

# Capital Conference 2019

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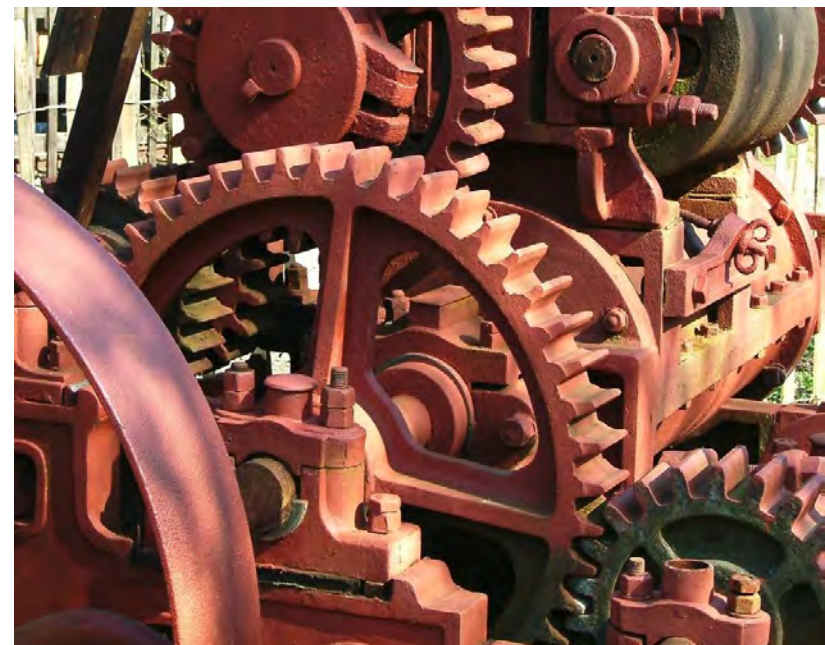


## General Law Village Act

Operations, Finance, Police, Annexation & Ethics



# Operations



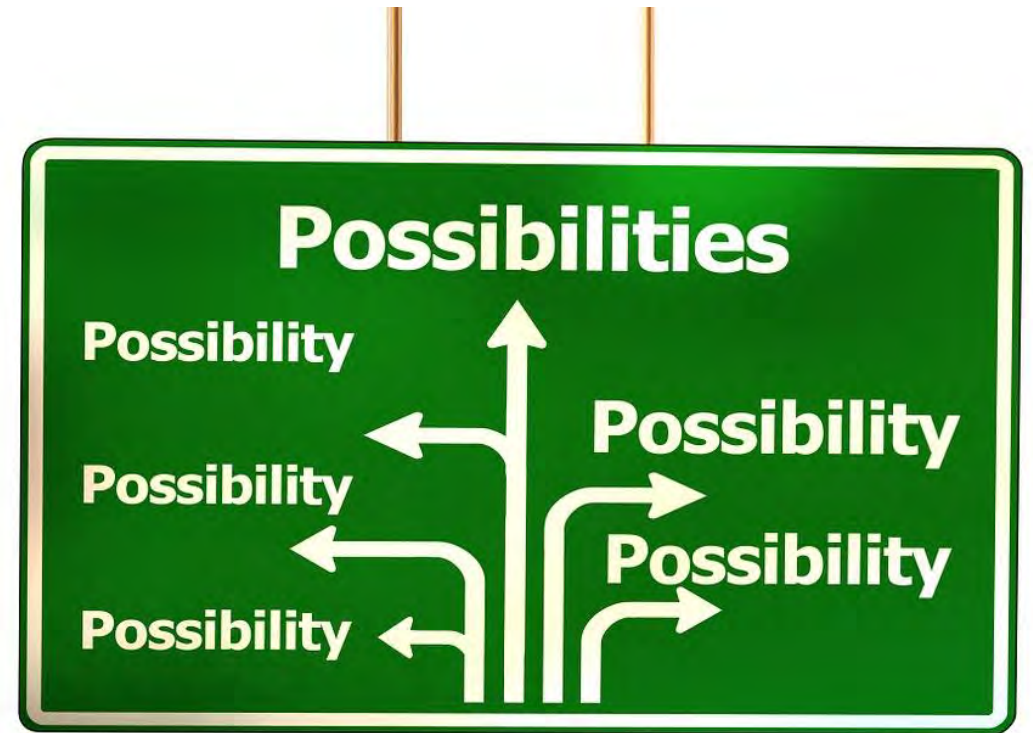
# Operations

- What services to provide?
- How much to provide?
- How comprehensive should our services be?
- How will we pay for providing services?



# Operations

- Options for Providing Services
  - Self-Production
  - Privatization
  - Contracting
  - Collaboration
  - Consolidation





# Operations

- Do we need Community Services?
- Is it best to form an authority or share services?
  - Funding
    - District-wide millage
    - Bonding
    - Fairness and equality in funding
    - Protection from direct responsibility
- Independently elected vs Appointed Board
- Specialty services assigned to specialized providers



# Operations

- Who will participate in shared services?
  - Look to enabling legislation – who *can* participate?
  - Can and *should* the participating parties share some of their services?
  - What is the area we are tasked with serving?
    - Can we handle it? (Is it too big?)
    - Is it worth our time? (Is it too small?)
    - How does it effect us financially? (Is it worth our money?)



# Operations

- Getting Outside Help
  - Consultants
  - Lawyers
  - Specialists (engineers, assessors, tech)
- Three Reasons
  - 1) Knowledge gap in your staff
  - 2) Supplement knowledge of your staff
  - 3) Second opinion to confirm knowledge of your staff



# Operations

## Employee Relations



- How many Michigan statutes do you think pertain to public employees?
  - Involve your village attorney in labor negotiations and grievance procedures.
- Consistency with policy



# Operations

- Employment Considerations
  - Bullard-Plawecki Act (personnel records)
  - Michigan Medical and Recreational Marihuana Acts (drug testing)
  - ADA and Michigan Persons With Disabilities Civil Rights Act (PWDCRA)
  - Occupational Safety and Health Act (OSHA)
  - Fair Labors Standards Act (FLSA)
    - Wage and Hour Provisions
  - Family and Medical Leave Act (FMLA)
  - Freedom of Information Act (FOIA)
  - Open Meetings Act (OMA)

# Operations

- Dealing with Questions of Liability
  - Consult your village attorney
  - Ask for legal opinion letters regarding any decision that may create liability
  - Be familiar with your insurance coverage limits and the terms of your policy
  - Reach out to the Michigan Municipal League



# Operations



Draft an Policy Manual (Operations and Employment)

- It is not enough that you have “implied,” “understood,” or “de facto” policies. **All policies should be in writing so they may be enforced.**
- Precedent is not policy for municipal officials.
- Whether a law or *lawsuit*, most policies are in place for a reason.



# Municipal Finance





# Finance

- Why do we care about finance?
  - Oversight
  - Accountability
  - Project and Service Planning
  - Budgeting
  - Collection of Taxes
  - Assessments
  - Efficiency and Effectiveness



# Finance

- Where do municipal finance laws come from?
  - Village Ordinances or Resolutions
  - Case Law (e.g. *Bolt v City of Lansing*)
  - Michigan Constitution (Headlee Amendments; Art 7, Sec 26; Art 9, Sec 18)
  - State Statutes (MCL 141.1 – 141.2821)
  - Federal Agencies (IRS and SEC)
  - Federal Administrative Codes
  - General Law Village Act

# Finance

- How does a municipality regulate its finances?
  - *Ad valorem* property taxes
  - Licenses and Permits
  - Fines and forfeitures
  - Extra-voted millage
  - Fees for services
  - Bonds
  - Special Assessments
  - Independent audits



# Finance

How do elected officials accomplish these goals?

- Simple Majority Votes
  - Resolutions
  - Ordinances
  - Passing budgets
    - Operating and Capital
- 2/3 Majority Votes
  - Increases to taxes
  - Special assessments





# Finance

- When should you start planning for your budget?
  - September-November
    - Begin considering expenses and revenues from prior and current year
    - Consider upcoming projects with major-capital expenses
    - Collaborate with Departments
  - December
    - Department budget requests
  - January
    - Proposed budget to legislature
  - February
    - Village council review, public hearing, and adoption
  - March 1 – Fiscal Year Begins (typically)



# Finance

## The Importance of the Operating Budget

- Day-to-day finances
- Priority Setting
- Thoughtful Policymaking
- Planning for Community Services
- Goal Setting
- Expectation Setting
- Consensus Building



# Finance

- Types of Operating Budgets
  - Line Item
  - Provision or Performance Based
  - Department Based
  - Zero-based



# Finance

- Operating Budget Requirements
  - Must conform to the General Law Village Act, Uniform Budgeting and Accounting Act, and state, local, and federal requirements.
  - Must present revenues and expenses for *last year, this year and next year*.
  - Must identify surplus and deficits from the previous year.
  - Must present all significant expenditures and plans for financing them.
  - Must balance the anticipated expenses with the anticipated revenues/financing plans.



# Finance

- Operating Budget Considerations
  - Who is your Chief Administrative Officer?
  - Who is your fiscal officer for budget purposes?
  - Is there adequate communication between departments?
  - Does your budget contain complete millage information?
  - When will your budget be completed, presented, and adopted?
    - Must be **before** the start of the new fiscal year.
  - Have you conducted an annual audit?
    - Bi-annual audit is permitted if population under 4k

# Finance

- Importance of the Capital Budget
  - Long-term financing plan
  - Promotes strategic thinking
  - Supports project completion
    - Earmarks funds for specific initiatives
  - Provides assurances to project contractors
  - Necessary for property allocation and professional expenses
    - Engineering reports, soil testing, amendments to ordinances,
  - Facility and department support
  - Capital Improvement Programs



# Finance

- The Capital Improvement Program
  - Long-term schedule for all major-capital projects
  - Prevention and anticipated improvements
  - Prepared by the planning commission, subject to approval by legislature
  - Michigan Planning and Enabling Act (MPEA)
    - Requires a prioritized 6-year plan
    - Expenditures for each department must be considered



# Finance

- Special Assessments

- May only be levied on land and only to the extent the land is benefitted by the improvement
  - Therefore, may be different if lands are benefitted differently
- Most often levied for improvements that only benefit specific parts of your community (e.g. street, water and sewer improvements).
- Amount of levy must be proportionate to the benefit.
- Village may borrow money or issue bonds in anticipation of a special assessment.
- Must follow the procedural requirements of the GLVA.



# Finance

- Special Assessment Procedures

1. A resolution determining the need for a special assessment for all or part of the expense for a public improvement must be provided by the council.
2. A 2/3 majority is required to impose a special assessment.
3. An ordinance containing all aspects of complete assessment procedure must be provided by the council.
4. Notice must be provided to all affected parties.
5. A public hearing addressing the necessity and apportionment of the special assessment must be held and all affected parties must have an opportunity to protest.
6. The council may adopt the ordinance after the public hearing.



**Police**

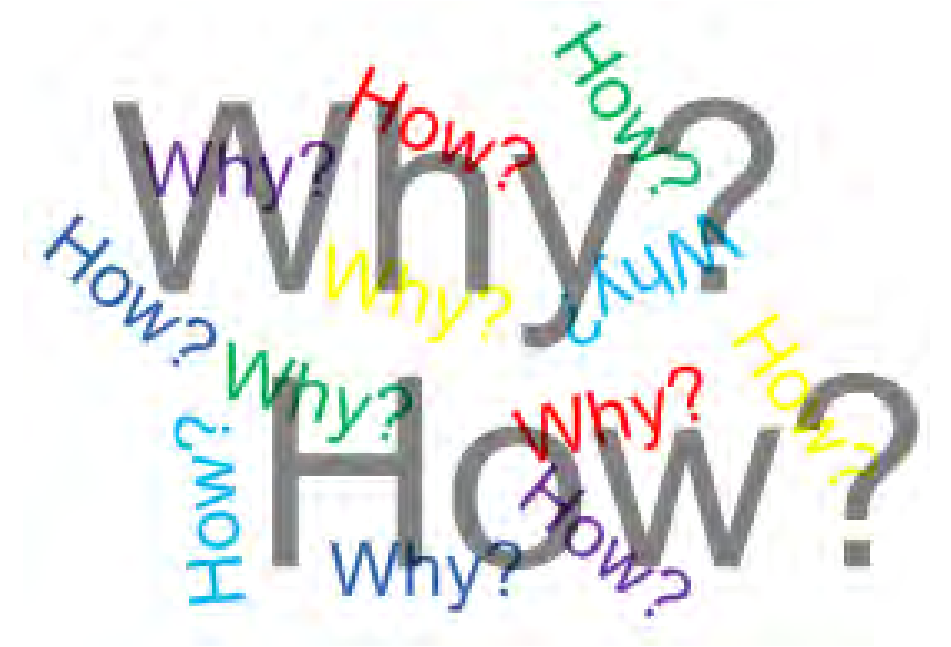


# Police

- The General Law Village Act provides that the Village Council may establish a police force.
  - Council has power to adopt rules for governing and scope of service for police.
  - Council has power to create a department of public safety.
  - President has power to appoint the number of officers necessary for “good government” and “protection of persons and property.”
  - President has power to appoint Chief of Police.
  - President has power to discipline or suspend an officer.

# Police

- What is an emergency services authority?
- Why establish or join an authority?
- What is the jurisdiction of the authority?
- What is the scope of services an authority should provide?



# Police

- The Emergency Services Act, 1988 PA 57, MCL 124.601 *et seq.*
- Any village may become a part of an existing authority or establish its own.
- Incorporated vs Non-incorporated Municipality
  - Pros
  - Cons
- Authority may also contract with a non-incorporated municipality.
  - Higher fees and terms are subject to change.
- Authority has power to draft ordinances
  - Subject to 1/3 veto.



# Police

- Facilities

- Use of county jail

- Violation of State law = County pays for lock up
    - Violation of Village law = Village pays for lock up

- Village Facility

- Village may establish their own holding facility for violation of village ordinances.
    - Regulations established by Village Council.



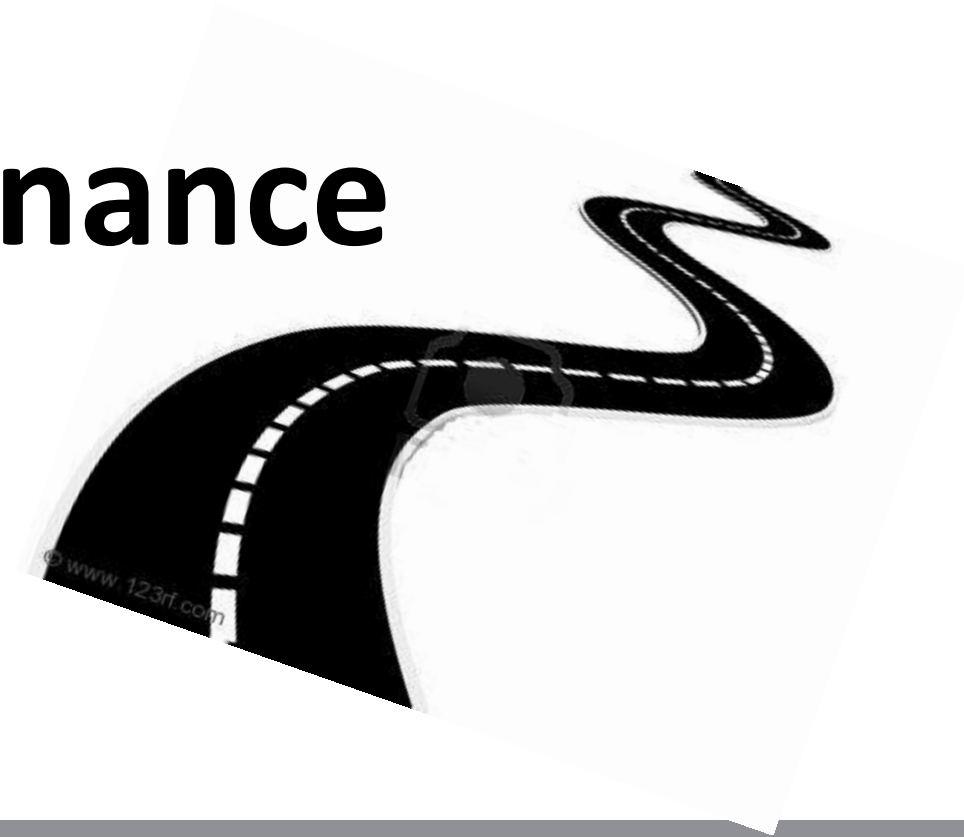
# Police

- Paying for Emergency Services
  - Tax Levy by Authority
  - Tax Levy by Village
  - Special Assessment District
  - Extra-voted Millage





# Street Maintenance



# Streets

- Distributions for street maintenance
- Street Administrator, MCL 247.663(9)
  - Alternatively, Department of Public Works, MCL 71.14
- Villages may consolidate street administration, MCL 247.663(1)

# Streets

- Jurisdiction of the Street Administrator
  - Performing or supervising
  - Labor, repairs, and improvements upon:
    - Highways & Streets
    - Sidewalks & Alleys
    - Bridges, Reservoirs, Culverts, Sewers, & Drains
    - Public Grounds
    - Parks
  - Issuing monthly report

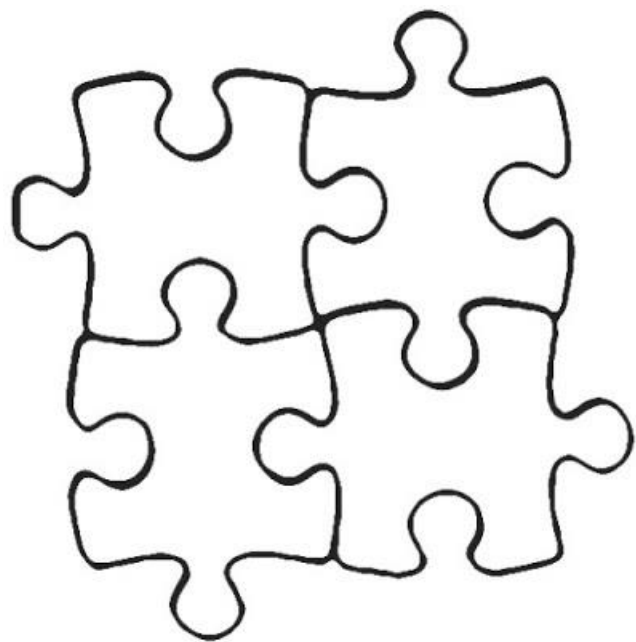




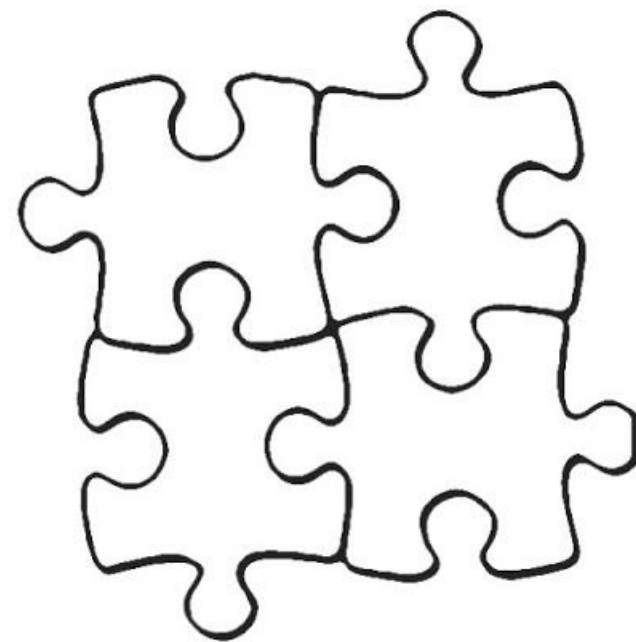
# Street



- Street Administrator Report
  - Provided to Village Council *each month*
  - Must include:
    - All labor or maintenance, including work
      - Done by the Administrator
      - Done under the director or supervision of the Administrator
    - All expenses, including
      - Materials (in itemized list)
      - Labor
    - Where the materials were used or labor was performed
    - The purpose of all additional expenses since the last report



# Annexation



# Annexation

- What is annexation?
  - “The process of bringing land from one jurisdiction to another by petition or resolution.” – State Boundary Commission
- State Boundary Commission typically **does not** govern village annexations.
- Instead, governed by MCL 74.6 of GLVA
  - “Changing boundaries”

# Annexation

- MCL 74.6 provides:
  - Whenever “changing boundaries,” the Council “shall petition the board of supervisors of the county in which such lands and premises affected thereby are situated to make such change.”
  - Petition must contain:
    - Legal description of affected land
    - Reasons for proposed change
    - Copy of Resolution of Council to take the action
    - Signature of Village President and Clerk
  - Notice and Public hearing requirement
  - County Board of Supervisors may decide if petition may be granted



# Ethics





# Ethics

- “Ethics” means what one should do.
- “There is a big difference between what we have the right to do and what is right to do.” - Justice Potter Stewart
- Legal conduct under the law may still give the appearance of impropriety, which should be avoided wherever possible.



# Ethics

- What are our ethical goals and what do we mean when we talk about ethics for municipal officials?

**GOAL:** Establish behavioral standards that promote the public's confidence and trust that the municipality is acting in the public's interest – not serving private interests.

# Ethics

- How do we effectuate municipal ethics?
  - Statutes (State legislature)
  - Local Ethics Ordinances (Village Council)
  - Local Ethics Policies and Guidelines (Boards, Committees & Departments)



# Ethics

- But more specifically...
  - Standards of Conduct for Public Officers & Employees (State Ethics Act)
    - MCL 15.341 *et seq.*
  - Contracts for Public Servants with Public Entities Act
    - MCL 15.321 *et seq.*
  - Political Activities of Public Employees Act
    - MCL 15.401 *et seq.*

# Ethics

- Incompatible Offices Act
  - MCL 15.181 *et seq.*
- Michigan Campaign Finance Act
  - MCL 169.201 *et seq.*
- Conflict of Interest Act (State Officers)
  - MCL 15.301 *et seq.*
- Open Meetings Act (OMA)
  - MCL 15.261 *et seq.*
- Freedom of Information Act (FOIA)
  - MCL 15.231 *et seq.*



# Ethics

- MCL 752.11 reads:
  - “Any public official, appointed or elected, who is responsible for enforcing or upholding any law of this state and who wilfully and knowingly fails to uphold or enforce the law with the result that any person’s legal rights are denied is guilty of a misdemeanor.”
- MCL 750.505
  - Common law criminal offense (e.g. misconduct in office) is a felony punishable by up to 5 years in prison and up to \$10,000 in fines.



# Ethics

- MCL 750.489
  - False statement of public finances; misdemeanor
- MCL 750.490
  - Improper keeping of public funds; misdemeanor
- MCL 750.490a
  - Improper purchase of goods on public credit; misdemeanor
- MCL 750.478
  - Willful neglect of duty; misdemeanor

# Ethics



- Whistleblower's Protection Act
  - MCL 15.362 *et seq.*
  - Employer may not discharge or discriminate against employee regarding compensation, terms, conditions, or privileges of employment because the employee reports a violation or suspected violation of the law.
- State Ethics Act
  - MCL 15.342 *et seq.*
  - Section 2 of the Act defines unethical conduct and sets standards for public officers and public employees.

# Ethics

- Section 2 provides that a public officer or employee:
  - Must not divulge to an unauthorized person, confidential information acquired in the course of employment
  - Must not represent his or her own personal opinion as the municipality's
  - Must use personnel resources judiciously, solely per the law, and not for personal gain or benefit.
  - Must not solicit or accept any gift or loan of money, goods, or services, or other thing of value for the benefit of a person or organization (other than the State) which tend to influence the manner in which the officer or employee performs official duties.

# Ethics

- Section 2 provides that a public officer or employee:
  - Must not engage in a business transaction in which the officer or employee may profit from his official position or authority, or benefit financially from confidential information obtained due to that position.
  - Must not engage or accept employment or render services for a private or public interest that is incompatible, in conflict, or would impair independent judgment or performance of official duties
  - Participate in negotiations or executions of contracts, permits, or other regulation related to a business entity in which he or she has a financial or personal interest.

# Ethics

- EXCEPTION # 1 – the rule above does not apply if:
  - A quorum is otherwise not available;
  - The officer is not paid for working more than 25 hrs/week; AND
  - The officer makes a disclosure of his interests on record.
- EXCEPTION # 2 – if the decision involves awarding a contract and
  - All Exception 1 requirements are met;
  - Officer will benefit from contract less than \$250 or 5% of the contract cost (whichever is less);
  - Officer files an affidavit that is made part of the public record.

# Ethics

- May want to adopt Village ethics regulations through ordinances.
- Institute for Local Government's Public Service Ethics
  - 4 tenets
- Typical prohibitions
- Defining conflict of interest and requiring public disclosures





# Ethics



- Nepotism
  - Hiring relatives or others with close ties to a public official
  - Consider whether a nepotism ban is appropriate for your community
    - Small – may be more tolerant of (or unable to avoid) close relationships among employees
    - Larger – far more likely to face criticism because there are certainly other unbiased choices
- Remember: the goal is to avoid the appearance of impropriety whenever possible in order to promote trust in our office and, most importantly, **serve the community well!**

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# THANK YOU!

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