

MANISTEE CITY COUNCIL

WORK SESSION AGENDA

Tuesday, September 8, 2015 - 7:00 p.m. - Council Chambers, City Hall

I. Call to Order.

II. Work Session Items.

- a.) PUBLIC COMMENTS ON WORK SESSION RELATED ITEMS.
- b.) DISCUSSION ON OPEN MEETINGS ACT – City Attorney George Saylor.
- c.) DISCUSSION ON FIREWORKS – City Attorney George Saylor.
- d.) DISCUSSION ON COMBINED SEWER OVERFLOWS – DPW Director Jeff Mikula and City Engineer Shawn Middleton.

III. Adjourn.

RBB:cl

Cindy Lokovich

From: George V. Saylor <GSaylor@mikameyers.com>
Sent: Thursday, August 13, 2015 8:16 PM
To: Colleen Kenny; James Smith; Ed Cote; Roger Zielinski; Chip Goodspeed; Mark Wittlieff; Eric Gustad
Cc: Ben Bifoss; Cindy Lokovich
Subject: Open Meetings Act
Attachments: Open Meetings Act (01771682x9ED46).pdf; Memo OMA (01765120x9ED46).docx

Follow Up Flag: Follow up
Flag Status: Flagged

Mayor Kenny and members of City Council:

Council will be discussing at a Work Session in September issues surrounding the Open Meetings Act, including how technology can play a role on the requirements of the OMA. I have attached to this email a copy of the OMA and also a Memorandum I have prepared for your review. If you have any questions regarding the Memorandum or in general the OMA, please feel free to contact me.

George

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Saylor & Hesslin

A Mika Meyers Beckett & Jones Law Firm

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Gockerman Wilson Saylor & Hesslin

A Mika Meyers Beckett & Jones, PLC Law Firm

Memorandum

To: City of Manistee Council

From: George V. Saylor, III

Date: August 13, 2015

Subject: OMA update

C/M: 26943-42142

The Michigan Open Meetings Act is a group of laws that ensure that decisions of government take place in view of the public. The purpose of this Memorandum is to outline some of the general provisions of the OMA and also discuss the status of the law with regard to current issues. The OMA mandates that deliberations of a public body take place in a setting where the general public is able to observe the debate and are able to offer their comments with regard to matters of concern. With regard to specific questions regarding the OMA, the City has always taken the position that if there is doubt as to whether or not a meeting is subject to the OMA, it will assume it is and post public notice of the meeting and require that the meeting take place in a setting open to the public.

1. Bodies Covered by the OMA.

- a. The Michigan Open Meetings Act (OMA) requires that all meetings of a “public body” be open to the public and held in a place available to the general public.
- b. The definition of a public body includes local legislative or governing bodies (like City Council) including boards, commissions, committees, and sub-committees that are empowered by law to exercise a governmental function.

2. Notice.

- a. Meetings of a public body cannot take place unless there has been proper notice provided and the meeting is open to the public. The Notice requirements of the OMA are:
 - i. A public notice must be posted at the principal office of the public body and contain the name of the public body, telephone number and address;
 - ii. A person designated by the public body must post within 10 days of the first annual meeting of the body the dates, times and places of its regular meetings for the year;
 - iii. If a change is made to any regular meeting date the new schedule must be posted within 3 days of the meeting at which the change was made;

- iv. For a rescheduled regular or special meeting a notice, including the date, time, and place of the meeting, must be posted at least 18 hours before the meeting and if the public body maintains an internet presence the notice must be included on the body's website. The 18 hour requirement dictates that the posting be accessible to the public for the 18 hour period (if posted on an interior location not accessible after hours, the posting must be made for 18 hours when the location is accessible to the public).

3. Meetings Covered.

- a. A quorum of a public body, meeting to discuss the business of the public body, is subject to the OMA. Purely social or chance gatherings, that do not involve the discussion of the business of the public body, or attendance of a quorum at a conference or training that does not involve a presentation tailored to the public body, are times when notice would not necessarily be required even though a quorum of the public body is present in the same location at the same time.
- b. If the public body delegates to a group the authority to take action on behalf of the body and not just make an advisory recommendation, then the meeting of that group is subject to the OMA, even if a quorum is not present.
- c. All decisions of a public body must be made at an OMA compliant meeting. While case law indicates that polling does not necessarily violate the OMA, consensus building and debate on an issue that ultimately is decided by the public body is a violation. Distinguishing between polling and consensus building is not a bright-line test and while it is expected that members of a public body will discuss matters involving the body, outside of a public meeting, care must be exercised to avoid debate among a majority on an issue that may be decided by the body.
- d. Committees and subcommittees of a public body that are merely advisory and are not delegated authority to act are not subject to the OMA. As a matter of policy, the City of Manistee requires all meetings, including those of standing or special committees, to comply with the OMA notice requirements, including the requirement for the keeping of minutes (Council Policy – 10).

4. Impact of technology on the OMA. The use of e-mail, texting or other forms of electronic communication among members of Council during a meeting constitutes deliberations toward decision-making or actual decisions and violates the OMA. In effect, such communication would constitute a closed session under the OMA. The principle is that the deliberation of Council must take place in the open and should be something that the public is able to observe. If e-mail communication, texting or other forms of electronic communication takes place between Council members during a meeting, the public is unable to observe that debate. Whether communication from outside the members of Council during a meeting is acceptable would depend upon the nature

of the communication. Council members being available by phone, text or e-mail during a meeting regarding matters that may be unrelated to Council business would be acceptable, but Council should maintain care in managing other types of communication during Council meetings.

5. Straw Polls, Communication Among all Council and “Reply All” E-mails. E-mail communication between Council members where it includes debate on a topic or soliciting the position of all members of Council (such as a straw poll) can result in a violation of the OMA. Even though you may not be meeting with a quorum of Council, and even when your discussions are on a one-on-one basis, if the objective of the discussions is to solicit the position of all Council members on a particular issue and offer your argument in favor or against a particular issue, it may be considered a debate on a topic among Council and constitute a violation of the OMA. Similarly, if an e-mail is exchanged on a particular topic, which is to be decided by Council, is sent to all members of Council, and then multiple Council members respond to the e-mail by the “reply all” button on their e-mail, it may constitute a violation of the OMA. It certainly is not improper to distribute material to all members of Council, but Council should not deliberate over the information exchanged by communicating positions with a quorum of Council through e-mail. Avoid the “reply all” response.

6. Meeting procedures. The OMA contains a number of provisions that affect the procedure at a public meeting.

- a. All members of the public must be permitted to attend a meeting of a public body and can only be excluded for a breach of the peace occurring at the meeting.
- b. While the OMA does not permit a governing body to require members of the public to register in order to attend a meeting, the public body may require that an individual speaking at a meeting identify themselves if they wish to speak.
- c. A public body may place limitations on public comment, but may not establish a rule that prevents public comment (if multiple people are speaking in favor or against a particular subject, the body may encourage them to designate one or more individuals to speak on their behalf in order to avoid cumulative comments).
- d. A public body must have a time for public comment, but whether at the beginning or end of the meeting is something up to the public body.
- e. There is no right to address the public body during its deliberations on a particular matter, although the chair may do so if desired.

7. Minutes. The OMA requires that minutes be taken for all meetings of a public body. The minimum requirement of the OMA is that the minutes reflect the date, time, place, members present and members absent at a meeting of the public body. As to the substance of the meeting, the OMA requires that the decisions be described and if there is a roll call vote the specific votes recorded. If a public body decides to have more detail in its minutes it may do so.

8. **Quorum.** The public body must follow parliamentary procedures in managing its meetings, including the requirement of a majority vote of members present at a meeting where a quorum is also present, unless the law requires some different number. If a meeting that is properly posted lacks a quorum when it convenes, the members present may receive reports, comments from the public and ask questions, although no decision should be debated or made. If a member of a body is disqualified from voting on a particular matter due to a conflict of interest, they cannot be counted as to whether there is a quorum present at the meeting.

9. **Voting.** Unless authorized by rule or law, members present at a meeting may not abstain on an issue put to vote and the chair votes on all Motions (not just to break a tie in voting).

GVS/pav

OPEN MEETINGS ACT
Act 267 of 1976

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

History: 1976, Act 267, Eff. Mar. 31, 1977.

The People of the State of Michigan enact:

15.261 Short title; effect of act on certain charter provisions, ordinances, or resolutions.

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.262 Definitions.

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

(b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

(c) "Closed session" means a meeting or part of a meeting of a public body that is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 2001, Act 38, Imd. Eff. July 11, 2001.

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the first extra session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;—Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;—Am. 1988, Act 158, Imd. Eff. June 14, 1988;—Am. 1988, Act 278, Imd. Eff. July 27, 1988.

Administrative rules: R 35.621 of the Michigan Administrative Code.

15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 87, Imd. Eff. Apr. 19, 1984.

15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; posting; statement of date, time, and place; website; recess or adjournment; emergency sessions; emergency public meeting; meeting in residential dwelling; limitation; notice; duration requirement.

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting in a prominent and conspicuous place at both the public body's principal office and, if the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, on a portion of the website that is fully accessible to the public. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled public meetings and accessible via a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those nonregularly scheduled public meetings. The requirement of 18-hour notice does not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting.

(5) A meeting of a public body that is recessed for more than 36 hours shall be reconvened only after public notice that is equivalent to that required under subsection (4) has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section bars a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat. However, if a public body holds an emergency public meeting that does not comply with the 18-hour posted notice requirement, it shall make paper copies of the public notice for the emergency meeting available to the public at that meeting. The notice shall include an explanation of the reasons that the public body cannot comply with the 18-hour posted notice requirement. The explanation shall be specific to the circumstances that necessitated the emergency public meeting, and the use of generalized explanations such as "an imminent threat to the health of the public" or "a danger to public welfare and safety" does not meet the explanation requirements of this subsection. If the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, it shall post the public notice of the emergency meeting and its explanation on its website in the manner described for an internet posting in subsection (4). Within 48 hours after the emergency public meeting, the public body shall send official correspondence to the board of county commissioners of the county in which the public body is principally located, informing the commission that an emergency public meeting with less than 18 hours' public notice has taken place. The correspondence shall also include the public notice of the meeting with explanation and shall be sent by either the United States postal service or electronic mail. Compliance with the notice requirements for emergency meetings in this subsection does not create, and shall not be construed to create, a legal basis or defense for failure to comply with other provisions of this act and does not relieve the public body from the duty to comply with any provision of this act.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body that is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice shall be at the bottom of the display advertisement, set off in a conspicuous manner, and include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

(7) A durational requirement for posting a public notice of a meeting under this act is the time that the notice is required to be accessible to the public.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1978, Act 256, Imd. Eff. June 21, 1978;—Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;—Am. 1984, Act 167, Imd. Eff. June 29, 1984;—Am. 2012, Act 528, Imd. Eff. Dec. 28, 2012.

15.266 Providing copies of public notice on written request; fee.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.267 Closed sessions; roll call vote; separate set of minutes.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted by the department of commerce under section 16231 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more

members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.269 Minutes.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. The public body shall make corrected minutes available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4. The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.

(3) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.

(4) A public body shall not include in or with its minutes any personally identifiable information that, if released, would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1982, Act 130, Imd. Eff. Apr. 20, 1982;—Am. 2004, Act 305, Imd. Eff. Aug. 11, 2004.

15.270 Decisions of public body; presumption; civil action to invalidate; jurisdiction; venue; reenactment of disputed decision.

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.272 Violation as misdemeanor; penalty.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than \$2,000.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273 Violation; liability.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273a Selection of president by governing board of higher education institution; violation; civil fine.

Sec. 13a. If the governing board of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963 violates this act with respect to the process of selecting a president of the institution at any time after the recommendation of final candidates to the governing board, as described in section 8(j), the institution is responsible for the payment of a civil fine of not more than \$500,000.00. This civil fine is in addition to any other remedy or penalty under this act. To the extent possible, any payment of fines imposed under this section shall be paid from funds allocated by the institution of higher education to pay for the travel and expenses of the members of the governing board.

History: Add. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.274 Repeal of MCL 15.251 to 15.253.

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.275 Effective date.

Sec. 15. This act shall take effect January 1, 1977.

History: 1976, Act 267, Eff. Mar. 31, 1977.

Cindy Lokovich

From: George V. Saylor <GSaylor@mikameyers.com>
Sent: Monday, August 31, 2015 1:54 PM
To: Colleen Kenny; James Smith; Ed Cote; Roger Zielinski; Chip Goodspeed; Mark Wittlieff; Eric Gustad
Cc: Ben Bifoss; Cindy Lokovich
Subject: Fireworks
Attachments: 2015-HIB-4367.pdf; 2015-SIB-0300.pdf

Mayor Kenny and members of Council:

In anticipation of the Work Session scheduled for next week, where we will be discussing the City Fireworks Ordinance, I am sending this email. As you will recall, an Amendment was made in June, 2014 to the City Codified Ordinances regarding the discharge of Consumer Fireworks. The Ordinance enacted created Chapter 663, which restricts the use of consumer fireworks in the City of Manistee between the hours of 11:00 pm and 8:00 am, except that the restriction was not imposed for the day before, day of, and day after a national holiday, when the restriction against use of consumer fireworks was imposed between the hours of 1:00 am and 8:00 am. Thus, Chapter 663 permits the use of consumer fireworks in the City of Manistee anytime, except during those times restricted (with the time surrounding a national holiday expanding the use by two additional hours). Council does have the authority under existing law to prevent the use of fireworks for all days, except the three day window around a national holiday (when it may prevent use between 1:00 am and 8:00 am as the Ordinance currently provides), if it would so choose.

There are two bills now in the legislature that may affect local municipal regulation of consumer fireworks.

Senate Bill No. 300 (copy attached) would allow municipalities to regulate consumer fireworks at any time without regard to the national holiday restriction.

House Bill No. 4367 (copy attached) would change the restriction on a municipalities ability to regulate from the three day window surrounding a national holiday to a three day window around July 4th. This Bill also provides that a municipality would retain the ability to regulate noise levels and enact a zoning ordinance dealing with the use of consumer fireworks. It is my opinion that both of those provisions would see modification if this Bill were to continue in the legislative process as it creates an ambiguous situation (it provides both a restriction against regulating the use of consumer fireworks surrounding the 4th of July and then appears to suggest that a municipality may still have the ability to regulate).

Both Senate Bill No. 300 and House Bill No. 4367 have only been introduced and are now in committee.

If you would like to discuss this issue before the Council Work Session, please feel free to contact me directly. Remember to not utilize the Reply All function for this email as we need to avoid a debate through email (another issue that we will be discussing at the Work Session).

George

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HOUSE BILL No. 4367

March 24, 2015, Introduced by Reps. Howrylak, Schor, Heise, Lane, Derek Miller, Chirkun, Plawecki, Yanez, Faris, McCready, Townsend and Hooker and referred to the Committee on Regulatory Reform.

A bill to amend 2011 PA 256, entitled "Michigan fireworks safety act," by amending sections 7 and 12 (MCL 28.457 and 28.462), as amended by 2013 PA 65.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) Except as provided in this act, a local unit of
2 government shall not enact or enforce an ordinance, code, or
3 regulation pertaining to or in any manner regulating the sale,
4 display, storage, transportation, or distribution of fireworks
5 regulated under this act.

6 (2) A local unit of government may enact an ordinance
7 regulating the ignition, discharge, and use of consumer fireworks,
8 including, but not limited to, an ordinance prescribing the hours
9 of the day or night during which a person may ignite, discharge, or

1 use consumer fireworks. ~~If SUBJECT TO SUBSECTIONS (4) AND (5), a~~
 2 local unit of government **THAT** enacts an ordinance under this
 3 subsection ~~, the ordinance shall not regulate the ignition,~~
 4 discharge, or use of consumer fireworks on the day preceding, the
 5 day of, or the day after ~~a national holiday~~ **INDEPENDENCE DAY** except
 6 as follows:

7 (a) A local unit of government with a population of 50,000 or
 8 more or a local unit of government located in a county with a
 9 population of 750,000 or more may regulate the ignition, discharge,
 10 or use of consumer fireworks between the hours of 12 midnight and 8
 11 a.m. ~~or between the hours of 1 a.m. and 8 a.m. on New Year's day.~~

12 (b) A local unit of government with a population of less than
 13 50,000 located in a county with a population of less than 750,000
 14 may regulate the ignition, discharge, or use of consumer fireworks
 15 between the hours of **1 a.m. and 8 a.m.**

16 (3) ~~An~~ **A LOCAL UNIT OF GOVERNMENT THAT ENACTS AN** ordinance
 17 under subsection (2) shall only impose a civil fine of not more
 18 than \$500.00 for each violation of the ordinance and no other fine
 19 or sanction.

20 **(4) THIS ACT DOES NOT LIMIT A LOCAL UNIT OF GOVERNMENT'S**
 21 **REGULATION OF NOISE LEVELS.**

22 **(5) THIS ACT DOES NOT LIMIT A LOCAL UNIT OF GOVERNMENT'S POWER**
 23 **TO ENACT A ZONING ORDINANCE UNDER THE MICHIGAN ZONING ENABLING ACT,**
 24 **2006 PA 110, MCL 125.3101 TO 125.3702.**

25 Sec. 12. (1) A person shall not ignite, discharge, or use
 26 consumer fireworks on public property, school property, church
 27 property, or the property of another person without that

1 organization's or person's express permission to use those CONSUMER
2 fireworks on those premises. Except as otherwise provided in this
3 section, a person that violates this subsection is responsible for
4 a state civil infraction and may be ordered to pay a civil fine of
5 not more than \$500.00.

6 (2) ~~Consumer~~ A PERSON SHALL NOT SELL OR PROVIDE CONSUMER
7 fireworks ~~shall not be sold~~ to a minor. A person that violates this
8 subsection shall be ordered to pay a civil fine of not more than
9 \$500.00, or, for a second or subsequent violation of this
10 subsection, a civil fine of not more than \$1,000.00. In addition,
11 the person's consumer fireworks certificate shall be suspended for
12 90 days after the civil fine is ordered for a second or subsequent
13 violation. This age requirement shall be verified by any of the
14 following:

15 (a) An operator's or chauffeur's license issued under the
16 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

17 (b) An official state personal identification card issued
18 under 1972 PA 222, MCL 28.291 to 28.300.

19 (c) An enhanced driver license or enhanced official state
20 personal identification card issued under the enhanced driver
21 license and enhanced official state personal identification card
22 act, 2008 PA 23, MCL 28.301 to 28.308.

23 (d) A military identification card.

24 (e) A passport.

25 (f) Any other bona fide photograph identification that
26 establishes the identity and age of the individual.

27 (3) An individual shall not discharge, ignite, or use consumer

1 fireworks or low-impact fireworks while under the influence of
2 alcoholic liquor, a controlled substance, or a combination of
3 alcoholic liquor and a controlled substance. As used in this
4 subsection:

5 (a) "Alcoholic liquor" means that term as defined in section
6 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

7 (b) "Controlled substance" means that term as defined in
8 section 8b of the Michigan vehicle code, 1949 PA 300, MCL 257.8b.

9 (4) An individual who violates the smoking prohibition under
10 NFPA 1124, 7.3.11.1 is guilty of a misdemeanor punishable by
11 imprisonment for not more than 1 year or a fine of not more than
12 \$1,000.00, or both.

13 (5) Signage stating the smoking prohibition described in
14 subsection (4) satisfies the requirements of NFPA 1124.

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.

SENATE BILL No. 300

April 28, 2015, Introduced by Senators HOOD, BIEDA, HOPGOOD, EMMONS and GREGORY and referred to the Committee on Government Operations.

A bill to amend 2011 PA 256, entitled "Michigan fireworks safety act," by amending section 7 (MCL 28.457), as amended by 2013 PA 65.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) ~~Except as provided in this act, NOTWITHSTANDING~~
2 **ANYTHING IN THIS ACT TO THE CONTRARY**, a local unit of government
3 ~~shall not~~ **MAY** enact or enforce an ordinance, code, or regulation
4 pertaining to or in any manner regulating the sale, display,
5 storage, transportation, or distribution of fireworks regulated
6 under this act.

7 (2) A local unit of government may enact an ordinance
8 regulating the ignition, discharge, and use of consumer fireworks,
9 including, but not limited to, an ordinance prescribing the hours
10 of the day or night during which a person may ignite, discharge, or
11 use consumer fireworks. ~~If a local unit of government enacts an~~

1 ~~ordinance under this subsection, the ordinance shall not regulate~~
2 ~~the ignition, discharge, or use of consumer fireworks on the day~~
3 ~~preceding, the day of, or the day after a national holiday except~~
4 ~~as follows:~~

5 ~~—— (a) A local unit of government with a population of 50,000 or~~
6 ~~more or a local unit of government located in a county with a~~
7 ~~population of 750,000 or more may regulate the ignition, discharge,~~
8 ~~or use of consumer fireworks between the hours of 12 midnight and 8~~
9 ~~a.m. or between the hours of 1 a.m. and 8 a.m. on New Year's day.~~

10 ~~—— (b) A local unit of government with a population of less than~~
11 ~~50,000 located in a county with a population of less than 750,000~~
12 ~~may regulate the ignition, discharge, or use of consumer fireworks~~
13 ~~between the hours of 1 a.m. and 8 a.m.~~

14 ~~—— (3) An ordinance under subsection (2) shall only impose a~~
15 ~~civil fine of not more than \$500.00 for each violation of the~~
16 ~~ordinance and no other fine or sanction.~~