



**City of New Buffalo
224 W. Buffalo Street
New Buffalo MI 49117
SPECIAL CITY COUNCIL MEETING AGENDA
January 27, 2021 at 6:30 p.m.**

Join Zoom Meeting

<https://us02web.zoom.us/j/81812727392?pwd=SHJvTEJNTFQyYTk3TmlWUDQzZkdLOT09>

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Public Comment
5. Presentation- City Attorney, Nick Curcio- New Council Member Training
6. Council Comments
7. Adjournment

New Council Member Training

New Buffalo City Council – January 27, 2020



Part 1

Context for City Government

Founding Principals

- *Representative government* is the idea that citizens have inherent rights and powers that they voluntarily cede to government.
 - Lincoln at Gettysburg – “Of the people, by the people, for the people.”
- *Federalism* is the idea that U.S. states have independent sovereignty, similar to nation states, but have agreed to be part of federal union.
- *Subsidiarity* is the idea that decision-making should be handled by the smallest or least centralized competent authority.
 - Handling things at state and local levels keeps government “closer to the people.”

Role for Local Government (In Theory)

- In theory, this means that there should be a larger role for local government.
- The U.S. Constitution creates a federal government of enumerated powers and reserves all other powers to the states.
- This includes the general *police power*, which is the power to provide for the public health, safety, and welfare.
- The Michigan Constitution provides that cities are subdivisions of the state (not independent sovereigns), but generally grants them *home rule*.
- *Home rule* means that a city has all governmental powers not specifically denied by the state or federal law.

Role for Local Government (In Practice)

- In practice, role for local government has lessened over time.
- First, state governments have grown less powerful as compared to federal government.
 - Post Civil-War amendments shifted balance.
 - Courts and other officials have broadly interpreted federal enumerated powers.
- Second, Congress has passed legislation preempting state and local regulation in many areas. Validly enacted federal laws *preempt* (a.k.a. supersede) state laws.
- Similarly, validly enacted state laws *preempt* local laws. Michigan Legislature has gradually rolled back home rule by preempting local regulation in many areas.
 - *Ex.*, taxation, telecommunications, mining, firearms, mobile home parks, right to farm, marijuana businesses, etc.

Functions of City Government Today (Pt. 1)

City as Service Provider

- Police protection
- Water and sewer service
- Maintenance of public facilities (streets, parks, etc.)
- Solid waste disposal

Functions of City Government Today (Pt. 2)

City as Component of State Government

- Tax assessment of real and personal property
- Collect taxes on behalf of state
- Assist in conducting state and federal elections
- Assist in enforcing state's criminal laws
- Coordinates efforts with other governmental units like counties, townships, school districts, regional authorities, state agencies, etc.

Functions of City Government Today (Pt. 3)

City as Regulator

When not preempted by state or federal law, cities can enact ordinances regulating private conduct. Common areas include:

- Land use (a.k.a zoning)
- Property maintenance
- Nuisances
- Offenses against the public peace
- Business regulations

Notable Limits on Local Power

- **Taxation:**
 - Local governments can only impose taxes when specifically authorized by state statute.
 - Good example is city income tax, which New Buffalo does not have.
 - Because of tax limitations, local governments look to other ways for raising revenue, such as service fees and special assessments.
- **Zoning**
 - State law recognizes and is sensitive to property rights, including right to use one's property.
 - Cities can regulate land use but must follow more extensive procedural steps designed to consider citizen input.
 - Zoning ordinances require Planning Commission review, hearings, and notices.

Part 2

Roles & Responsibilities of City Officials

Forms of Local Government

- Several types of local governments including:
 - Town hall.
 - Commission.
 - Strong mayor or strong executive.
 - Commission (or council) – manager.
- Roles & responsibilities are shaped by the form.
- Form of city government established by local charter.
- Charter is essentially a local constitution. Places procedural and substantive restraints on City powers.

New Buffalo's Council-Manager System

- The New Buffalo City Charter establishes a Council-Manager system.
 - Manager is the chief administrative officer.
 - Council is the policy making & legislative body.
 - Mayor is voting member & presiding officer of the Council.

City Manager

- Serves at the pleasure of Council.
- Sees that all laws, ordinances, resolutions, & acts of the council are executed.
- Manages & supervises public improvements & utilities.
- Administers & supervises city departments & offices.
- Hires and supervises city employees.
- Prepares & submits the annual budget.
- Keeps the Council advised on the city's affairs.
- Performs such other duties as are specified in the City Charter or may be required by Council.

Mayor

- Ceremonial head of the city.
- Has an equal voice & duty to vote as other Council members.
- Presiding officer of Council.
- Advises the Council on the public affairs of the city.
- Common practice is for Manager to coordinate with Mayor in preparing Council agendas, but this is not technically required.
 - The idea behind this practice is that the Mayor will typically have a good feel for the desires of Council as a whole.

Council

- The body, not individual Council members, has authority.
- Council acts through ordinances, resolutions & motions.
- Makes policy.
- Appoints & oversees city manager & city attorney.
- Adopts budgets.
- Approves contracts.
- As a legislative body, adopts laws (*i.e.*, ordinances).

City Attorney

- Legal advisor to the Council; technically represents citizens.
- Manager consults attorney on City affairs when:
 - Manager deems appropriate.
 - Council as a whole requests legal opinion or other legal work.
 - Individual Council member has need for legal advice (*e.g.*, regarding of conflict-of-interest).
- Council interaction with City Attorney typically occurs:
 - During Council meetings.
 - When coordinated by City Manager.
 - When Council members have concerns relating to performance of City Manager.
- Some functions are performed by other attorneys.
 - Jim Straub is appointed ordinance prosecutor.
 - Dickinson Wright PLLC has special-counsel relationship with City for complex or time-intensive matters.
 - City's risk pool, MMRMA, will assign defense counsel to defend certain types of lawsuits.

Council Member Ethics

- Council members must act in the public interest, not for private or personal interests.
- Confidentiality of information must be respected & maintained.
- Council members may not solicit or accept gifts or other things of value which would influence performance of duties.
- Council members must avoid conflicts of interest.
- Council members must refrain from the use of personnel resources, property, funds, or information for private gain.
- Specific ethics rules found in state law and local ordinances, *e.g.*:
 - Incompatible Offices Act;
 - Contracts with Public Servants Act;
 - Article VII of City Code.

Best Practices

- As a City official, people perceive you as its representative.
- Support policies, personnel, & practices while appropriately ensuring accountability &, when needed, seeking changes.
- Praise publicly; criticize non-publicly.
- Evaluate based on concrete goals, outcomes & measurements.
- For day-to-day matters, refer inquiries to appropriate staff.
- Everyone gets the same information.

Best Practices (cont.)

- Council members advocate for policies, not for persons or entities, & avoid promises requiring official action.
- Council/Manager system should make management non-political.
- Spokespersons should take great care.
- Be careful with electronic communications (discussed below).
- Assume everything may be recorded.

Part 3

OMA & FOIA

Background

- OMA & FOIA enacted in 1976 (post-Watergate).
- Neither statute specifically addresses electronic communications like e-mails, text messages, tweets, or computer files.
- Courts & AG interpret OMA & FOIA to apply to electronic communications.

Open Meetings Act (OMA)

- Purpose: To promote government openness & accountability by providing public access to decision making & deliberation.
- In General: All decisions and deliberations of a public body are required to be made at an open meeting.
- Communications among Council members that violate the OMA:
 - Deliberation among less than a quorum or mini-meeting.
 - Private or non-public communication (includes emails/texts) during meeting.
 - Secret voting.

OMA Application

- Communications among Commissioners that would violate the OMA if they occurred verbally are also violations if they occur electronically.
- The OMA prohibits private deliberation through electronic communications, even if the deliberation occurs using personal computers or cell phones.
- “Politicking” and informal canvassing on policy decisions do not violate the OMA, but:
 - Resulting electronic communications may be subject to FOIA.
 - Best practice is to keep informal discussions to a minimum.

OMA Penalties

- **Invalidation of decision:**
 - A court may invalidate the decision of a public body if the decision was made privately or without proper notice.
- **Injunction:**
 - A court may issue orders to the public body to prevent future violations of the OMA.
- **Penalties for intentional violations:**
 - Intentional violations of the OMA are criminal misdemeanors, & individual Commissioners may be liable for civil damages, court costs, & attorney fees. Second violations may result in jail.

Closed Session Meetings Under the OMA

- The OMA authorizes public bodies to meet in closed session in a few limited circumstances.
- Some of the most relevant include:
 - Personnel reviews;
 - Consideration of land purchase;
 - Consideration of litigation or settlement strategy;
 - Discussion of attorney-client privileged opinion or memo.
- City Manager typically decides when a closed session would be appropriate and asks the Council for a motion to go into closed session.

FOIA

- Purpose: Provide access to public records to allow the public to obtain full and complete information about government decision making.
- In General: All public records of a public body that are properly requested must be disclosed.
 - Under narrowly construed exemptions, some public records “may” be withheld from disclosure.
- Records on public body’s computer or server are a public records.
- Assume any record on any City device is subject to the FOIA.
- Records on personal devices relating to City business may be subject to FOIA & are subject to subpoena.

FOIA Penalties

- If FOIA request is denied, requester may file lawsuit to appeal.
- Court will compel disclosure of improperly withheld public record.
- If requester prevails, court awards reasonable attorneys' fees & costs.
- If public body arbitrarily & capriciously violates the FOIA, damages will be imposed against the public body.

Mandatory Records Retention

- Michigan Historical Commission Act requires government agencies to retain public records for certain time periods, depending on the type of record.
- This includes all communications involving City business, even if made from personal devices.

Best Practice for FOIA and Records Retention

- If you only learn 1 thing from this presentation, let it be this:

Do Not Text or Send Personal Emails About City Business

- While not technically illegal, texts and personal emails make it very difficult to comply with applicable laws.
- If you ever receive a text or personal email about City business, the best practice is to forward the entire conversation to your City email.

Part 4

Practical Applications /
Hypotheticals

Hypothetical #1

- Citizen seeks a change in snowplowing.
 - Plows go too fast or too slow.
 - Wants snow piled differently.
 - Plowing should be earlier or later.
 - Too much or too little salt.
 - Plowing is not frequent enough.

Hypothetical #2

- Business wants assurance of a City contract.
 - Buy local.
 - City is getting a bad deal now.
 - Her business performs better.
 - Other businesses unfairly compete.
 - Longer term contract is better.
 - American or Michigan businesses should have preference.
 - Should favor certain businesses (*e.g.*, small business, minority or women owned business, U of M grads, etc.).

Hypothetical #3

- Concerns are raised about police conduct.
 - Too many patrols or too few patrols.
 - Excessive force.
 - Discourteous, disrespectful, or rude.
 - Bias involving neighborhoods, classes of persons, or particular individuals.
 - Lack of integrity.
 - Quick tempered.
 - Lack of investigative results.

Hypothetical #4

- Staff member wants to know if she can “count on you.”
 - Could be a union representative.
 - Might want changes in particular policy or benefit, e.g., overtime, comp time, call-out, disability leave, insurance benefit, retirement plan, etc.
 - Might seek a particular result in a grievance or lawsuit.
 - Might seek a particular change in a collective bargaining agreement.
 - Might seek assurances against layoffs.
 - Wants help in a proposed early retirement buyout.

Hypothetical #5

- A “public comment” includes personal attacks.
 - Against the City Manager or a staff member.
 - Against another Commissioner.
 - Against another audience member or citizen.
- If the allegations are serious and, perhaps, even true?
- If the allegations are preposterous?
- If “colorful” language?

Hypothetical #6

- You have concerns about a closed session discussion.
 - Perhaps it violated the OMA.
 - Perhaps it involved matters you think should be made public.
 - Perhaps it involved actions violating law or policy.
 - Perhaps it included statements or behavior that were “out of bounds.”
 - Perhaps you question whether the information was accurate & complete.

Hypothetical #7

- Developer seeks “full support” for a project.
 - Wants help with zoning approvals.
 - Wants lower utility connection, permitting, or other fees.
 - Wants economic development incentives.
 - Seeks a new or improved road.
 - Wants an easement on adjoining City property.
 - Seeks changes in City requirements.
 - Claims unfair treatment by City staff.

Hypothetical #8

- You believe official statements are inaccurate or incomplete.
 - City spokesperson is not fully disclosing all relevant facts or other information.
 - Emphasis on minimizing liability rather than accountability.
 - Advances one agenda rather than fairly representing all views.
 - Official information may deprive citizens of fair hearing.
 - You fear there is an effort to mislead the media & public.

Hypothetical #9

- Speaker at public hearing comments on matters outside the scope of the hearing.
 - Perhaps not even on the same topic.
 - Perhaps topically related, but not an issue within the City's purview.
 - Perhaps within City purview and topically related, but beyond the hearing notice.
 - Perhaps its discussion will distract from the real issue.

Hypothetical #10

- Speaker turns to or addresses one or more audience members.
 - May be “grandstanding.”
 - May be seeking a “show of hands.”
 - May be picking out a particular person for special attention.
 - May be addressing factions.
 - May be trying to take control of meeting.

Hypothetical #11

- You disagree with a Council Member, the Mayor, or the City Manager.
 - Perhaps you believe the Council majority is failing to listen the public.
 - Perhaps you believe someone must provide “facts” to the community.

Questions?