212.05(b)(6).⁹
 - viii. *Robert's Rules of Order*, to the extent not inconsistent with state law, the Charter or Code, govern Commission proceedings.

⁹ Potential conflicts of interest should be addressed case-by-case and depend up whether there is a direct financial interest in the issue's outcome.

Code §212.02.XII.

III. Particular Matters.

A. Ordinances.

1. Except for emergency ordinances, cannot be adopted at a meeting at which they are introduced, but may be adopted at any following, regular meeting. Charter §4.3(B).
2. Require an affirmative vote of a majority of the Commission. Charter §4.3(B).
3. Must have been introduced within 60 days of adoption. Code §212.02.VIII.
4. Must be published within 5 days of adoption. Charter §4.4.
5. Takes effect 10 days after adoption. Charter, §4.3(B).
6. Penalties.
 - i. Misdemeanors can be up to \$500 and/or up to 90 days in jail. Charter §4.8.¹⁰
 - ii. Municipal civil infractions may have higher fines but cannot include incarceration. May also issue court orders requiring compliance.
7. Initiative and referendum require 10% of registered electors. Charter §4.11. Commission must then adopt or repeal as requested or submit it to the electors. Charter §§4.15-4.16.

B. Contracts. Charter § 713; Code, §208.01.

1. Contracting power generally vested in the Commission, except the Manager is the purchasing director and may “bind the City as to routine or operational items.” Charter §7.13.
2. Contracts of \$20,000 or more must be bid. Code §208.01(a).

IV. Code of Ethics for City Commissioners. Code §212.05.

A. Purpose.

1. According to Code §212.05(a):
“(1)[C]itizens...are entitled to...fair, ethical

¹⁰ State law now allows local ordinances to have a penalty of up to 93 days imprisonment “if the violation substantially corresponds to a violation of state law... for which the maximum ... imprisonment is 93 days.” MCL §117.4i.(k).

and accountable local government that has earned the public's full confidence for integrity.

(2) ...[E]ffective functioning of democratic government requires that public officials...comply with both the letter and spirit of the laws and policies affecting the operations of government; public officials be independent, impartial and fair in their judgment and actions; public office be used for the public good, not for personal gain; and public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

(3) ...[T]o assure public confidence in the integrity of local government and its effective and fair operation.”

2. Mostly aspirational.

a. Sanctions exist, but violation is a not a criminal offense or a municipal civil infraction. Code §212.05(b)(15)D.

b. Removal from office requires action by the Governor. Code §212.05(b)(15)D3.

B. Requires that Commissioners:

1. Act in the public interest.

a. Work for the common good of the people of Battle Creek.

b. Do not work for any private or personal interest.

c. Assure fair and equal treatment of all persons, claims, and transactions.

2. Comply with applicable federal, state and local law, including City ordinances and policies.

3. Respect City processes when involved in internal dealings (*i.e.*, with City officers and employees) or in external dealings (*i.e.*, with officials of other governments or with citizens, businesses or other members of the public).

a. Comply with and support:

i. City Commission policies and procedures.

ii. City purchasing, personnel, financial and other processes and procedures.

- iii. Decisions by City bodies, officers and employees.
 - b. May exercise appropriate discretion when an issue is before Commission.
 - c. May seek changes.
- 4. Be prepared, courteous and attentive during meetings. Focus on the business at hand. Avoid interrupting speakers.
- 5. Publicly share relevant, substantive information they may have received from sources outside of the public decision-making process.
- 6. Disclose any material financial interest and/or any legal or fiduciary duty to another organization or entity or personal relationship that may give the appearance of a conflict of interest
 - a. Before the time to perform their duty or concurrently with the performance of the duty.
 - b. Even if there is no conflict of interest, disclosure will prevent later questioning.
- 7. Refrain from any dealings that might lead some to questioning impartiality.
 - a. Examples include:
 - i. A Commissioner or member of a Commissioner's family soliciting or accepting any loan, purchase, services or other opportunities at terms not available to the general public.
 - ii. A Commissioner or member of a Commissioner's family soliciting or accepting gifts or favors.
 - b. Permitted exceptions include:
 - i. A gift or honorarium, not exceeding a value of \$100.00, for services rendered in the performance of public duties or other activity devoted to the improvement of cities, communities and the lives of citizens.
 - ii. Accepting ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; a loan in the regular course of business from a lending institution on the same terms as generally available to the public; and a scholarship, grant or fellowship awarded on the same terms as applied to other applicants.
 - iii. Accepting other gifts, favors or loans if

the donor does not have interests that have come or are likely to come before the Commission.

iv. Soliciting and accepting campaign contributions.

8. Respect the confidentiality of information concerning the property, personnel or affairs of the City.

a. May not disclose to an unauthorized person confidential information acquired in the course of their duties in advance of the time prescribed for its authorized release.

b. May not use confidential information to advance personal, financial or other private interests.

9. Refrain from using public resources, including City staff time, equipment, supplies, and facilities for personal or private use.

10. Refrain from appearing on behalf of the private interests before the City Commission or any board, committee, commission or proceeding of the City.

11. Represent the official policies or positions of the City Commission to the best of their ability when designated as delegates for this purpose. If expressing a personal opinion, a Commissioner must make it clear it is a personal opinion, not a City position.

12. Comply with the commission-manager form of government.

a. Refrain from giving any direction to or interfering with the work of City personnel.

b. Support implementation of City policy, even if voting against or otherwise opposing it.

13. Refrain from attempting to influence any proceeding, decision or recommendation of any City official, board or body charged with implementing City policies or rendering decisions or recommendations.

14. Support a positive and constructive work environment for City personnel and for citizens and businesses dealing with the City.

V. Open Government Laws.

A. Purpose and background.

1. Michigan's Open Meetings Act, 1976 PA 267 ("OMA")¹¹ and Michigan Freedom of Information Act, 1976 PA 442 ("FOIA")¹² were enacted in 1976 as part of a nationwide effort to open government decision making and communication.

2. Both therefore predate e-mail, text messaging, Twitter, Facebook, cell phones, and other modern forms of electronic communication.

3. Neither has been amended to specifically refer to electronic communications.

4. Michigan courts and the Attorney General interpret the OMA and FOIA to apply to electronic communications.

B. Open Meetings Act.

1. Generally: All decisions and deliberations of a public body are required to be made at an open public meeting.

2. Exceptions: Certain exceptions apply under limited circumstances (*i.e.* a closed session to consider information exempt from disclosure, like legal opinions under FOIA). Exceptions are narrowly construed.

C. Freedom of Information Act.

1. Generally: All public records of a public body are subject to disclosure.

2. Exemptions: Certain public records "may" be withheld from disclosure, but exemptions are narrowly construed.

D. Communications by and among Commissioners are governed by the OMA and FOIA.

1. Communications aimed at making a decision outside a public meeting violate the OMA.

a. Applies whether in person, verbally or in a written form, even if on a personally owned electronic device.

b. Applies to communications during a meeting.

c. "Politicking," lobbying, informal canvassing, is not a violation of the OMA.

2. Electronic communications and documents that

¹¹ MCL 15.261 *et seq.*

¹² MCL 15.241 *et seq.*

stored on a computer or on the computer server of a public body are a public record under the FOIA.

3. If used for or in relation to any City matter, a personally owned computer or other electronic device (*i.e.* personal cell phone) may also be subject to the FOIA and subpoena.

Examples include a former Detroit mayor and a former Secretary of State.

4. State mandated records retention requirements compel that even those messages stored on personally owned devices be maintained.

5. In case of a FOIA lawsuit or a subpoena in any lawsuit, a personally owned electronic device could be subject to forensic examination.

a. Personal records could also be viewed.

b. It is difficult to fully delete information on electronic devices.

6. Everything on a publicly owned electronic device may be a public record. (There are a few exceptions, but they are very narrowly construed.)

VI. Best Practices.

A. You are a City official, so:

1. Whatever you do or say reflects on the City.

2. Some will perceive that whatever you say reflects City policies or attitudes.

B. The City will designate one or more spokespersons on issues.

1. If you are a spokesperson:

a. Be careful in choosing words and phrases.

b. Check your facts.

c. Be sure you know and understand the nuances of applicable ordinances, resolutions and policies.

d. Be positive.

2. If you are not the spokesperson, don't speak except to refer an inquiry to the right person(s).

C. Support City policies and personnel.

1. When disagreeing with a policy, advocate change. But, support it until it is changed.

2. When disagreeing with personnel, inquire of the

City Manager.

3. When disagreeing with the City Manager, discuss concerns:

- a. First with the Manager.
- b. Then, if unsatisfied, with other Commissioners.

D. Commissioners

1. When approached by interested entities, persons or media representatives:

- a. Refer them to appropriate personnel.
- b. Ask questions to understand.
- c. Inquire of the City Manager.
- d. Advocate for a change in an appropriate manner.

2. Do not try to direct, counsel, cajole, implore, or otherwise influence City personnel, except the City Manager.

3. Periodically:

- a. Establish written, concrete, measurable goals and objectives for the City Manager.
- b. Provide written feedback to the City Manager.
- c. Hold the City Manager accountable for:
 - i. Meeting written, concrete, measurable goals and objectives.
 - ii. City operations.
 - iii. Complying with budget.
 - iv. Other parts of job description.
 - v. Informing the Commission.
 - vi. Treating everyone fairly and equally in compliance with the law and City policies.

4. All Commissioners should have the same information.

5. Advocate for policies, not for particular businesses, individuals or in particular cases.

6. Refrain from making promises to citizens or staff outside of official City Commission action.

E. City Manager:

1. Respect and listen to all Commissioners understanding that, while individual Commissioners have views, a majority sets policy and direction.

3. Keep Commissioners fully informed about City matters.
4. Treat everyone, including all Commissioners, fairly and equally in compliance with the laws and City policies.
5. Comply with laws and City policies.
6. Respect and listen to business owners, citizens and others.
7. Advise Commission based on experience, expertise, research and other available information, presenting all relevant information.

F. Be careful about written words, taking care that they are:

1. Not defamatory.
2. Accurate and carefully phrased.
3. Comply with laws and policies.
4. Avoid deliberations outside of meetings.

G. Assume every word or action could be recorded.

H. Assume everything recorded or in writing could become public.

VII. Hypotheticals.

GRAPIDS 65623.1 374400.1