

# **CHARTER**

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**City of**  
**PORTAGE, MICHIGAN**

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This folder is a copy of the Charter of the City of Portage, Michigan

May 2004

## PORTAGE CODE

- Sec. 4.6. Meetings of the Council.
- Sec. 4.7. Health Functions of the Council.
- Sec. 4.8. Limitations on Council Actions.

### Chapter 5. City Legislation

- Sec. 5.1. Prior Township Legislation Preserved.
- Sec. 5.2. City Code.
- Sec. 5.3. Introduction, Consideration, Style, and Recording of Ordinances.
- Sec. 5.4. Publication of Ordinances.
- Sec. 5.5. Effective Date of Ordinances.
- Sec. 5.6. Penalties.
- Sec. 5.7. Time Limit for Prosecution of Ordinance Violations.
- Sec. 5.8. Initiative and Referendum.
- Sec. 5.9. Initiative or Referendary Petitions.
- Sec. 5.10. Same - Council Procedure.
- Sec. 5.11. Same - Submissions to Electors.
- Sec. 5.12. Same - Status of Ordinances Adopted.
- Sec. 5.13. Same - Ordinances Suspended.

### Chapter 6. The Administrative Service

- Sec. 6.1. Administrative Officers.
- Sec. 6.2. Administrative Officers - Appointment, Employees.
- Sec. 6.3. City Manager.
- Sec. 6.4. City Clerk.
- Sec. 6.5. City Auditor.
- Sec. 6.6. City Attorney.
- Sec. 6.7. City Treasurer.
- Sec. 6.8. Deputies of the Clerk and Treasurer.
- Sec. 6.9. Assessor.
- Sec. 6.10. Police Department.
- Sec. 6.11. Fire Department.
- Sec. 6.12. Other Administrative Duties of Officers.
- Sec. 6.13. Citizen Committees.
- Sec. 6.14. Additional Administrative Powers and Duties.
- Sec. 6.15. Library.
- Sec. 6.16. Employee Welfare Benefits.
- Sec. 6.17. Pension Plan.
- Sec. 6.18. City Personnel Management Plan.

### Chapter 7. General Finance

- Sec. 7.1. Fiscal Year.
- Sec. 7.2. Budget Procedure.
- Sec. 7.3. Public Inspection of Budget Proposal.
- Sec. 7.4. Budget Hearing.
- Sec. 7.5. Adoption of Budget.
- Sec. 7.6. Budget Control.
- Sec. 7.7. Special Accounts.
- Sec. 7.8. Withdrawal of City Moneys.
- Sec. 7.9. Claims Against City, Other than for Injuries.
- Sec. 7.10. Claims Against City for Injuries.
- Sec. 7.11. Depositories.
- Sec. 7.12. Independent Audit.
- Sec. 7.13. Annual Report.

## CHARTER

### Chapter 8. Taxation

- Sec. 8.1. Power to Tax and Tax Limits.
- Sec. 8.2. Tax Day.
- Sec. 8.3. Preparation of the Assessment Roll.
- Sec. 8.4. Board of Review.
- Sec. 8.5. Duties and Functions of Board of Review.
- Sec. 8.6. Meetings of the Board of Review.
- Sec. 8.7. Endorsement of Roll.
- Sec. 8.8. Validity of Assessment Roll.
- Sec. 8.9. Clerk to Certify Tax Levy.
- Sec. 8.10. City Tax Roll.
- Sec. 8.11. Tax Roll Certified for Collections.
- Sec. 8.12. Taxes a Debt and Lien.
- Sec. 8.13. Personal Property - Jeopardy Assessment.
- Sec. 8.14. Taxes Due and Notification Thereof.
- Sec. 8.15. Tax Payment Schedule.
- Sec. 8.16. Failure or Refusal to Pay Personal Property Taxes.
- Sec. 8.17. Collection of Delinquent Taxes.
- Sec. 8.18. Protection of City Lien.
- Sec. 8.19. State, County, and School Taxes.
- Sec. 8.20. Disposition of Real Property Held by City.

### Chapter 9. Special Assessments

- Sec. 9.1. General Power Relative to Special Assessments.
- Sec. 9.2. Detailed Procedure to Be Fixed by Ordinance.
- Sec. 9.3. Reconsideration of Petitions.
- Sec. 9.4. Condemnation Costs.
- Sec. 9.5. Limitation on Suits and Actions.
- Sec. 9.6. Lien for and Collection of Special Assessments.
- Sec. 9.7. Hazards and Nuisances.
- Sec. 9.8. Boulevard Lighting.
- Sec. 9.9. All Real Property Liable for Special Assessments.
- Sec. 9.10. Special Assessment Accounts.
- Sec. 9.11. Certain Postponements of Payments.

### Chapter 10. Borrowing Power

- Sec. 10.1. Municipal Borrowing Power.
- Sec. 10.2. Limitations upon Borrowing Power.

### Chapter 11. Contracts

- Sec. 11.1. Contracting Authority of Council.
- Sec. 11.2. Purchase and Sale of Personal Property.
- Sec. 11.3. Limitation on Contractual Power.
- Sec. 11.4. Business Dealings with City.

### Chapter 12. Elections

- Sec. 12.1. Regular City Elections.
- Sec. 12.2. Primary Elections.
- Sec. 12.3. Special Elections.
- Sec. 12.4. Qualifications of Electors.
- Sec. 12.5. Election Procedure.
- Sec. 12.6. Election Commission.
- Sec. 12.7. Nomination Petitions.
- Sec. 12.8. Approval of Petitions.

## PORTAGE CODE

- Sec. 12.9. Procedure at Primary Elections.
- Sec. 12.10. Form of Ballots.
- Sec. 12.11. Canvass of Votes.
- Sec. 12.12. Persons Elected - Tie Vote.
- Sec. 12.13. Recount.

### **Chapter 13. Utility Franchises and Municipal Utilities**

- Sec. 13.1. Public Utility Franchises.
- Sec. 13.2. Limitations on the Granting of Franchises.
- Sec. 13.3. Procedure for Granting Franchises.
- Sec. 13.4. Sale or Assignment of Franchises.
- Sec. 13.5. Plans of Facilities in Streets and Public Places.
- Sec. 13.6. General Powers Respecting Utilities.
- Sec. 13.7. Management of Municipal Utilities.
- Sec. 13.8. Rates.
- Sec. 13.9. Utility Rates, Charges, and Collection.
- Sec. 13.10. Disposal of Utility Plants and Property.
- Sec. 13.11. Utility Accounts.

### **Chapter 14. Municipal Court**

### **Chapter 15. Supervisors**

## PREAMBLE

We, the people of the City of Portage, grateful to God for the blessings of freedom, peace, health, safety, and justice, and desirous of further securing these blessings to ourselves and our posterity, and to provide for the public peace and health and for the safety of persons and property, do hereby ordain and establish this Charter for the City of Portage.

## CHAPTER 1. NAME, BOUNDARIES, AND GENERAL PROVISIONS

### Sec. 1.1. Name.

The City shall be a body corporate under the name, "The City of Portage."

### Sec. 1.2. Boundaries.

(a) The City shall embrace and be comprised of the entire territory of the organized Township of Portage, Kalamazoo County, Michigan, as it existed on February 18, 1963, together with such annexations thereto and less such detachments therefrom that may be made from time to time.

(b) Upon annexation or detachment of territory, the boundaries shall be deemed thereby to be changed without amendment of this section.

(c) The Clerk shall maintain and keep available in his office for public inspection an official description and map of the boundaries of the City, as the same shall exist from time to time.

**State law reference**—Annexation, MCL 117.6 et seq., MSA 5.2085 et seq.

### Sec. 1.3. Records to Be Public.

All records of the City shall be public, unless otherwise provided by law; shall be kept in City offices, except when required for official reasons or for purposes of safekeeping to be elsewhere; and shall be available for inspection at all reasonable times.

**State law references**—Mandatory that charter provide that all records of municipality be public, MCL 117.3(l), MSA 5.2073, (l); Freedom of Information Act, MCL 15.231 et seq., MSA 4.1801(1) et seq.

### Sec. 1.4. Public Records as Evidence.

Public records of the City, or copies duly certified by the custodian thereof, shall be prima-facie evidence of their contents in all legal actions or in other proceedings.

**State law references**—Mandatory that charter provide that all records of municipality be public, MCL 117.3(l), MSA 5.2073, (l); Freedom of Information Act, MCL 15.231 et seq., MSA 4.1801(1) et seq.

### Sec. 1.5. Definitions and Interpretations.

Except as otherwise specifically provided or indicated by the context of this Charter:

- (1) The word "board" includes the word "commission";[.]
- (2) The word "City" means the City of Portage;[.]
- (3) The word "Council" means the body vested with the legislative power of the City of Portage, and is synonymous with the terms, city commission, governing body, and other terms used to designate the governing bodies of cities in any law;[.]
- (4) The word "lien" includes security interest as defined by law or as brought into being by the operation of law, or both;[.]
- (5) The word "law" denotes applicable Federal law, the Constitution and statutes of Michigan, the applicable common law, and this Charter;[.]
- (6) The word "officer" includes, but shall not be limited to, the Mayor, the members of the Council, the Judges of the Municipal Court, members of City boards, and administrative officers and deputy administrative officers of the City;[.]
- (7) The word "person" extends and may be applied to bodies politic and corporate and to partnerships and associations as well as to individuals;[.]
- (8) The words "printed" or "printing" include typewriting, printing, engraving, stencil duplicating, lithographing, photostating, or any similar method of reproducing written language;[.]

- (9) The words "publish" or "published" include publication in the manner provided by law, or, where there is no applicable law, in one or more newspapers of the City qualified by law for the publication of legal notices or, if newspaper publication is not available, by posting in at least two places in each election precinct;[.]
- (10) Except in reference to signatures, the words "written" and "in writing" include hand written script, printing, typewriting, teletype and telegraphic communications, and other forms of graphic English language readable by the average literate person;[.]
- (11) All words indicating the present tense are not limited to the time of the adoption of this Charter, but extend to and include the time of the happening of any event or requirement to which a Charter provision is applied;[.]
- (12) The singular includes the plural, the plural includes the singular, the masculine gender extends to and includes the feminine gender and the neuter.

#### **Sec. 1.6. Official Performance.**

Whenever this Charter requires the performance of an act by an officer, the act may be performed by a deputy, or by a subordinate under the officer's direction, unless otherwise provided or required by law.

#### **Sec. 1.7. Penalties for Violations of Charter.**

No person shall fail to do or perform any act required to be done or performed by him, nor shall any person do any act forbidden, by this Charter. Any such failure to do or perform any such act so required and the doing of any such act forbidden shall constitute a violation of this Charter. Any person found guilty of an act constituting a violation of this Charter may be punished by a fine or imprisonment, or by both such fine and imprisonment, in the discretion of the court. No such fine shall exceed the sum of five hundred dollars (\$500.00) nor shall any such imprisonment exceed ninety (90) days. This section shall not operate to

limit or prejudice the power to remove officers or discharge employees as provided in this Charter.

#### **Sec. 1.8. Chapter and Section Headings.**

The chapter and section headings used in this Charter are for convenience only and are not a part of the Charter, and shall not be considered as such for any purpose.

#### **Sec. 1.9. Amendments.**

This Charter may be amended at any time in the manner provided by law. Should two (2) or more amendments, adopted at the same election, have conflicting provisions, the amendment receiving the largest affirmative vote shall prevail as to those provisions.

**State law references**—Power to adopt and amend charter, Mich. Const. 1963, art. VII, § 22; charter amendment procedures, MCL 117.21 et seq., MSA 5.2100 et seq.

#### **Sec. 1.10. Severability of Charter Provisions - Ordinances.**

If any provision, section, or clause of this Charter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any remaining portion or application of this Charter, which can be given effect without the invalid portion or application, and, to this end, this Charter is declared to be severable. This rule of severability shall apply equally to ordinances of the City.

#### **Sec. 1.11. New State Constitution.**

In the drafting of this Charter, the Charter Commission has been aware of the adoption of the new Michigan Constitution. Insofar as the Constitution, itself, affects the provisions of city charters, the Charter Commission has endeavored to comply with its provisions. The Charter Commission is and has been aware of the fact that implementing legislation will be required to make such Constitution fully effective. Insofar as such implementing legislation could be foreseen by the Charter Commission from information available to it, every effort has been made to make this Charter conform thereto or to include the intent and purpose thereof. In the drafting of this Charter by the Charter Commission and in its adop-

tion by the electors of the proposed City of Portage, it has been and is the intent and purpose of this Charter Commission and of the said electors that the provisions of this Charter shall be liberally construed by the officers of the City, by those required to apply the provisions of the Charter, and by the courts in interpreting and applying such provisions, to the end that, insofar as possible, such provisions shall be consistent with and not contravene the new State Constitution, and the general laws of the State whether the same were in effect at the time of the drafting and adoption of this Charter or thereafter adopted by the Legislature.

## CHAPTER 2. MUNICIPAL POWERS AND LIABILITIES

### Sec. 2.1. General Powers.

(a) Unless otherwise provided or limited by law, the City of Portage shall be vested with and possess all the powers, functions, privileges, and immunities, expressed or implied, to which cities are, or hereafter may be, entitled under and in the spirit of the law of Michigan and the home rule traditions of the State, and may exercise all powers which are not prohibited by and which are not in contravention with law. In the exercise of such powers, functions, and privileges, the City shall manage and control its finances, rights, interests, buildings, and property; enter into contracts; acquire by purchase, grant, lease, or condemnation and hold and utilize any property, both within the limits and without the limits of the City; acquire, own, and operate any utility, unless the power to do so is denied by law; to do any act, including the adoption of any ordinances, to advance the interests, good government, and prosperity of the City and its inhabitants; and protect the public peace, morals, health, and general welfare and the safety of persons and property.

**State law references**—Permissible that charter provide for exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, MCL 117.4j(3), MSA 5.2083, (3); mandatory that charter provide for the public peace and health and for the safety of persons and property, MCL 117.3(j), MSA 5.2073, (j).

(b) The city may join with any municipal corporation or with any unit of government, or with any number or combination thereof, by contract, or otherwise as may be permitted by law, in the ownership, operation, or performance, jointly, or by one or more on behalf of all, of any property, facility, or service which each would have the power to own, operate or perform separately.

(c) The enumeration of particular powers, privileges, or immunities in this chapter or elsewhere in this Charter shall not be held or interpreted to be exclusive.

### Sec. 2.2. Permitted and Other Powers.

Under authority of Public Act No. 279 of 1909 (MCL 117.1 et seq., MSA 5.2071 et seq.), as amended, and other provisions of law, the power of the City shall include, but shall not be limited to, the following, which so far as possible shall be exercised by general ordinance provisions:

- (1) To declare as a hazard or nuisance any act or condition, upon public or private property, or both, including, but not limited to, the accumulation of rubbish and the growing of noxious weeds which is or may be dangerous to the health, safety, morals, or welfare of the inhabitants of the City; to provide for the abatement thereof; and to provide that the costs of such abatement shall be charged as a special assessment against the real property on which the hazard or nuisance is located;

**State law reference**—Control and eradication of noxious weeds, MCL 247.61 et seq., MSA 9.631(1) et seq.

- (2) To provide for the public health and welfare and the safety of persons and property by:

- (i) Regulating trades, occupations, and amusements within the City, and prohibiting trades, occupations, and amusements which are detrimental to the safety, health, morals, or welfare of its inhabitants;

**State law reference**—Permissible that charter provide for regulation of trades, occupations and amusements, MCL 117.4i(d), MSA 5.2082, (d).

- (ii) Regulating the preparation, storage, transportation, and sale or other distribution of foods, drugs, and beverages for human consumption;

**State law reference**—Permissible that charter provide for enforcement of sanitary ordinances, MCL 117.4i(j), MSA 5.2082, (j).

- (iii) Collecting and disposing of garbage and rubbish;

**State law reference**—Permissible that charter provide for enforcement of sanitary ordinances, MCL 117.4i(j), MSA 5.2082, (j).

- (iv) Regulating and restricting the locations of oil and gasoline stations and other establishments which sell fuels for propelling and lubricating self-propelled vehicles;

**State law reference**—Permissible that charter provide for regulating and restricting the location of oil and gasoline stations, MCL 117.4i(b), MSA 5.2082, (b).

- (v) Licensing and regulating the number of vehicles, which carry persons or property for hire, fixing the rates of fare and charges, and determining the location of stands for such vehicles;

- (vi) Regulating the construction, erection, alteration, equipment, repair, moving, removal, and demolition of buildings and structures and their appurtenances and service equipment;

**State law reference**—State Construction Code Act of 1972, MCL 125.401 et seq., MSA 5.2771 et seq.

- (vii) Establishing zones within the City and regulating therein the use and occupancy of lands or structures; the height, area, size and location of buildings; the required open spaces for light and ventilation of buildings, and the density of population;

**State law references**—Permissible that charter provide for zoning, MCL 117.4i(c), MSA 5.2082, (c); zoning generally, MCL 125.581 et seq., MSA 5.2931 et seq.

- (viii) Regulating, limiting, and prohibiting the construction and use of buildings and lands in order to promote the public safety and to prevent fires;

**State law references**—Permissible that charter provide for zoning, MCL 117.4i(c), MSA 5.2082, (c); zoning generally, MCL 125.581 et seq., MSA 5.2931 et seq.; State Construction Code Act of 1972, MCL 125.401 et seq., MSA 5.2771 et seq.

- (ix) Regulating and controlling the use in any manner of streams, waters, and watercourses within the City in any manner consistent with the provisions of law, including the prevention and control of the pollution and obstruction thereof in any manner, and the development of the stream beds and banks;

**State law reference**—Permissible that charter provide for use, control and regulation of streams, waters and watercourses, MCL 117.4h(4), MSA 5.2081, (4).

- (x) Regulating the use of private property, insofar as the same may affect the public health and safety and the use of public streets and highways and to provide for the health and safety of persons on property to which persons are customarily invited for purposes of trade, entertainment, or manufacture.

- (3) To establish and reasonably control streets, alleys, bridges, and public places, and the space above and beneath them, and the use thereof by:

- (i) Creating and vacating the same and by acquiring land or any interest in land, which may be required therefor, which land may also be sold by the City to the extent it is not, or may no longer be, required for the purpose for which acquired, including any surplus land which may be incidental to or necessary for the purchase of land required;

- (ii) Providing a plan of City streets and alleys;

**State law reference**—Permissible that charter provide for plan of streets and alleys, MCL 117.4h(3), MSA 5.2081, (3).

- (iii) Providing for the safety of persons and property by regulating the use of the surface of streets and the



space above and below the surface for the purposes of travel in any manner, advertising in any manner, structure of any type or kind, and as easements or rights-of-way for public utility facilities;

**State law reference**—Permissible that charter provide for use, regulation and control of streets, MCL 117.4h(1), MSA 5.2081, (1).

- (iv) Compelling all persons to care for the untraveled portions of streets lying between the curbs or, where no curbs, shoulders and property line which abut upon premises owned, controlled, or occupied by them, and to keep the same free from weeds and from objects which are offensive or hazardous to public health and safety, and, upon the failure to do so, cutting and removing such weeds and removing such objects and assessing the cost thereof against such property as a special assessment;
- (v) Compelling all persons to keep sidewalks which are in the area of streets immediately adjacent to the premises owned, controlled, or occupied by them, free from anything which obstructs such sidewalks, or which makes the same offensive or hazardous to the public health or safety, and upon failure to do so, to remove the same and assess the cost thereof against such property as a special assessment;
- (vi) Providing for the grade of streets and sidewalks, or either of them, and requiring public utility users of the streets to conform thereto with respect to their tracks or facilities located on, above, or under the streets; requiring railroads to keep their tracks, and the street surface between their tracks and for a distance of one and one-half feet on each side of them, in a state of repair deemed reasonable by the City officer responsible therefor;

**State law reference**—Permissible that charter provide for use, regulation and control of streets, MCL 117.4h(1), MSA 5.2081, (1).

- (vii) Regulating the speed of vehicles, trains, and locomotives upon or across the streets within the provisions and limitations of law, and the stopping and parking of the same upon the streets and at street crossings;

**Editor's note**—Most of subsection (vii) is preempted by federal and state law. See *CSX Transp., Inc. v. City of Thorsby*, 741 F. Supp. 889 (M.D. Ala. 1990); *CSX Transp., Inc. v. City of Tullahoma, Tenn.*, 705 F. Supp. 385 (E.D. Tenn. 1988); *Chesapeake & Ohio Ry. Co. v. City of Bridgman*, 669 F. Supp. 823 (W.D. Mich. 1987); *Johnson v. Southern Ry. Co.*, 654 F. Supp. 121 (W.D.N.C. 1987); *Southern Pacific Transp. Co. v. Town of Baldwin*, 685 F. Supp. 601 (W.D. La. 1987).

- (viii) Providing for and regulating the lighting of streets and alleys, whether such lights be located on public or private property;

**State law reference**—Permissible that charter provide for special assessments for boulevard lighting, MCL 117.4d(1)(b), MSA 5.2077, (1)(b).

- (ix) Preventing and abating the obstruction of streets and alleys or any part thereof;

**State law reference**—Permissible that charter provide for use, regulation, improvement and control of streets, alleys and public ways, MCL 117.4h(1), MSA 5.2081, (1).

- (x) Regulating the location of buildings and structures and of trees and shrubbery near street corners and street intersections with alleys, so as to provide for the public safety and welfare in the use of streets and alleys;
- (xi) Providing for and regulating the numbering of buildings upon property abutting the streets and alleys and compelling the owners and occupants thereof to affix numbers thereto;

- (xii) Providing for the use, by others than the owner, of public utility property located on, above, or under the streets, alleys, and public places, upon the payment of a reasonable compensation therefor to the owner thereof;

**State law reference**—Permissible that charter so provide for use of public utility property located on, above, or under streets, MCL 117.4h(2), MSA 5.2081, (2).

- (xiii) Providing for the planting and general care and protection of trees and shrubbery within the streets and public places of the City and preventing the cutting of limbs and branches for the placing and maintenance of utility wires without the consent of the designated officer or agency of the City;
- (xiv) Providing for the regulation of the planting of trees and shrubbery near streets insofar as the same is required to protect City sewers.
- (4) To undertake any public work or make any public improvement, or any repair or replacement thereof, either directly or by contract with public bodies or private persons; and to participate in any public work or public improvement under any lawful plan by which the whole or partial support of such work or improvement is provided by another governmental unit or agency;
- (5) To construct, provide, maintain, extend, operate, and improve:
  - (i) Within the City: a City Hall, City office buildings; community buildings, police stations including jail facilities, fire stations; civic auditoriums; public libraries, and polling places; and
  - (ii) Either within or without the corporate limits of the City: public parks; recreation grounds and stadiums; Municipal camps, public grounds, zoological gardens, museums; airports and landing fields; cemeteries, public wharves and landings upon navigable waters; levees, embankments, and structures for flood control, and other purposes related to public health, safety, and welfare; electric light and power plants and system; gas distribution systems; public heating plants and systems; waterworks and water treatment plants and systems; sewage disposal facilities; market houses and market places; facil-

ities for the storage and parking of vehicles; hospitals; facilities for the landing of helicopters and air vehicles having like landing characteristics; and any other structure or facility which is devoted to or intended for public purposes within the scope of the powers of the City;[.]

**State law reference**—Permissible that charter provide for obtaining of utilities, jails and other property, MCL 117.4c, 117.4e—117.4g, MSA 5.2076, 5.2078—5.2080.

- (6) Acquiring by purchase, gift, condemnation, lease, or otherwise, real and personal property and interests in property, either within or without the corporate limits of the City, for any public use or purpose within the scope of its powers including, but not by way of limitation, the uses and purposes set forth in this section;

**State law reference**—Permissible that charter provide for obtaining of property, MCL 117.4e, MSA 5.2078.

- (7) Receiving and holding any property, whether real, personal or intangible, in trust for City hospital, library, park, cemetery, or any other Municipal purpose and applying the same to the execution of such trust.

## CHAPTER 3. CITY OFFICERS

### Sec. 3.1. City Officers.

(a) The elective officers of the City are the Mayor, the six Councilmen, and the Municipal Judges.

(b) The appointive officers of the City are the City Manager, the Clerk, the Treasurer, the Assessor, the Police Chief, the Fire Chief, and members of City boards, whether such boards be created by this Charter or by ordinance in pursuance of law. The Council may, upon the recommendation of the City Manager, create additional appointive offices and officers, or, unless prohibited by law, combine any administrative offices, by ordinance to meet the needs of the City, but the powers and duties of such additional offices and

officers shall not contravene or duplicate the powers and duties of the officers herein designated.

**State law reference**—Mandatory that charter provide for election of mayor and legislative body and for election or appointment of a clerk, treasurer, assessor and other necessary officers, MCL 117.3(a), MSA 5.2073, (a).

### **Sec. 3.2. Eligibility for Elective City Office.**

(a) To be eligible for election or appointment to and to hold a City office, a person shall be and remain a registered elector of the City.

(b) A person appointed to fill a vacancy in an elective office must have such qualifications at the time of his appointment.

(c) The Council shall be the judge of the election and eligibility of its members, subject to election recount provisions of law.

(d) In making appointments of appointive officers, first consideration shall at all times be given to electors of the City having the necessary training and ability for the office to be filled. The requirement that a person must be a registered elector of the City to hold an appointive office may be waived by the Council by a vote of five or more of its members. If such requirement is so waived, any such appointment shall be provisional during a period fixed by the Council, but not to exceed nine months after the appointment is made. During such period, a person so appointed shall become a registered elector of the City and his appointment shall then cease to be provisional. No person shall hold a provisional appointment in the City government more than once in any two year period.

(8-14-1967)  
**Editor's note**—Residency requirements for appointed municipal officers and municipal employees are superseded by MCL 15.601 et seq., MSA 17.470(601) et seq.

**State law reference**—Mandatory that charter provide for qualifications of officers, MCL 117.3(d), MSA 5.2073, (d).

### **Sec. 3.3. Persons Ineligible for City Office or Employment.**

Except as otherwise provided in this Charter, a person who holds a City office shall not be eligible to hold another public office while he remains in such City office, nor shall he be eligible for any City employment for which compensation is paid

by the City, during his term of office or until ninety days have elapsed following the termination of such term of office. The City shall not have power to give any official position to one who is in default to the City.

**State law reference**—Mandatory that charter provide for qualifications of officers, MCL 117.3(d), MSA 5.2073, (d).

### **Sec. 3.4. Notice of Election or Appointment.**

The Clerk shall mail to each person elected or appointed, a notice of election or appointment within five days from the time of election or appointment.

### **Sec. 3.5. Compensation of Officers.**

(a) Except as otherwise provided in this Charter, the compensation of all officers of the City, except members of the Council and the Mayor, shall be established by the Council. The City shall not grant or authorize extra compensation to any officer or agent of the City after his services have been rendered.

(b) City officers shall be entitled to reimbursement for actual and reasonable [reasonable] expenses incurred by them in connection with the execution of their offices, when the claim therefor has been audited by the Clerk and approved by the Council.

**State law reference**—Mandatory that charter provide for compensation of officers, MCL 117.3(d), MSA 5.2073, (d).

### **Sec. 3.6. Oath of Office.**

Every officer of the City, before entering upon his duties, shall take the oath or affirmation required by the Constitution of the State of Michigan. The Council may require designated employees to take such oath before entering upon their employment. Executed copies of such oaths or affirmations shall be filed with the Clerk.

**State law reference**—Oath of office, Mich. Const. 1963, art. IX, § 1.

### **Sec. 3.7. Surety Bonds.**

In order to protect the City and the public, the Council shall require appropriate surety bonds of officers and employees. No bond shall be renewed upon its expiration. The premium of such bonds

shall be paid by the City. Blanket bonds covering two or more officers or employees, or both, may be substituted for individual bonds.

### **Sec. 3.8. Giving of Surety by Officers and Employees Forbidden.**

No officer or employee shall give or furnish any bail, bond, or recognizance, nor shall he be the agent of any bondsman or insurer in connection with any bond or insurance which may be required by law, ordinance, or by the Council relative to any City function, or which requires the approval of the Council.

### **Sec. 3.9. Vacancies in Office.**

(a) A City office shall become vacant upon the occurrence of any of the following:

- (1) The expiration of the term of office;
- (2) The death of the incumbent;
- (3) A resignation, when accepted by the appointing authority;
- (4) A removal from office in any manner provided by law;
- (5) Ceasing to possess at any time the qualifications for eligibility for office required by this Charter for election or appointment to office, or the holding thereof;
- (6) Final conviction of an infamous crime, any act constituting malfeasance in office under this Charter, or of an offense involving a violation of his oath of office;
- (7) A judicial determination that the incumbent is mentally ill;
- (8) A decision of a competent tribunal declaring the election or appointment of the incumbent void;
- (9) Failure to take the oath or make the affirmation, or file the bond required for the office, within ten days from the date of election or appointment or within such other time, not exceeding thirty days thereafter, as the Council may fix;
- (10) Except the Mayor and Councilmen, absence from the City or failure to perform the duties of such office for ninety consec-

utive days, unless such absence from the City or failure to perform the duties of office shall be excused by the Council prior to the expiration of such ninety day period.

**State law reference**—Vacancies in city office to be filled as provided in charter, MCL 201.37, MSA 6.717.

### **Sec. 3.10. Resignations.**

Resignations of elective officers and of officers appointed by the Council or by the Mayor with the approval or confirmation of the Council, shall be made in writing and filed with the Clerk, who shall immediately notify the proper officials concerned. The resignation of all other officers shall be made in writing and filed with the City Manager. No resignation from office shall be effective until twenty-one days after it has been filed, unless accepted by the Council or City Manager, as the case may be, prior to the expiration of such time.

### **Sec. 3.11. Removal from Office.**

The Council may remove officers appointed by it or by the Mayor with the approval or confirmation of the Council, except an officer who is appointed to fill a vacancy in an elective office, for inefficiency, neglect of duty, or malfeasance in office.

### **Sec. 3.12. Recall.**

An elective officer may be recalled and the vacancy thereby created shall be filled in the manner prescribed by law.

**State law references**—Permissible that charter provide for recall of its officers, MCL 117.4i(g), MSA 5.2082, (g); recall generally, MCL 168.951 et seq., MSA 6.1951 et seq. See also Mich. Const. 1963, art. II, § 8.

### **Sec. 3.13. Filling Vacancies.**

(a) If a vacancy occurs in an elective office, except in the case of recall, the Council shall fill the vacancy by appointment within sixty days thereafter. Each such appointment, except as otherwise provided in this Charter, shall be for a term ending on the first Monday following the next regular City election.

(b) If a vacancy occurs in an appointive office, such vacancy shall be filled within thirty days thereafter in the manner provided for making the original appointment. Such time may be extended for not more than an additional sixty days, by Council resolution setting forth the reasons therefor.

**State law reference**—Vacancies in city office to be filled as provided in charter, MCL 201.37, MSA 6.717.

### **Sec. 3.14. Delivery of Office to Successor.**

Whenever an officer or employee leaves an office or employment for any reason, he shall deliver forthwith to his successor in the office or employment, or to the City Manager if there be no such successor, all property of the City, such as books, working papers, moneys, and effects, which are in his custody, possession, or control. To make effective the requirement of this section, the City shall furnish to each officer and department of the City and to employees, including such as are retained professionally, all necessary supplies as may be necessary for compliance with such requirement.

## **CHAPTER 4. THE CITY COUNCIL**

### **Sec. 4.1. The City Council.**

The Council shall consist of the Mayor and the six Councilmen. The Council shall exercise all of the legislative and policymaking powers of the City and shall provide for the performance of all duties and obligations imposed upon the City by law. The compensation of each Councilman shall be twenty dollars for each regular and special meeting of the Council actually attended by him, unless the Council provides a different compensation per meeting actually attended by ordinance adopted not less than six months prior to the City election following which such compensation shall become effective. Such compensation shall be payable quarterly.

**Editor's note**—Compensation of the council has been superseded by Code ch. 2, art. 7, div. 5, which created the local officers compensation commission pursuant to MCL 117.5c, MSA 5.2084(3).

**State law reference**—Mandatory that charter provide for election of a body vested with legislative power, MCL 117.3(a), MSA 5.2073, (a).

### **Sec. 4.2. Expiration of Terms of Office.**

Beginning with the regular City election in November of 1975, three Councilmen shall be elected for terms of four years, and three Councilmen and the Mayor shall be elected for terms of two years. Thereafter, at each regular City election, a Mayor shall be elected for a term of two years and three Councilmen for terms of four years. All such terms of office shall expire in the last year of such term of office on the first Monday in November following the regular City elections. (11-15-1974)

**State law reference**—Odd-year elections, MCL 168.644a et seq., MSA 6.1644(1) et seq.

### **Sec. 4.3. Organization of the Council.**

The Council shall meet and organize on the first Monday in April following each regular City election. At such meeting, or within one week thereafter, the Council shall elect from its membership a Mayor pro-tempore and do such other acts as may be required for its organization and the conduct of its business. The Council may provide by ordinance for the interim order of the succession of its members to the office of Mayor pro-tempore and for the prompt reconstitution of the Council in the event that its membership is reduced to less than a quorum.

### **Sec. 4.4. Mayor.**

(a) The Mayor shall be recognized as the chief executive officer of the City and shall perform all duties provided or required by him by law or by the Council.

(b) He shall be the presiding officer of the Council.

(c) He shall be a member of the Council with all the powers and duties of that office, including the right and duty to vote on questions before the Council.

(d) He shall advise the Council concerning the legislative and policymaking affairs of the City and make recommendations thereon.

(e) He shall recommend to the Council his selection for the office of City Manager whenever there is a vacancy in that office. In case the

Council shall not appoint any such nominee, he shall make additional nominations until an appointment is made by the Council.

(f) In emergencies, he shall have the powers conferred by law upon peace officers and shall exercise such powers, as the City's chief executive officer, to prevent disorder, to preserve the public peace and health, and to provide for the safety of persons and property.

(g) He shall not possess the veto power.

(h) In addition to his compensation as a member of the Council the Mayor shall receive \$1,000.00 per year, payable quarterly.

**State law reference**—Mandatory that charter provide that mayor is chief executive of city, MCL 117.3(a), MSA 5.2073, (a).

#### **Sec. 4.5. Mayor Pro-Tempore.**

The Mayor Pro-tempore shall succeed to the office of Mayor when a vacancy occurs in that office, until such time as the Council shall appoint an elected member of the Council to fill such vacancy. He shall have and exercise the powers and duties of the Mayor when the Mayor is absent or unable to perform the duties of his office.

**State law reference**—Vacancies in city office to be filled as provided in charter, MCL 201.37, MSA 6.717.

#### **Sec. 4.6. Meetings of the Council.**

(a) The Council shall meet in the established Council Chamber, or in such other place as may be established by ordinance, and shall hold at least two regular meetings in each month.

(b) Special meetings of the Council shall be held at the regular meeting place of the Council. Special meetings shall be called by the City Clerk on the written request of the Mayor, or of any three members of the Council.

(c) At least twelve hours written notice shall be given of special meetings, designating the time and purpose of the meeting. Such notice shall be given personally by the Clerk to each member of the Council, or written notice may be left at the usual place of residence or business of each member of the Council by the Clerk or by someone designated by him. A copy of such notice shall also be delivered at the place of business of each

newspaper which has its chief place of business in the City, but this requirement shall not be jurisdictional to the holding of any such meeting or affect the validity of any action taken thereat.

**State law reference**—Public notice of special meetings, MCL 15.265(4), MSA 4.1800(15), (4).

(d) In an emergency, any special meeting shall be a legal meeting, without such notice, if all members are present or, if there be a quorum present, all absent members have waived in writing the required notice thereof. Waivers may be made either before or after the time of the meeting. The fact deemed to constitute an emergency as grounds for holding a special meeting without notice under authority of this subsection shall be set forth in the journal of the meeting.

**State law reference**—Notice of special meetings, MCL 15.265(4), MSA 4.1800(15), (4).

(e) An affidavit of the giving or service of any notice required by this section shall be made a part of the journal of a special meeting. All waivers of notice shall be attached to and made a part of the journal of the special meeting to which they pertain.

(f) No business shall be transacted at any special meeting of the Council except that stated or given in the notice of the meeting.

(g) All regular and special meetings of the Council shall be public meetings and the public shall have a reasonable opportunity to be heard at a reasonable time in the course of each meeting.

**State law references**—Mandatory that charter require compliance with Open Meetings Act, MCL 117.3(1), MSA 5.2073, (1); Open Meetings Act, MCL 15.261 et seq., MSA 4.1800(11) et seq.

(h) Four members of the Council shall be a quorum for the transaction of business. In the absence of a quorum, any number less than a quorum may adjourn a meeting to a later date.

(i) The Council shall determine its own rules and order of business and shall keep a journal, in the English language, of all its proceedings. The journal of each meeting of the Council shall be signed by the Clerk. The vote upon all matters considered by the Council shall be taken by "Yes"

and "No" votes which shall be entered upon record, except that, where the vote is unanimous, it shall be necessary only so to state.

**State law references**—Records to be open to public in accordance with Freedom of Information Act, MCL 117.3(l), MSA 5.2073, (l); Freedom of Information Act, MCL 15.231 et seq., MSA 4.1801(1) et seq.; mandatory that charter provide for keeping legislative journal in English, MCL 117.3(m), MSA 5.2073, (m).

(j) The Council may compel attendance of its members and any officer or employees of the City at its meetings. It may punish for nonattendance in such manner as it may prescribe by its rules.

(k) No member of the Council may vote on any question upon which he has a substantial direct or indirect financial interest other than an interest similar to that of other citizens affected, otherwise, each member of the Council shall vote on each question before the Council for determination, unless excused therefrom by the affirmative vote of all remaining members able to vote on the question. If a question is raised under this section at any Council meeting, such question shall be voted on before the question to which it applies is voted upon, but the Council members affected may not vote on such determination.

(l) The vote of a majority of the members present at a regular meeting shall be required for official action by the Council, unless a larger majority is required by law. In the case of a special meeting, the vote of at least four members of the Council shall be required for official action by the Council, unless a larger majority is required by law.

(m) The Clerk shall prepare an agenda of the business to be considered at each regular Council meeting. No business shall be considered by the Council, unless placed upon the agenda for the meeting not later than 12 o'clock noon, on the Friday preceding the meeting, except upon the approval of four or more members of the Council.

(n) There shall be no standing committees of the Council.

#### **Sec. 4.7. Health Functions of the Council.**

The Council shall be the Board of Health of the City. In such capacity it shall act to preserve the public health as provided by and in accordance

with law. The health functions of the Council may be exercised by the Kalamazoo County Health Department insofar as it may have health jurisdiction in the City and to the extent and in the manner provided by law.

**State law references**—Mandatory that charter provide for the public peace and health and for the safety of persons and property, MCL 117.3(j), MSA 5.2073, (j); local health departments, MCL 333.2401 et seq., MSA 14.01(2401) et seq.

#### **Sec. 4.8. Limitations on Council Actions.**

No member of the Council shall direct or demand the appointment of any person to, his promotion within, or his removal from, any office or employment in the City government. Except for purposes of inquiry authorized by it, the Council and its members shall deal with the administrative officers and employees of the City solely through the City Manager concerning matters relating to the performance of their several official duties and employments. No action contrary hereto shall be valid or binding upon the City Manager or any officer or employee of the City.

### **CHAPTER 5. CITY LEGISLATION**

#### **Sec. 5.1. Prior Township Legislation Preserved.**

In order to preserve and provide for the public health and welfare and for the safety of persons and property in the City, and as successor to the Township of Portage, insofar as the same are consistent with and permitted by law and subject to Section 5.2 hereof, the valid ordinances of the Township of Portage are continued in effect under this Charter as ordinances of the City of Portage. When this Charter requires the Council to adopt or provide any ordinance, any existing ordinance which is continued as provided herein and meeting such requirements shall suffice, subject to Section 5.2 hereof.

**State law reference**—Mandatory that charter provide for continuation of ordinances, MCL 117.3(k), MSA 5.2073, (k).

#### **Sec. 5.2. City Code.**

Within one year after the effective date of this Charter, the Council shall provide for and develop an ordinance code for the City. Such code shall be

an ordinance of the City. It shall be amended and parts thereof shall be repealed only by ordinance. It shall be adopted and published in the manner provided or permitted by law. In the development of such code, all ordinances of the Township shall be reviewed and shall be adopted into such code, amended before such adoption, or omitted therefrom, as fits the needs of the City and the provisions of this Charter.

**State law reference**—Codification of ordinances, MCL 117.5b, MSA 5.2084(2).

### **Sec. 5.3. Introduction, Consideration, Style, and Recording of Ordinances.**

(a) Each proposed ordinance shall be introduced in written form. The style of all ordinances adopted by the Council shall be, "The City of Portage Ordains:[...]"

(b) Unless declared to be an emergency ordinance by a vote of not less than five members of the Council, no ordinance shall be adopted by the Council except at a regular Council meeting held not less than one week subsequent to its introduction. An emergency ordinance may be introduced and adopted at any regular or special meeting of the Council.

(c) Each proposed ordinance which is properly introduced as herein required shall be acted upon by the Council within six months after its introduction. If any proposed ordinance be not so acted upon, the Clerk shall present it to the Council for adoption or rejection at the first meeting of the Council following the expiration of the six months period.

(d) Each ordinance shall be recorded by the Clerk in the Ordinance Book and such recording shall be prima-facie evidence of the due and proper adoption thereof.

(e) All ordinances, resolutions, and official proceedings of the City may be placed in evidence in all courts and tribunals by a copy thereof certified as true by the Clerk, under the seal of the City, as an alternate to other methods of proving the same which may be provided or permitted by law.

**State law reference**—Mandatory that charter provide for ordinance adoption and publication procedures, MCL 117.3(k), MSA 5.2073, (k).

### **Sec. 5.4. Publication of Ordinances.**

Each ordinance shall be published in a manner provided by the Council and permitted by law, before it shall become operative. If publication is made by posting, a notice of the place of posting and a brief statement of the purpose of the ordinance shall be published in one or more of the newspapers of general circulation in the City within ten days after posting.

**State law reference**—Mandatory that charter provide for publication of ordinances, MCL 117.3(k), MSA 5.2073, (k).

### **Sec. 5.5. Effective Date of Ordinances.**

(a) Unless declared to be an emergency ordinance as provided in Section 5.3(b), no ordinance shall become operative until fifteen days after the adoption and publication thereof.

(b) No ordinance which provides for or establishes a tax shall become operative less than thirty days after the adoption and publication thereof.

### **Sec. 5.6. Penalties.**

The Council shall provide in its ordinances and the ordinance code for the punishment of violations of the ordinances of the City and the provisions of the code. Such punishment may be by a fine not to exceed five hundred dollars, or by imprisonment for not more than ninety days, or both, in the discretion of the Court. Imprisonment may be in the City or County jail, or in any workhouse or penal institution of the State which is authorized by law to receive prisoners of the City.

**State law references**—Charter may provide for punishment of ordinance violations and limitations on penalties, MCL 117.4i(k), MSA 5.2082, (k); civil infractions, MCL 117.4l, MSA 5.2083(2).

### **Sec. 5.7. Time Limit for Prosecution of Ordinance Violations.**

No prosecution for the violation of any ordinance shall be commenced after the expiration of two years after the commission of the offense.



**Sec. 5.8. Initiative and Referendum.**

The electors of the City may initiate any ordinance or secure a referendum on any ordinance by petition.

**State law reference**—Permissible that charter provide for initiative and referendum, MCL 117.4i(g), MSA 5.2082, (g).

**Sec. 5.9. Initiative or Referendary Petitions.**

An initiatory or a referendary petition shall be signed by not less than ten per cent of the registered electors of the City who voted at the last regular City election according to the records of the Clerk on the date the petition is filed. No referendum shall be permitted respecting any ordinance required to be passed by the Council by any law, except in the manner provided by such law. Such petition may be the aggregate of two or more petition papers. Each signer of a petition shall sign his name and shall, himself, place thereon after his name, the date and his place of residence by street and number. To each petition paper there shall be attached a sworn affidavit by the circulator thereof, stating that each signature thereon is the genuine signature of the person whose name it purports to be and that it was signed in the presence of the affiant. Such petition shall be filed with the Clerk who shall, within ten days, canvass the signatures thereon to determine the compliance thereof with the requirements of this section. Any signature obtained more than ninety days before the filing of such petition with the Clerk shall not be counted or considered as a valid signature on a petition on which it appears. If found to contain an insufficient number of valid signatures as required herein, or to be improper as to form or compliance with the requirements of this section, the Clerk shall notify, forthwith, the person filing such petition, and ten days from such notification shall be allowed for the filing of supplemental petition papers. No supplemental petition paper filed after such ten-day period shall be considered by the Clerk. When found sufficient and proper, the Clerk shall present the petition to the Council at its next regular meeting.

**Sec. 5.10. Same - Council Procedure.**

Upon receiving an initiatory or referendary petition from the Clerk, the Council shall, either:

- (1) If it be an initiatory petition, adopt the ordinance as submitted in the petition

within thirty days after the receipt thereof, or, within such time, determine to submit the question of adopting the proposed ordinance to the electors of the City; or

- (2) If it is a referendary petition, repeal the ordinance to which the petition refers within thirty days after the receipt thereof, or, within such time, determine to submit the question of repealing the ordinance to which the petition pertains to the electors of the City.

**Sec. 5.11. Same - Submissions to Electors.**

Should the Council decide to submit the question of adopting or repealing an ordinance, following receipt of an initiatory or a referendary petition, to the electors, it shall be submitted at the next regular election held in the City within ninety days after its determination to submit the question of such adoption or repeal to the electors of the City or, if there be no such election, at a special election which shall be held within sixty days after such determination. In the event that the City is legally precluded from holding a special election as herein required the question of adopting or repealing such ordinance shall be submitted to the electors of the City at a City primary election or special City election to be held within sixty days after the impediment against holding a special City election ends. The result shall be determined by a majority vote of the electors voting thereon, except in cases where otherwise required by law.

**Sec. 5.12. Same - Status of Ordinances Adopted.**

An ordinance adopted by the electorate through initiatory proceedings may not be amended or repealed by the Council for a period of one year after the date of the election at which the ordinance was adopted. Should two or more ordinances be adopted at the same election which have conflicting provisions, the one receiving the largest affirmative vote shall prevail as to those provisions.

**Sec. 5.13. Same - Ordinances Suspended.**

The certification by the Clerk of the sufficiency of a referendary petition within thirty days after the passage of the ordinance to which such petition refers shall automatically suspend the operation of the ordinance in question, pending repeal by the Council or the final determination of the electors thereon.

## **CHAPTER 6. THE ADMINISTRATIVE SERVICE**

**Sec. 6.1. Administrative Officers.**

(a) The administrative officers of the City shall be the City Manager, the Assessor, the Clerk, the Treasurer, the Chief of Police, the Fire Chief, the heads of the several departments of the City, and any additional administrative officers created by or under authority of Section 3.1 of this Charter.

(b) In making appointments of administrative officers the appointing authority shall consider only the good of the public services, the fitness of the appointee for, and his ability to discharge the duties of the office to which he is appointed. Such appointments shall also be subject to the provisions of Section 3.2(d).

(c) The terms of all administrative officers shall be indefinite and subject to the provisions of this chapter.

(d) The compensation of all administrative officers shall be in accordance with and within budget appropriations therefor. Within budget appropriations, reasonable expenses may be allowed to administrative officers when actually incurred in the performance of their official duties or upon authority of the Council and after they have been audited by the Clerk and approved by the Council.

**Sec. 6.2. Administrative Officers - Appointment, Employees.**

(a) The Council shall appoint the City Manager and the City Attorney who shall each serve at the pleasure of the Council.

(b) All other administrative officers, [sic] shall be appointed by the City Manager, subject to the approval of and confirmation by the Council, and shall serve at the pleasure of the City Manager for indefinite terms.

(c) All persons employed by the City who are not elective or administrative officers, or members of a board created by this Charter, or declared to be administrative officers by or under authority of this Charter, shall be deemed to be employees of the City.

**Sec. 6.3. City Manager.**

(a) The City Manager shall be the administrative agent of the Council; shall be vested with the administrative powers of the City granted to him by this Charter; and shall perform the duties of that office and be accountable therefor at all times to the Council.

(b) As the chief administrative officer of the City, the City Manager shall:

- (1) Be responsible to the Council for the conduct of the administrative functions and business of the City;
- (2) Appoint such of the administrative officers, subject to confirmation by the Council, as are not required by this Charter to be appointed by the Council;
- (3) Supervise and coordinate the work of the administrative officers and departments of the City;
- (4) Prepare and submit to the Council the annual budget proposal of the City, together with supporting information in explanation thereof, as required by Chapter 7 of this Charter;
- (5) Establish and maintain a central purchasing service for the City;
- (6) Supervise and coordinate the personnel policies and practices of the City, subject to any plan for personnel management which may be adopted under authority of Section 6.18 of this chapter;
- (7) Keep informed and report to the Council concerning the work of the several administrative officers and departments of the

City, and, to that end, he may secure from the administrative officers and department heads such information and periodic or special reports as he or the Council may deem necessary;

- (8) Recommend to the Council measures relating to the City's administrative affairs in the light of the needs and development of the City;
- (9) In case of conflict of authority between any officers or administrative departments, or both, or in case of absence of administrative authority, occasioned by inadequacy of Charter or ordinance provisions, resolve the conflict or supply the necessary authority, so far as may be consistent with law and the ordinances of the City, and direct the necessary action to be taken in conformance therewith, making a full report to the Council at its next meeting;
- (10) Exercise and perform such further powers and such additional administrative duties as the Council may see fit to delegate to him.

#### **Sec. 6.4. City Clerk.**

(a) The Clerk shall be Clerk of the Council and of each appointive board of the City, except as otherwise provided by law or by ordinance. He or his deputy shall attend all meetings of the Council and of each board of the City, unless otherwise provided by the law or ordinance and shall keep a permanent journal of its proceedings, in the English language.

**State law reference**—Mandatory that charter provide for keeping legislative journal in English, MCL 117.3(m), MSA 5.2073, (m).

(b) He shall be custodian of the City seal, and shall affix it to all documents and instruments requiring the seal, and shall attest the same. He shall also be custodian of all papers, documents, and records pertaining to the City, the custody of which is not otherwise provided by law. He shall give to the proper officials ample notice of the expiration or termination of their terms of office and of any official bonds, franchises, contracts, or agreements to which the City is a party.

(c) He shall keep a record of all ordinances, resolutions, and actions of the Council and shall keep the Mayor and City Manager informed with respect thereto. The Clerk shall keep the City Manager informed concerning such matters as are within the scope of his powers and authority as fixed by the Council.

(d) He shall have power to administer all oaths required by law and the ordinances of the City.

(e) He shall certify all ordinances and resolutions enacted or passed by the Council and such certification shall be prima-facie evidence of the due and proper actions of the Council thereon.

#### **Sec. 6.5. City Auditor.**

(a) The City Auditor shall be the general accountant of the City, shall keep books of account of the assets, receipts and expenditures of the City, and shall keep the Council and the City Manager informed as to the City's financial affairs. He shall provide the accounting system of the City and each of its departments. Such system of accounts shall conform to any uniform system that may be required by law.

(b) He shall maintain an inventory of City owned property, both real and personal.

(c) He shall balance all books of accounts of the City at the end of each calendar month, and shall make reports thereon as required by the City Manager.

(d) He shall, at any time, upon direction of the City Manager or the Council, examine and audit all books of account kept by any official or department of the City. He shall examine and test-check all books of account of the Treasurer and the Municipal Court at least once each month.

(e) He shall perform such other duties as this Charter, the Council, or the City Manager with the approval of the Council, shall direct.

(f) Until such time as the Council shall provide for an independent City Auditor, the Clerk shall act in that capacity.

**Sec. 6.6. City Attorney.**

(a) The City Attorney shall act as the legal advisor of and be responsible to the Council in all respects concerning the performance of its official duties. He shall advise the City Manager concerning legal problems affecting the City administration, and the Clerk, Treasurer, and Assessor concerning their statutory and Charter duties, when so required, and shall file with the Clerk a copy of all written opinions given by him.

(b) He shall prosecute ordinance violations and shall represent the City in cases before courts and other tribunals.

(c) He shall prepare or review all ordinances, regulations, contracts, bonds, and such other instruments that may be required by this Charter or by the Council, and shall promptly give his opinion as to the legality thereof.

(d) He shall attend the meetings of the Council.

(e) He shall be the attorney for the several boards of the City and shall give opinions to such boards upon the written request of the chairmen thereof.

(f) He shall perform such other duties as may be prescribed for him by this Charter or the Council;[.]

(g) The Council and the City Attorney shall agree upon the basic compensation for any or all of the foregoing functions and duties of his office as are agreed to be covered thereby and upon the basis of compensating the City Attorney for services rendered which are not covered by such basic compensation. All such agreements shall be made before the services to be covered thereby are rendered.

(h) Upon the Attorney's recommendation, or upon its own initiative, the Council may provide for an assistant to the City Attorney and may retain special legal counsel to handle any matter in which the City has an interest, or to assist the City Attorney in connection therewith.

**Sec. 6.7. City Treasurer.**

(a) The Treasurer shall have the custody of all moneys of the City and all evidences of value belonging to or held in trust by the City.

(b) He shall collect all City taxes and assessments and such other accounts and moneys which are collected by the City, except as shall be permitted or required by law or ordinance.

(c) He shall keep and deposit all money or funds in such manner and only in such places as the Council may determine or as may be required by law.

(d) He shall have such powers, duties, and prerogatives in regard to the collection and custody of State, County, school district, and City taxes, assessments, and moneys as are conferred by law, or under authority of law.

(e) He shall perform such other duties as may be prescribed by law or by the Council.

**Sec. 6.8. Deputies of the Clerk and Treasurer.**

The Clerk and the Treasurer, [sic] may appoint and remove their deputies, subject to the budget allowance therefor and the approval of the City Manager relative to appointments. Each deputy shall possess all the powers and authorities of his superior officer.

**Sec. 6.9. Assessor.**

(a) The Assessor shall possess all the powers vested in and shall be charged with all the duties imposed upon assessing officers by law.

(b) He shall make and prepare all regular and special assessment rolls in the manner prescribed by law and ordinance.

(c) He shall perform such other duties as may be prescribed by law or the Council.

**Sec. 6.10. Police Department.**

(a) The Police Department shall be under the direction of the Chief of Police.

(b) Police officers of the City shall have all the powers, immunities, and privileges granted to peace officers by law for the making of arrests, the preservation of order, and the safety of persons and property in the City. Insofar as such powers, immunities, and privileges are not self-executing or inherent in the office and duties of peace officers under Michigan law, the Council shall adopt such ordinances and take such measures as may be required to make them effective. Any person arrested shall be taken before the proper authority for examination or trial without unnecessary delay. Police officers shall make and sign complaints to or before the proper officers and magistrates against any person known to be or, upon complaint or information, believed to be guilty of any violation of this Charter or any ordinance of the City, or of the penal laws of the State. For purposes of making arrests, violations of this Charter and of City ordinances shall be deemed to be misdemeanors.

#### **Sec. 6.11. Fire Department.**

(a) The Fire Department shall be under the direction of the Fire Chief.

(b) The Fire Department shall be responsible for the prevention and extinguishment of fires and the protection of persons and property against damage and accident resulting therefrom. The Fire Chief shall be responsible for the use, care, and management of the City's fire-fighting apparatus and property. He shall conduct supervisory and educational programs to diminish the risk of fires within the City. He, or any of his authorized subordinates, may command any person present at a fire to aid in the extinguishment thereof and to assist in the protection of life or property. If any person willfully disobeys any such lawful requirement, he shall be deemed guilty of a violation of this Charter.

(c) Members of the City's Fire Department shall have all the powers, immunities, and privileges granted to such persons by law respecting the performance of their duties and for acts concerning the safety of persons and property relating to the extinguishment of fires, the spreading of fire, fire protection, and the diminishing of the risk of fire. Insofar as such powers, immunities,

and privileges are not self-executing or inherent in the function and duties of members of the City's Fire Department, the Council shall adopt such ordinances and take such measures as may be required to make them effective.

(d) The Fire Chief or any of his authorized subordinates may cause any building to be pulled down or destroyed, when he or they deem it necessary in order to arrest the progress of a fire. In such case no action shall be maintained against the City or any person therefor. If any person having an interest in such building shall apply to the Council within three months after the fire for damages or compensation for such buildings, the Council may pay him such compensation as it may deem just. The council may ascertain the amount of such damage or compensation by agreement with the owner of the property, or by the appraisal of a jury selected in the same manner as in the case of juries selected to appraise damages for the taking of property for public use. In making any award under authority of this section, the Council or the jury, as the case may be, shall credit against the damages arising out of the pulling down or destruction of the building any insurance recoverable by all persons having an interest in such property. No awards shall be made under authority of this section on account of any loss which could reasonably be expected to have occurred to a building because of the fire, if it had not been pulled down or destroyed under authority of this section. In no event shall such award give weight to or take into consideration any loss of revenue from or damages for loss of occupancy of any building so pulled down or destroyed.

#### **Sec. 6.12. Other Administrative Duties of Officers.**

The duties of administrative officers for which provision is not made herein, shall be those established by law and by the ordinances and resolutions of the Council.

#### **Sec. 6.13. Citizen Committees.**

The Council may create citizen advisory committees for the purpose of studying and investigating specific problems or needs of any depart-

ment, function, or interest of the City when no other officer or board exists or has been created, the reasonable scope of the duties of whom or which would include the making of such studies or investigations. Each such committee shall render its report to the Council within two years after its creation, and shall then cease to exist unless the work of the committee is extended thereafter by the Council for a period not exceeding one year.

#### **Sec. 6.14. Additional Administrative Powers and Duties.**

From time to time, upon the recommendation of the City Manager, the Council may, by ordinance, prescribe, [sic] additional powers and duties, not inconsistent with this Charter, to be exercised and administered by appropriate officers and departments of the City.

#### **Sec. 6.15. Library.**

(a) The City, as the successor of the Township of Portage, shall continue to support and operate library services and facilities within the City. Such library services and facilities shall constitute a department of the City government and shall be conducted and financed by the City in a manner consistent with the needs of the community therefor and in such a manner as will at all times qualify the library for State aid for libraries and participation in the distribution of penal fines, under applicable law.

(b) The City Library shall be administered by the Library Board composed of five electors of the City having an interest in library affairs. The members of the Board shall be appointed by the Council for terms of five years, so arranged and appointed that the term of one member shall commence on the first day of July in each year. The Library Board shall appoint a librarian, subject to the confirmation of the City Manager, who shall be responsible to the Board for the management of the library department, subject to applicable law. The library department shall submit its budget request and budget information to the City Manager in the same manner and at the same time as other departments of the City and

shall be subject to the same accounting procedures in the administration of its annual budget as are other departments of the City.

#### **Sec. 6.16. Employee Welfare Benefits.**

The Council shall have power to make available to the administrative officers and employees of the City any recognized plan of group life, hospital, health, accident insurance, or other employee benefit plan, either independently of, or as a supplement to, any pension plan provided by the City for its employees. The Council may provide insurance for City officers and employees for liabilities arising out of the lawful performance of their duties.

#### **Sec. 6.17. Pension Plan.**

The Council may provide a pension plan for its employees, either independently of, combined with, or supplemental to the Federal Social Security pension program. The City pension plan shall be based upon actuarial principles similar to those upon which the pension plan for employees of the State of Michigan is based, but the benefits of the City pension plan shall not be limited to or bound by such State plan.

#### **Sec. 6.18. City Personnel Management Plan.**

(a) For the purpose of making uniform the employment of City personnel, other than its officers, and to the end that the handling of City personnel activities will be done in a manner which is equitable to City employees and, by increased efficiency and improved administration, will be economical to the citizens and taxpayers of the City, the Council shall establish by ordinance a system of personnel management for its employees within one year after the effective date of this Charter. In such ordinance, or independently thereof, the Council shall establish uniform salary and wage scales for its employees, under which employees who perform similar work will receive similar compensation therefor, giving consideration for length of service in the employ of the City, regardless of the office or department of the City in which they are employed.

(b) In such ordinance, the Council shall provide that members of the immediate family of a City officer, and such other of his relatives as the Council shall prescribe, shall not be employed by the City while he holds his office, but that this prohibition shall not apply in cases where such a person was a bona fide employee of the City at the time the officer assumed office or the relationship came into being after the office was assumed.

(c) Any such plan shall become effective thirty days after final adoption by the Council, without necessity of the approval thereof by the electors of the City, but the rights of referendum thereon are not impaired by this provision.

## CHAPTER 7. GENERAL FINANCE\*

### Sec. 7.1. Fiscal Year.

The fiscal and budget year of the City shall begin on the first day of July of each year and end on the thirtieth day of June of the following year.

### Sec. 7.2. Budget Procedure.

On or before the first day of February of each year, each officer and department head shall submit to the City Manager a complete statement of the financial needs and expected revenues of his office or department for the next fiscal year. The City Manager shall assemble the statements so submitted and prepare for the Council a budget proposal for the next fiscal year. Such budget proposal shall be presented to the Council at its first regular meeting in April. The proposed expenditures set forth in such budget proposal shall not exceed the expected revenues of the City for the next fiscal year by an amount greater than the expected unencumbered funds, not transferred to any special account under authority of Section 7.7 of this chapter, remaining at the end of the current fiscal year.

\*State law references—Municipal Finance Act, MCL 113.1a et seq., MSA 5.3188(1) et seq.; mandatory that charter provide for a system of accounts conforming to uniform system required by law, MCL 117.3(m), MSA 5.2073, (m); Uniform Budgeting and Accounting Act, MCL 141.421 et seq., MSA 5.3228(21) et seq.

### Sec. 7.3. Public Inspection of Budget Proposal.

The budget proposal of the City Manager, together with his recommendations and its supporting schedules and information shall be available for public inspection in the office of the Clerk, but shall not be removed therefrom.

### Sec. 7.4. Budget Hearing.

A public hearing on the budget proposal shall be held not less than one week before its final adoption, at such time as the Council shall direct. Notice of the public hearing shall be published by the Clerk at least one week in advance thereof and the budget proposal shall be available in the office of the Clerk during such week.

### Sec. 7.5. Adoption of Budget.

(a) At a regular meeting held not later than the second Monday in June of each year, the Council shall, by resolution, adopt a budget for the ensuing fiscal year and shall make an appropriation of the money needed therefor. Such resolution shall designate the sum to be raised by taxation for the general purposes of the City and for the payment of principal and interest on its indebtedness. Failure to adopt such resolution within the time herein set shall not invalidate either the budget or the tax levy therefor.

(b) A copy of the appropriations for each fiscal year, certified by the Clerk, shall be furnished to the Assessor within ten days after the date of the adoption of the budget resolution.

State law reference—Mandatory that charter provide for annual appropriations of money, MCL 117.3(f), MSA 5.2073, (f).

### Sec. 7.6. Budget Control.

(a) Except for purposes which are to be financed by the issuance of bonds or by special assessments, no money shall be drawn from the treasury of the City, except in accordance with the budget in effect and the appropriation for such purpose, nor shall any obligation for the expenditure of money be incurred without appropriation covering all payments which will be due under such obligation during the fiscal year.

(b) Expenditures shall not be charged directly to any contingent or general account. Instead, the necessary amount of the appropriation from such account shall be transferred to the proper budget item or account and the expenditure then charged thereto. The Council, upon the written recommendation of the Mayor, or the City Manager, and by the affirmative vote of not less than five of its members, may appropriate unappropriated funds or transfer any unencumbered appropriation balance, or any portion thereof, from any budget item or account, department, or agency to another and make an appropriation thereof for the purpose for which such transfer is made. The City Manager shall be responsible for the administration of the foregoing requirements in subsections (a) and (b) of this section.

(c) During each month, the City Manager shall submit to the Council data showing the relation between the estimated and actual revenues and expenditures to the end of the preceding month; and, if it shall appear that the revenues are less than anticipated, the Council may, by resolution, reduce appropriations, except amounts required for debt and interest charges, to such a degree as may be necessary to keep expenditures within the revenues.

(d) Within thirty days following the end of each fiscal year, the City Manager shall file with the Council a schedule of all encumbrances upon the budget appropriations existing at the end of the fiscal year, with his recommendations thereon, and the Council shall provide for the payment of such thereof as constitute valid claims against the City from corresponding budget items appropriated in the then current fiscal year.

#### **Sec. 7.7. Special Accounts.**

(a) The Council may, by ordinance, establish and maintain accounts for accumulating moneys to be used for acquiring, extending, altering, constructing, or repairing public improvements and for the purchase of equipment of any type, in each case either for a specific item or items or for future unspecified public improvements or equipment, or both.

(b) Appropriations to such accounts may be made by the Council either in the annual appropriation resolution or, from time to time during the fiscal year, from available funds, from whatever source derived, which are not required for other appropriations or obligations of the City. Such accounts shall be continuing accounts and the balances therein at the end of each fiscal year shall remain a part thereof.

(c) At the end of each fiscal year, the Council may, by a vote of five or more of its members, transfer any unencumbered budget balance or any part thereof into one or more of the accounts authorized to be created by this section.

(d) Moneys which are accumulated for the purpose of public improvements, as set forth in subsection (a) hereof, shall be used only at the direction of the Council, and only for the purpose provided in the original ordinance establishing such account, unless their use for some other Municipal purpose be authorized by a majority vote of the electors of the City who vote on the proposition to amend such ordinance to provide for a change in the use of the moneys in such account. Any such amendment may be submitted to the electors by the Council or by initiatory proceedings provided in Chapter 5 of this Charter. After the purpose of any such account has been fulfilled, any balance remaining therein may be transferred by the Council to any other special account or to the General Fund of the City.

(e) Moneys which are accumulated for the purpose of purchasing equipment, as set forth in subsection (a) hereof, shall be expended only for the purpose provided in the ordinance establishing any such account, or as such ordinance may be amended from time to time, and, when no longer required for such purpose, such moneys or any part thereof, may be transferred to the General Fund by a resolution of the Council. No vote of the electors of the City shall be required to authorize any such amendment, but the initiative procedure provided in Chapter 5 of this Charter shall be available to the electors of the City.

(f) If moneys accumulated in any special fund authorized by this section shall not be expended for the purpose for which they have been set aside and accumulated for a period of five years after



the entire amount needed therefor has been accumulated, the amount of such fund shall revert to the General Fund of the City or may be expended for any public improvement in the City or purchase of equipment for the City, if authorized to do so expended [sic] by vote of five or more members of the Council, or by an amendment of the ordinance creating the fund with the approval of the electors of the City as provided in subsection (d) of this section.

#### **Sec. 7.8. Withdrawal of City Moneys.**

(a) Unless otherwise provided by law or by ordinance, all moneys drawn from the treasury shall be drawn pursuant to the authority and appropriation of the Council. The Council, upon the recommendation of the City Manager, where necessary to expedite operating procedures, may authorize designated officers and employees of the City to make minor disbursements from petty cash accounts, which disbursements shall be accounted for and shall be audited by the City Auditor.

(b) Checks for the disbursement of City funds shall be signed by the Clerk and countersigned by the Treasurer, or as otherwise provided by ordinance.

(c) Checks may be issued prior to authorization by the Council for such purposes and up to such amounts as the Council shall provide by ordinance.

#### **Sec. 7.9. Claims Against City, Other than for Injuries.**

Procedures for the examination and payment of claims against the City, other than for injuries for which provision is made in Section 7.10, shall be as prescribed by law. In the absence of any such law, the Council shall prescribe such procedures by ordinance.

#### **Sec. 7.10. Claims Against City for Injuries.**

(a) Procedures and limitations for the examination and adjustment of claims against the City for injury to persons and property shall be such as are provided by law. Such provisions and limitations of law are hereby extended to and made

applicable to and shall govern in cases of claims for injury to persons and property arising out of all negligent acts of the City and its officers, employees, and agents, for which the City may be liable under law, except those which arise out of any proprietary function of the City.

(b) The section shall not be deemed to waive any defense of immunity which the City may have from claims for damages arising out of negligence or otherwise, but shall apply in all cases where such defense is not available to the City.

**State law reference**—Claims for injuries, MCL 691.1401 et seq., MSA 3.996(101) et seq.

#### **Sec. 7.11. Depositories.**

The Council shall designate depositories for City funds in accordance with law, and shall provide for the regular deposit of all City moneys.

**State law reference**—Deposit of public moneys, MCL 211.43b, MSA 7.86.

#### **Sec. 7.12. Independent Audit.**

There shall be such annual and other accounting for all public moneys of the City as is required by law. If there be no such law, an independent audit shall be made of all accounts of the City government at the close of each fiscal year, and shall be completed within ninety days thereafter. Special independent audits may be made at any time that the Council may designate. Such audits shall be made to the Council by a Certified Public Accountant designated by it. Each audit and reports supplemental thereto shall be made public in the manner that the Council determines and copies of the audit shall be placed in the office of the Clerk. All City financial records, accountings, and audit and other reports shall be public records, available for inspection in the office of the Clerk and a statement of all revenues and expenditures of public moneys shall be published and distributed as required by law.

#### **Sec. 7.13. Annual Report.**

The City Manager shall prepare an annual report of the affairs of the City, after the completion of the annual audit. The report shall include condensed financial statements showing the results of all City operations, including statements for each public utility owned or operated by the

City. Copies of such report shall be made available for public inspection and distribution at the office of the Clerk and by such other method as the Council may determine.

## CHAPTER 8. TAXATION\*

### Sec. 8.1. Power to Tax and Tax Limits.

(a) The City shall have the power to annually levy and collect ad valorem taxes, rents, tolls, and excises for Municipal purposes.

**State law reference**—Permissible that charter provide for paying and collecting rents, tolls and excises, MCL 117.4i(a), MSA 5.2082, (a).

(b) The subjects of ad valorem taxation for Municipal purposes shall be the same as for State, County, and school purposes under the general law. Except as otherwise provided by this Charter, City taxes shall be levied, collected, and returned in the manner provided by law.

**State law reference**—Mandatory that charter so provide, MCL 117.3(f), (g), MSA 5.2073, (f), (g).

(c) Exclusive of any levy for the payment of principal and interest on outstanding general obligation bonds and exclusive of any other levies authorized by law to be made beyond Charter tax rate limitations, the levy of ad valorem taxes for general municipal purposes shall not exceed three-quarters of one percent of (seven and one-half mills on) the assessed value of all real and personal property in the City. In addition to the tax rate herein above authorized and limited: (1) the City shall have power to levy not to exceed two-tenths of one percent of (two mills on) the assessed value of all real and personal property in the City for the purpose of making or accruing funds for making public improvements authorized by law in the City,[] and (2) the City shall have the power to levy not to exceed one and one-half of one-tenth of one percent of (one and one-half mills on) the assessed value of all real and personal property in the City for the purpose of expanding, operating and maintaining the City's public library,[] and (3) the City shall have the power to levy not to exceed one-half of one tenth of one percent of (one-half mill on) the assessed

\***State law reference**—Mandatory that charter provide for tax procedure, MCL 117.3(i), MSA 5.2073, (i).

value of all real and personal property for the purpose of operating a curbside recycling program,[] and (4) the City shall have the power to levy not to exceed four one-hundredths of one percent (four-tenths mill) on assessed value of all real and personal property in the City for programs to collect and remove leaves and yard trimmings at least twice per year and rubbish, paper, litter, and other similar materials at least once per year.

(d) The foregoing tax limitation of three-quarters of one percent of (seven and one-half mills on) the assessed value of all real and personal property in the City may be increased for any period, not to exceed two (2) fiscal years of the City, by a majority of the electors of the City voting on the question at a regular or special election. In no case shall the total of any such increase cause the tax limitation of the City, including the limitations authorized in subsection (c) hereof, to exceed two (2) percent of (twenty mills on) the assessed value of all real and personal property in the City.

(8-6-1974; 11-6-1990; 8-4-1992)

**State law reference**—Millage rates, MCL 117.3(g), MSA 5.2073, (g).

### Sec. 8.2. Tax Day.

Subject to the exceptions provided or permitted by statute, the taxable status of persons and property shall be determined as of the thirty-first day of December of each year, which shall be deemed to be the tax day as defined by State law, for all taxes levied in the city during the ensuing calendar year.

**State law reference**—Taxable status to be as of December 31, notwithstanding charter provisions, MCL 211.2(2), MSA 7.2, (2).

### Sec. 8.3. Preparation of the Assessment Roll.

(a) On or before the second Monday in March in each year, the Assessor shall prepare and certify an assessment roll of all property in the City, in the manner and form required by law. Values of all property listed on such assessment roll shall be estimated according to recognized methods of systematic assessment. The assessment rolls of the City shall show total figures for the value of the land and of the improvements

thereon. On or before the first Monday in March in each year, the Assessor shall give notice of any change in the assessed value of any property on, or of the addition of any property to, the assessment roll. Such notice shall be given to the owner thereof, as shown by such assessment roll, by first class mail. The failure of the owner to receive any such notice, shall not invalidate any assessment roll or any assessment or levy of taxes thereon.

(b) No exemptions from taxation shall be allowed, except as expressly required or permitted by law.

**State law reference**—Assessment roll, MCL 211.24 et seq., MSA 7.24 et seq.

#### **Sec. 8.4. Board of Review.**

(a) A Board of Review is hereby created, composed of three (3) members who have the qualifications for holding elective City office as set forth in this Charter and who are free-holders of property assessed for taxes in the City. The Council shall set the compensation of the members of the Board of Review, which compensation shall be on a per diem basis.

(b) The members of the Board of Review shall be appointed by the Mayor, subject to confirmation by the Council, and may be removed for reasons of nonfeasance or misfeasance by a vote of five (5) or more members of the Council. The first members shall be appointed during the month of February, 1964, for terms which shall be such that the term of one of the members will expire in the month of January of each year. Thereafter one member shall be appointed in the month of January of each year, for a term of three (3) years, commencing upon his appointment.

(c) The Board shall annually, on the first day of its meeting, select one of its members chairman for the ensuing year. The Assessor shall be Clerk of the Board, and shall be entitled to be heard at its sessions, but shall have no vote on any proposition or question.

**State law reference**—Board of review, MCL 211.28—211.33, 211.107, MSA 7.28—7.33, 7.161.

#### **Sec. 8.5. Duties and Functions of Board of Review.**

For the purpose of revising and correcting assessments, the Board of Review shall have the

same powers and perform like duties in all respects as are, by law, conferred upon and required of boards of review in townships, except as otherwise provided in this Charter. At the time, and in the manner provided in the following section, it shall hear the complaints of all persons considering themselves aggrieved by assessments. If it shall appear that any person or property has been wrongfully assessed or omitted from the roll, the Board shall correct the roll in such manner as it deems just. Except as otherwise provided by law, no person other than the Board of Review shall make any change upon, or addition or correction to, the assessment roll. The Assessor shall make a permanent record of all proceedings of the Board and enter therein all resolutions and decisions of the Board. Such record shall be filed with the Clerk on or before the first day of May following the meeting of the Board of Review.

**State law reference**—Functions of board of review, MCL 211.29—211.30a, MSA 7.29—7.30(1).

#### **Sec. 8.6. Meetings of the Board of Review.**

(a) The Board of Review shall convene in its first session of [on] the second Monday in March of each year at such time of the day and place as shall be designated by the Council and shall continue in session for at least six (6) hours during each of at least three (3) successive days for the purpose of considering and correcting the assessment roll prepared and presented by the Assessor, and on such additional days as may be required to hear persons who have given notice of desire to be heard within such three-day period. The Assessor shall order the publication of the time and place of the meeting of the Board of Review. Such publication shall be made not less than ten (10) days prior to the first meeting of the Board in each year.

(b) In each case where the assessed value of any property is changed or any property is added to the roll by the Board, or the Board has resolved to consider at its second session the increasing of an assessment, or the adding of any property of [to] the roll, the Assessor shall give notice thereof to the owner of any such property, as shown by such roll, by first class letter, mailed no later than the day following the end of the first session of the Board. Such notice shall state the date[,] the time,

place, and purpose of the second session of the Board. The failure of the owner to receive such notice shall not invalidate any assessment roll or any assessment or levy of taxes thereon.

(c) The Board of Review shall convene in its second session on the Tuesday following the fourth Monday in March of each year, at such time of the day and place as shall be designated by the Council and shall continue in session until all interested persons have had an opportunity to be heard, but in no case for less than six hours on the day that the Board convenes in its second session. At such second session, the Board may not increase any assessment, except in those cases with respect to which the Board resolved at its first session to consider such increase at its second session. This provision shall not apply to the addition of any omitted property to the roll.

**State law reference**—Meetings of board of review, MCL 211.29, 211.30, MSA 7.29, 7.30.

#### **Sec. 8.7. Endorsement of Roll.**

After the Board of Review has completed its review of the assessment roll, and not later than the first Monday in April, a majority of its members shall endorse thereon and sign a statement to the effect that the same is the assessment roll of the City for the year in which it has been prepared. The omission of such endorsement or statement shall not affect the validity of such roll. In the event that the Board of Review shall fail or refuse to so review the assessment roll of the City, such roll, as prepared and presented to the Board of Review by the Assessor, shall be the assessment roll for the year for which it was prepared and shall stand as though it had been certified by the Board of Review and the amounts required to be certified by Section 8.9 shall be spread thereon by the Assessor and collected by the Treasurer.

**State law reference**—Completion of roll, MCL 211.30a, MSA 7.30, (1).

#### **Sec. 8.8. Validity of Assessment Roll.**

Upon the completion of the assessment roll, and from and after midnight ending the last day of the meeting of the Board of Review, it shall be the assessment roll of the City for County, school, and City taxes, and for other taxes on real and personal property that may be authorized by law.

It shall be presumed by all courts and tribunals to be valid, and shall not be set aside, except for cause set forth by law.

#### **Sec. 8.9. Clerk to Certify Tax Levy.**

Within three days after the Council has adopted the budget for the ensuing fiscal year of the City, the Clerk shall certify to the Assessor the total amount which the Council has determined shall be raised by general tax. He shall also certify all amounts of current or delinquent special assessments and all other amounts which the Council requires to be assessed, reassessed, or charged upon such roll upon any property or against any person.

**State law reference**—Deadline for certification of levy, MCL 211.216, MSA 7.76.

#### **Sec. 8.10. City Tax Roll.**

After the Board of Review has completed its review of the assessment roll, the Assessor shall prepare the City tax roll. Such City tax roll may be either a copy of the assessment roll with the authorized City taxes, assessments, and charges spread thereon, or may be a combined tax roll upon which County, school and other taxes may be spread for collection under the general property tax act, in addition to City taxes, assessments and charges as determined by the Council. Upon receiving the certification of the several amounts to be raised, or to be assessed, reassessed, or charged as provided in Section 8.9 of this Charter, the Assessor shall spread upon said tax roll the several amounts determined by the Council to be raised, charged, assessed, or reassessed against persons and property. He shall spread the amount to be raised by general City tax, according to and in proportion to the several valuations set forth in said roll. To avoid fractions in computation on any tax roll, the Assessor may add to the amount of the several taxes to be raised thereon not more than the amount prescribed by law. Any excess created thereby on any tax roll, for the levy and collection of taxes in the City, shall belong to the City.

#### **Sec. 8.11. Tax Roll Certified for Collections.**

After spreading the City taxes and any assessments, reassessments, and charges, the Assessor

shall certify the tax roll and shall annex his warrant thereto, directing and requiring the Treasurer to collect from the persons named in said roll the several sums mentioned therein opposite their respective names as a tax, assessment, reassessment, or charge, and granting to him, for the purpose of collecting taxes, assessments, and charges on such roll, all of the statutory powers and immunities possessed by township treasurers for the collecting of taxes. On or before July 15th, the City tax roll shall be delivered to the Treasurer for the collection of the taxes, assessments, reassessments and charges set forth thereon.

#### **Sec. 8.12. Taxes a Debt and Lien.**

(a) The taxes on real and personal property shall become a debt to the City from the owner or person otherwise to be assessed, on the tax day provided by law. The amounts assessed on any interest in real property shall become a lien upon such real property on the first day of August following the said tax day and the lien for such amounts, and for all interest and charges thereon shall continue until payment thereof. All personal property taxes shall be a first lien, prior, superior, and paramount, on all personal property of persons so assessed from and after the first day of August following the said tax day and shall so remain until paid. Said tax liens on personal property shall take precedence over all other claims, encumbrances, and liens, and security interest upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, whether by attachment, replevy, judgment, or otherwise. No transfer of personal property assessed for taxes shall operate to divest or destroy such lien, except where such property is actually sold in the regular course of retail trade.

**State law reference**—Tax liens, MCL 211.40, MSA 7.81.

#### **Sec. 8.13. Personal Property - Jeopardy Assessment.**

If the Treasurer finds or reasonably believes that any person who is, or may be, liable for taxes upon personal property, the taxable situs of which was in the City on tax day, intends to depart or has departed from the City; or to remove or has

removed therefrom personal property which is or may be liable for taxation; or to conceal or conceals himself or his property; or does any other act tending to prejudice, or to render wholly or partly ineffectual the proceedings to collect such tax, he shall proceed to collect the same as a jeopardy assessment in the manner provided by law.

#### **Sec. 8.14. Taxes Due and Notification Thereof.**

(a) City taxes shall be due for payment on the first day of August of the year when levied and shall be payable as stated in the warrant of the Assessor annexed to said roll.

(b) The Treasurer shall not be required to call upon the persons named in the City tax roll, nor to make personal demand for the payment of taxes, but he shall give notice to the taxpayers of the City, at least six days prior to the first day of August in each year, of the time when said taxes will be due for collection, by publication, at least once, in one or more of the newspapers published or circulated in the City, he shall also send a tax statement by first class mail, addressed to the owners of the property upon which taxes are assessed, according to the names of such owners and their addresses as indicated on the tax roll. Said notice and tax statement shall be deemed sufficient to require the payment of all taxes on said tax roll. Failure on the part of the Treasurer to give said notice and send any tax statement shall not invalidate the taxes on said tax roll nor release any person or property assessed thereon from any penalty provided for the nonpayment or late payment of City taxes, assessments, or charges appearing on the tax roll.

**State law reference**—Jeopardy assessment of personal property taxes, MCL 211.691 et seq., MSA 7.51(1) et seq.

#### **Sec. 8.15. Tax Payment Schedule.**

The Council shall provide, by ordinance, a tax payment schedule. Such schedule shall state the amount of collection charges and interest to be added to taxes, charges, assessments, and reassessments on the City tax roll and when such charges and interest shall be added. Such schedule may provide for the closing of the City tax roll on the first day of October of each year and the spreading of the taxes then delinquent upon the

December tax roll upon which County and school taxes are collected, to be collected upon such roll with a four per cent collection charge added thereto.

**Sec. 8.16. Failure or Refusal to Pay Personal Property Taxes.**

If any person shall neglect or refuse to pay any City tax on personal property assessed to him, the Treasurer shall collect the same by seizing any personal property of such person, wherever it may be found in the State of Michigan, to an amount sufficient to pay such tax, and charges and interest added thereto. No personal property shall be exempt from such seizure. He may sell the property seized, to an amount sufficient to pay such tax, together with all charges, fees, penalties, and interest added thereto, in accordance with statutory provisions. The Treasurer may also sue the person to whom a personal property tax is assessed, in accordance with the powers granted him by law.

**State law reference**—Seizure of property, MCL 211.47 et seq., MSA 7.91 et seq.

**Sec. 8.17. Collection of Delinquent Taxes.**

All taxes, assessments, and charges upon real property on the tax roll, together with collection charges and interest added thereto, remaining uncollected by the Treasurer on the first day of March following the date when the roll was received by him shall be subject to one of the following procedures.[:]

- (1) The real property against which such taxes, assessments, and charges are assessed shall be subject to disposition, sale, and redemption for the enforcement and collection of the tax lien against the same in the method and manner which may be provided by ordinance. The Council may provide by ordinance the procedure for the sale and redemption of real property for such unpaid taxes, assessments, and charges, together with collection charges and interest added thereto, by judicial sale on petition filed in behalf of the City. Such procedure shall correspond substantially to the procedure provided by law for the sale by the State of tax delinquent

real property and redemption therefrom, except that the acts performed by State and county officers shall be performed by appropriate City officers and that City tax sales shall be held not less than thirty nor more than ninety days prior to the dates of corresponding tax sales under the general law.

- (2) If no ordinance is in effect pursuant to subsection (1) of this section, such taxes, assessments, and charges, together with any collection charges and interest added thereto, shall be returned to the County Treasurer, to the extent and in the same manner and with like effect as provided by law for returns by township treasurers of township, school, and county taxes. The taxes, assessments, and charges, together with any collection charges and interest added thereto, which collection charges and interest shall be treated and collected in the same manner as taxes returned to the County Treasurer are collected in accordance with law, and shall be and remain a lien upon the property against which they are assessed until paid.

**State law reference**—Tax collections, MCL 211.44 et seq., MSA 7.87 et seq.

**Sec. 8.18. Protection of City Lien.**

The City shall have power to acquire, by purchase, any premises within the City at any tax or other public sale, or by direct purchase from the State of Michigan or the fee owner, when such purchase is necessary to protect the lien of the City for taxes or special assessments, or both, on said premises and the lien for other charges, collection charges, and interest, and may hold, lease, or sell the same for purposes of securing therefrom the amount of such taxes, special assessments, charges, collection charges, and interest, together with any incidental expense incurred in connection with the exercise of this power. Any such procedure exercised by the City in the protection of its tax lien shall be deemed to be for public purpose.

**Sec. 8.19. State, County, and School Taxes.**

For the purpose of assessing and collecting the taxes for the State, County, and school purposes,

the City shall be considered the same as a township, and all provisions of State law relative to the collection of and accounting for such taxes shall apply. For these purposes the Treasurer shall perform the same duties and have the same powers as township treasurers under State law.

**Sec. 8.20. Disposition of Real Property Held by City.**

When the City has acquired any title or interest in property to protect the City's tax lien thereon, the owner of any interest therein, by fee title, as mortgagee, or as vendor or vendee under a land contract shall have the right to purchase the City's interest therein, upon payment to the City of the amount of money which the City has invested therein in the form of taxes, special assessments, charges, fees, penalties, interest, and costs, paid by the City to perfect its title in such property. After the lapse of ninety days after the date that the City acquired title to any such property, the Council may remove the same from the market by determining that such property is needed for and should be devoted to public purposes, naming such purposes, or may sell the same at a price which shall be not less than its market value, as determined and certified to the Council by the Assessor and qualified appraisers appointed by the Council. In any case where the City has acquired any title or interest in real property, such title or interest shall be recorded with the Register of Deeds of Kalamazoo County.

**CHAPTER 9. SPECIAL ASSESSMENTS\***

**Sec. 9.1. General Power Relative to Special Assessments.**

The Council shall have the power to make public improvements within the City. As to public improvements which are of such a nature as to benefit especially any property or properties within a district, the Council shall have the power to determine, by resolution, that the whole or any part of the expense of any such public improve-

ment shall be defrayed by special assessment upon such property, in proportion to the benefits derived or to be derived.

**Sec. 9.2. Detailed Procedure to Be Fixed by Ordinance.**

(a) The Council shall prescribe, by ordinance, the complete special assessment procedure governing the initiation of public improvement projects, the preparation of plans and cost estimates, the creation of special assessment districts, notices and hearings, making of special assessment rolls, the correction of errors in such rolls, the confirming of special assessment rolls, the number of installments in which special assessments may be paid, the collection of special assessments, the making of additional assessments where the original special assessment roll proves insufficient to pay the cost of the improvement or the cost of the repayment of the principal of and interest on money borrowed to pay for such improvement, refunds of excessive assessments:[] Provided That, when such excess is less than five per cent of the total amount of the assessment roll, the excess may be placed in the General Fund:[] and any other matters concerning the making and financing of improvements by the special assessment method. Such ordinance shall include provisions for the following:

- (1) The procedure for filing petitions for public improvements;
- (2) A survey and report by the City Manager concerning the need for, desirable extent of, and probably [probable] cost of such proposed public improvement;
- (3) A public hearing by the Council on the necessity of the making of such public improvement with a publication of notice of such hearing:[] Provided, That no such public hearing shall be required when a petition for a public improvement is signed by all of the owners of property to be assessed therefor;
- (4) A resolution of the Council determining to proceed or not to proceed with the proposed public improvement;

\*State law reference—Special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5, MSA 5.2074, 5.2075, 5.2077, 5.2084.

- (5) A public hearing by the Council on the special assessment roll for the project with a publication of notice of such hearing;
- (6) A resolution of the Council confirming the special assessment roll for public improvements and stating the date upon which the special assessment therefor, or the first installment thereof, if installment payments be allowed, shall be due and payable, the number of annual installments, if allowed, in which the special assessment may be paid, and the rate of interest to be charged upon such deferred installments;
- (7) That no additional assessment for any public improvement which exceeds ten per cent of the original assessment shall be made, unless such additional assessment be reviewed at a meeting of the Council, for which meeting notices shall be published as provided in the case of review of the original special assessment roll;
- (8) That, in any case when the main purpose of a sidewalk is to provide travel convenience to and from a school, factory, or other institution, public or private, and not for the benefit of the property in a district, except incidentally, the City shall pay not less than one-half of the cost of such sidewalk;
- (9) If, under item (4) above, the determination is to proceed, determining the probable life of the improvement, finally fixing the special assessment district therefor, and ordering the Assessor to prepare a special assessment roll therefor:[] Provided, That if prior to the adoption of the resolution to proceed with the making of the public improvement, written objections thereto have been filed by the owners of property in the district, which according to the City Manager's report, will be required to bear more than fifty per cent of the cost thereof, or by a majority of the owners of property to be assessed, no resolution determining to proceed with

the improvement shall be adopted while such objections remain, except by the affirmative vote of five members of the Council.[]

- (10) Publication of notices required by this section shall be given in a newspaper published in the City and by first class mail addressed to the owners of the property to be affected, according to the current assessment roll of the City, which publication and mailing shall be not less than ten days prior to the hearing to which it applies;
- (11) In the event that funds are on hand or a revolving fund exists to defray the expense of any public improvement prior to the completion thereof, the special assessment roll therefor may be made within sixty days after the improvement is completed and shall be based upon the actual cost thereof.

(b) When the City may, by law, participate in intergovernmental improvements, the cost of which may be defrayed in whole or in part by special assessments, the procedure therefor shall be as provided by the law permitting the same. If such procedure is not so provided, the procedure established by and under authority of this chapter shall govern.

### **Sec. 9.3. Reconsideration of Petitions.**

In the event that the Council shall fail to make any public improvement petitioned for under the provisions of the special assessment ordinance during the calendar year during which any petition is filed, such petition shall be reconsidered by the Council prior to the first day of March of the succeeding calendar year for the purpose of determining whether such improvements should be made during such calendar year.

### **Sec. 9.4. Condemnation Costs.**

The cost of condemning or otherwise acquiring property needed for any public improvement shall constitute a part of the cost of the improvement, but in no case shall the amount of such cost which is included in any special assessment for any public improvement cause the assessment to ex-



ceed the amount of the benefit received by any property assessed therefor through the making of the improvement.

#### **Sec. 9.5. Limitation on Suits and Actions.**

No suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of any special assessment or additional special assessment, (1) unless, within thirty days after the confirmation of the special assessment roll, written notice be filed with the Clerk of intention to file such suit or action, stating the grounds on which it is claimed such assessment is illegal, and (2) unless such suit or action shall be commenced within ninety days after the confirmation of the roll.

#### **Sec. 9.6. Lien for and Collection of Special Assessments.**

Upon the confirmation of each special assessment roll, the special assessments thereon shall, until paid, be and continue to be a lien upon the property assessed for the amount of such assessments and all interest and collection charges which may accrue thereon. Such lien shall be of the same character and effect as that which is created by this Charter for City taxes and shall be treated as such in all procedures for the collection of special assessments as in this Charter provided. Such special assessments or the installments thereof, as the case may be, shall be charged against the owners of the property assessed, according to the records of the Assessor's office at the time the special assessment or installment thereof, as the case may be, is due for payment. All special assessments, or installments thereof, made in any calendar year which remain unpaid on the first day of March of the succeeding calendar year, together with the collection charges and interest which have accrued thereto, shall be placed upon the delinquent tax roll of the City as required in Chapter 8 of this Charter and shall be collected, or the collection thereof enforced, in the same manner as are delinquent taxes of the City. For this purpose, the word "assessments" used in Chapter 8 shall include special assessments authorized by this chapter.

#### **Sec. 9.7. Hazards and Nuisances.**

When any lot, or premises, building, or structure within the City, because of age or dilapidation, the accumulation of refuse or debris, the uncontrolled growing of noxious weeds, or because of any other condition or happening becomes, in the opinion of the Council, a public nuisance, or hazard which is dangerous to the health, safety, or welfare of the inhabitants of the City or of those residing or habitually going near such lot or premises, or such building, or structure, the Council may, after investigation, give notice to the owner or owners of the land upon which such nuisance or hazard exists or to the owner or occupant of the land or the building or structure itself, specifying the nature of the nuisance or hazard and requiring such owner or occupant to alter, repair, tear down, abate, or remove the nuisance or hazard within a time to be specified by the Council which shall be commensurate with the nature of the nuisance or hazard. Insofar as practicable, considering the nature of the nuisance or hazard, the notice herein required shall be in writing and delivered in person or by first class mail with full postage prepaid thereon, addressed to the address set forth in the current assessment roll of the City or the records of the Assessor. Such notice shall be given by the Clerk. If, after diligent and reasonable effort to locate the owner of the premises or his agent, he cannot be found, such notice shall be given to the occupant of the premises, if any, and by posting upon the premises in plain view of all persons going upon or passing near such premises. If, at the expiration of the time limit in said notice, the owner has not complied with the requirements thereof, or in any case where the owner of the land or of the building or structure itself is not known or cannot be found, the Council may order such nuisance or hazard to be abated by the proper department or agency of the City which is qualified to do the work required, or may do the work by contract or by hire, and the cost of such abatement may be assessed against the lot, premises, or description of real property upon which such nuisance or hazard is located, by special assessment.

#### **Sec. 9.8. Boulevard Lighting.**

The Council may provide a system of boulevard lighting for the City or any part or parts thereof,

any [and] may assess the cost thereof on any street for which such lighting is provided against the lands abutting thereon if the property owner[s] of a majority of the frontage on such streets, or part thereof so to be improved, shall petition therefor.

#### **Sec. 9.9. All Real Property Liable for Special Assessments.**

All real property, including such as is exempt from taxation by law, shall be liable for the cost of public improvements benefiting such property, unless specifically exempted from special assessments by law.

#### **Sec. 9.10. Special Assessment Accounts.**

Moneys raised by special assessment for any public improvement shall be credited to a special assessment account, and shall be used to pay the special assessment portion of the cost of the improvement for which the assessment was levied and of expenses incidental thereto, including the repayment of the principal of and interest on money borrowed therefor, and to refund excessive assessments, if refunds be authorized.

#### **Sec. 9.11. Certain Postponements of Payments.**

The Council may provide that any person who, in the opinion of the Assessor and Council, by reason of poverty is unable to contribute toward the cost of the making of a public improvement by special assessment, may execute to the City an instrument creating a lien for the benefit of the City on all of any part of the real property owned by him and benefited by any public improvement, which lien will mature and be effective from and after the execution of such instrument, shall be recorded with the Register of Deeds of Kalamazoo County, and shall not be discharged or released until the terms thereof are met in full. The Council shall establish the procedure for making this section effective.

### **CHAPTER 10. BORROWING POWER\***

#### **Sec. 10.1. Municipal Borrowing Power.**

(a) Subject to the applicable provisions of the law, the City may borrow money for any purpose within the scope of its powers or which may be permitted by law, and may issue bonds or other evidences of indebtedness thereof. Such bonds or other evidences of indebtedness shall include, but not be limited to the following types:

- (1) General obligation bonds for the payment of which the full faith and credit of the City is pledged;
- (2) Special assessment bonds which are issued in anticipation of the payment of special assessments for the purpose of defraying the cost of any one or more public improvements, which bonds shall be both an obligation of the special assessment district and a general obligation of the City;
- (3) Revenue bonds, as authorized by law;
- (4) Tax anticipation notes, which may be issued in anticipation of the collection of taxes for the current or next succeeding fiscal years of the City, or any other year permitted by law, in the manner and subject to any limitations provided by law;
- (5) Mortgage bonds, as authorized by law, for the acquiring, owning, purchasing, constructing, improving, or operating of any public utility which the City is authorized by law to finance in this manner;
- (6) Bonds issued in anticipation of future payments from the Motor Vehicle Highway Fund, or any other fund of the State, which the City may be permitted by law to pledge for the payment of the principal and interest thereof, which bonds, if the law so permits, may also be a general obligation of the City;

\***State law references**—Permissible that charter contain provisions re borrowing funds, MCL 117.4a et seq., MSA 5.2074 et seq.; Municipal Finance Act, MCL 131.1 et seq., MSA 5.3188(1) et seq.

(7) Water main extension bonds, in an amount not to exceed one percent of the assessed valuation of all real and personal property in the City, for the payment of which the full faith and credit of the City are pledged for the refunding from time to time of moneys advanced or paid on special assessments imposed for water main extensions as buildings are connected to such extensions, which bonds shall be payable in not more than thirty years, with interest thereon at a rate which shall not exceed six percent per annum;

(8) Calamity bonds, issued in case of fire, flood, or other calamity for the relief of the inhabitants of the City and for the preservation of Municipal property, in a sum not to exceed three-eighths of one per cent of the assessed value of the real and personal property in the City, which shall become due in not more than five years.

(b) Whenever any portion of public improvements shall be assessed by or charged to the City at-large and the balance of such cost assessed against the property benefited, the Council may provide for the payment of the City's portion of such cost in installments. In such case, bonds may be issued in anticipation of the payment of the amount assessed against the City at large, the same as they may be issued in anticipation of the payment of the amount assessed against the benefited property. In such case, the Council shall appropriate in each fiscal year an amount which is sufficient to pay the principal of an [and] interest on such bonds which are required to be paid during that year. Such bonds may be included as a part of a total issue of bonds for the public improvement to which they apply and need not be separated from bonds issued in anticipation of the payment of special assessments assessed against the benefitted property.

(c) Bonds may be issued in anticipation of the collection of special assessments levied with respect to two or more public improvements, but no special assessment district shall be required to pay the obligation of any other special assessment district and the ordinance or resolution authorizing such bond issue shall so provide.

(d) All collections on special assessment rolls or on any combination of such rolls shall be set apart in a separate fund and shall be used for the purpose for which levied, and for the payment of the principal of and interest on bonds issued in anticipation of such special assessments. If there is any deficiency in any special assessment fund to meet the payment of the principal or interest to be paid therefrom, moneys shall be advanced from the general funds of the City to meet such deficiency, and shall be replaced in the general funds when the special assessment fund shall be sufficient therefor.

(e) Each bond or other evidence of indebtedness shall contain on its face a statement specifying the purpose for which the same is issued, and the proceeds thereof shall not be used for any other purpose, except that, whenever the proceeds of any bond issue, or a part thereof, remain unexpended and unencumbered for the purpose for which said bond issue was made, the Council may, by the confirming vote of not less than five members, authorize the use of such unexpended and unencumbered funds:

- (1) For the retirement of such bond issue, or
- (2) If such bond issue has been fully retired, then for the retirement of other bonds or obligations of the City provided for by this section:[] Provided, That in the case of special assessment bonds, such funds shall be refunded to the owners of property against which special assessments therefor were made, or placed in the General Fund of the City in accordance with the provisions of Section 9.2 of this Charter, and
- (3) For such other purposes as may be permitted by law, subject to the proviso in paragraph (2) above;[,] or
- (4) If such funds cannot be so used, then in any manner approved by the vote of not less than five members of the Council.

(f) No bond or other evidence of indebtedness, regardless of type or purpose, shall bear interest at a rate exceeding that fixed by law.

(g) All bonds and other evidences of indebtedness shall be signed by the Mayor and countersigned by the Clerk, under the seal of the City. Interest coupons may be executed with the facsimile signatures of the Treasurer. A complete and detailed record of all bonds and other evidences of indebtedness shall be kept by the Treasurer. Upon the payment of any bond or other evidence of indebtedness, the same shall be marked "Canceled" or otherwise defaced by the Treasurer to indicate payment. After all of the bonds of any issue have been paid, they may be destroyed by cremation, with a proper certificate of such destruction filed in the office of the Clerk.

#### **Sec. 10.2. Limitations upon Borrowing Power.**

(a) The net bonded indebtedness incurred for all public purposes shall not at any time exceed ten percent of the assessed value of all the real and personal property in the City:[] Provided, That in computing such net bonded indebtedness, there shall be excluded money borrowed under the provisions of Section 10.1(a) clauses (2), (3), and (4) of this chapter, and any other bonds which are not, by law, subject to the debt limitation of the City. The resources of any debt retirement or sinking fund pledged for the retirement of any outstanding bonds which are subject to the debt limitation herein established, shall also be deducted from the amount of bonded indebtedness.

(b) No bonds shall be sold to obtain funds for any purpose other than that for which they were specifically authorized, and, if such bonds are not sold within two years after authorization, such authorization shall be null and void, except when delay is caused by litigation or when a bond issue has been authorized to be issued in two or more parts or series. In case of litigation, the two year period shall start at the time of the filing of the final judgment or decree. In case of bonds authorized to be issued in two or more parts or series, the first part or series shall be sold within two years after authorization and the final part or series shall be sold within ten years after authorization.

## **CHAPTER 11. CONTRACTS**

### **Sec. 11.1. Contracting Authority of Council.**

(a) The power to make and to authorize the making of contracts on behalf of the City is vested in the Council and shall be exercised in accordance with the provisions of law.

(b) All contracts, except as otherwise provided by ordinance in accordance with the provisions of Section 11.2 hereof shall be authorized by the Council and shall be signed on behalf of the City by the Mayor and the Clerk, and, except as so provided, in the case of contracts for the price [of] five hundred dollars or more, shall not be enforceable unless so signed.

(c) With the advice of the City Manager, the Council shall designate one of the administrative officers of the City as purchasing agent. Such officer shall be responsible for the purchasing and sale of all City property, except as otherwise provided by this Charter.

### **Sec. 11.2. Purchase and Sale of Personal Property.**

The Council shall establish, by ordinance, the procedure for the purchasing and sale of personal property. Such ordinance shall provide for centralized purchasing on behalf of the City. The ordinance shall also provide the dollar limit within which purchases and sales of personal property may be made without the necessity of securing competitive bids, and the dollar limit and conditions within which purchases and sales of personal property may be made without the necessity of Council approval and signature by the Mayor and the Clerk. No purchase of personal property shall be made unless a sufficient unencumbered appropriation is available therefor, or for such amount of the purchase price as shall be required to be paid during the current fiscal year of the City.

### **Sec. 11.3. Limitation on Contractual Power.**

(a) The Council shall have power to enter into contracts which, by the terms thereof, will be fully executed within a period of ten years. Contracts requiring more than ten years for the full execu-

tion thereof shall receive the approval of a majority of the qualified electors of the City voting thereon at a regular or special election before the same shall be binding upon the City. This limitation shall not apply to any franchise or contract for services with a public utility or with one or more other governmental units, nor to contracts authorized by law or for debt secured by bonds or notes which may be lawfully issued by the City.

(b) The City shall not have power to sell, lease, or dispose of any real estate unless:

- (1) The resolution authorizing the sale, lease, or disposal thereof shall be completed in the manner in which it is to be finally passed and has remained on file with the Clerk for public inspection for twenty-eight days before the final adoption of passage thereof, with notice of intent to sell, lease, or dispose of such property published not less than twenty days before the Council finally acts thereon, and unless,
- (2) Such action is approved by the affirmative roll call vote of five or more members of the Council, and unless,
- (3) When the proposition is to sell any park, cemetery or any part thereof, except when such park is not required under an official master plan of the City, the proposition to sell, lease, or dispose of the same shall also be approved by a three-fifths vote of the electors of the City voting thereon at any general or special election.

(c) Except as provided by ordinance authorized by Section 11.2 of this chapter, each contract for the construction of public improvements or for the purchase or sale of personal property shall be let after opportunity for competitive bidding. All bids shall be opened in public in the Council room by the Clerk, at the time designated in the notice of bidding, and shall be reported to the Council at its next meeting. The Council may reject any or all bids, if deemed advisable. If, after two or more opportunities for competitive bidding, no bids are received or such bids as were received were not satisfactory to the Council, the Council may either endeavor to obtain new competitive bids or authorize the City Manager or other proper offi-

cial of the City to negotiate for contract in the open market. The second bid herein required may be waived by a vote of five or more members of the Council and the Council may then proceed under the previous sentence.

(d) No contract shall be made with any person who is in default to the City.

(e) No exclusive contract shall be made with any person, except for the normal purchasing of supplies and equipment, the making and acquisition of public improvements, and such as may be authorized by this Charter.

(f) No extra compensation shall be paid to any public officer, agent, employee, or contractor after the service has been rendered or the contract entered into.

(g) No contract shall be amended after it has been made, except upon authority of the Council.

#### **Sec. 11.4. Business Dealings with City.**

The Council may provide by ordinance the conditions under which an officer or employee of the City may have business dealings with the City.

### **CHAPTER 12. ELECTIONS\***

#### **Sec. 12.1. Regular City Elections.**

(a) Beginning in the year 1975, a regular City election shall be held on the Tuesday succeeding the first Monday in November in every odd numbered year.

(b) At the regular City election held in the year 1975, there shall be elected by and from the City at large, a Mayor for a term of office of two years, and six Councilmen. The terms of office for the three Councilmen receiving the highest total number of votes in the regular City election of 1975 shall be four years. The terms of office for the three Councilmen receiving the next three highest vote totals shall be two years. Thereafter, at

\*State law references—Mandatory that charter provide for the time, manner and place of holding elections, MCL 117.3(c), MSA 5.2073, (c); Michigan election law, MCL 196.1 et seq., MSA 6.1001 et seq.

regular City elections, a Mayor shall be elected for a term of two years and three Councilmen shall be elected for a term of four years.

(c) A member of City Council whose term will not expire at the Mayoral election will not be eligible to run for Mayor unless such member of Council shall irrevocably resign his Council position before the deadline for filing nominating petitions for Mayor. Said resignations shall be absolute but shall not take effect until the day after the City election. Should one or more members of Council resign from office to run for Mayor, then their vacancies shall be filled for terms of two years by those persons receiving either the fourth, fifth, or sixth highest number of votes for Council member in the City elections.

(11-4-1980)

**State law reference**—Odd-year elections, MCL 168.644a et seq., MSA 6.1644(1) et seq.

### **Sec. 12.2. Primary Elections.**

**Editor's note**—This section was repealed by the voters on November 5, 1974.

### **Sec. 12.3. Special Elections.**

Special City elections shall be held when called by resolution of the Council, adopted at least sixty days in advance of such election. If a special election is to be held on the date of any State primary or general election, such election shall be called in ample time for the giving of notice to the County Clerk of questions to be voted thereat, as required by law. Any resolution calling a special election shall set forth the purpose of such election. Unless otherwise permitted by law, no more than two special City elections shall be held in any one calendar year.

**State law references**—Notice of special elections, MCL 168.653a, MSA 6.1653(1); maximum number of special elections in one year, MCL 117.5(c), MSA 5.2084, (c).

### **Sec. 12.4. Qualifications of Electors.**

Each resident of the City who has the constitutional qualifications of an elector in the State of Michigan, or who will have such qualifications at the next election held in the City, shall be entitled to register as an elector of the City.

**Editor's note**—The provisions of Charter § 12.4 are superseded by MCL 6.491 et seq., MSA 6.1491 in that such provisions provide for the qualifications of electors of the city. See MCL 168.492, MSA 6.1492.

### **Sec. 12.5. Election Procedure.**

All City elections for the election of City officers shall be nonpartisan. The general election laws of the State shall apply to and control, as nearly as may be, all procedures relating to registrations for the conduct of all City elections, and the nomination of candidates for election to City offices, except as such general laws relate to political parties or partisan procedures and except as otherwise provided by this Charter. The compensation of all election personnel shall be determined by the Council.

### **Sec. 12.6. Election Commission.**

An Election Commission, consisting of the Clerk, the Treasurer, and the Assessor, is hereby created. The Clerk shall be chairman. The City Attorney shall attend meetings of the Commission when requested to do so by the Clerk. The Commission shall have charge of all activities and duties required of it by law relating to the conduct of elections in the City. In the absence of a quorum, members present may create a quorum, as permitted by law. In any case where election procedure is in doubt, the Election Commission shall prescribe the procedure to follow.

### **Sec. 12.7. Nomination Petitions.**

A person desiring to qualify himself or another person as a candidate for any elective office under this Charter shall file with the Clerk a nomination petition therefor, signed by not less than fifty nor more than one hundred of the registered electors of the City. Blank nomination petitions, in substantially the same form as required by law for non-partisan nomination petitions, shall be prepared and furnished by the Clerk. Such petitions shall be filed with the Clerk not later than 4:00 o'clock in the afternoon on the seventh Tuesday preceding the regular City election date. Nomination petitions for the purpose of filling a vacancy shall so state in connection with the name of the office for which they are to be used. No person shall place his signature on more than one nomination petition for Mayor, nor to more such petitions for Councilmen than there are vacancies on the Council to be filled. If any person does place his signature on more petitions than

herein permitted, his signature shall be counted to the number permitted, only on the first petitions filed with the Clerk.

(11-5-1974)

**Editor's note**—Pursuant to MCL 168.644f, MSA 6.1644(6), nominating petitions must be filed by 4:00 p.m. on the 12th Tuesday prior to the primary election.

**State law reference**—Nonpartisan nominating petitions, MCL 166.544a, MSA 6.1544(1).

### **Sec. 12.8. Approval of Petitions.**

Within five days after the filing of a petition, the Clerk shall determine the sufficiency of the number of genuine signatures on the petition. If he finds that any petition does not contain the required number of genuine signatures, he shall immediately notify the filer of the petition, in writing, of the insufficiency of the petition. If the Clerk does not so notify the filer of the petition, it shall be deemed to be sufficient as to the number of signatures thereon and shall not be subject to challenge with regard thereto. No additional signatures on any petition shall be received by the Clerk after the final date and time fixed for filing nomination petitions.

**Editor's note**—The provisions of Charter § 12.8 are superseded by MCL 168.552, MSA 6.1552.

### **Sec. 12.9. Procedure at Primary Elections.**

**Editor's note**—This section was repealed by the voters on November 5, 1974.

### **Sec. 12.10. Form of Ballots.**

The form, printing, and numbering of ballots used in any City primary election and election shall conform, as nearly as may be, to that prescribed by law, except that no party designation or emblem shall appear thereon. The names of qualified nominees for each office shall be listed on the ballot under a separate heading for each office and shall be so rotated on the ballots, that, insofar as possible, the name of each candidate will appear first on the ballot under the office he seeks an equal number of times.

**State law references**—Preparation and distribution of primary ballots, MCL 168.559 et seq., MSA 6.1559 et seq.; voting machines at primaries, MCL 168.574 et seq., MSA 6.1574 et seq.; ballots in general elections, MCL 168.684 et seq., MSA 6.1684 et seq.

### **Sec. 12.11. Canvass of Votes.**

The Clerk shall canvass the votes cast at all City elections. If the Clerk is a candidate for a City office, he shall not canvass the votes at the election at which he is a candidate and the Council shall appoint an elector of the City to act in his stead. Such canvass shall be made by the Clerk at the City Hall at 10:00 o'clock in the forenoon on the third day following each City election. He shall publicly canvass the returns of such election, and shall determine the vote upon all questions and propositions, and declare whether the same have been adopted or rejected and which persons have been nominated for or elected to office, as the case may be.

### **Sec. 12.12. Persons Elected - Tie Vote.**

Candidates receiving the highest number of votes for election to an office shall be declared to have been elected to that office. If, at any City election, the outcome cannot be determined because two or more persons received an equal number of votes, the Election Commission shall, on the day following the canvass of such votes proceed to recount the votes cast for such persons. Such recounting of votes shall be conducted and the result thereof returned and reported as provided by law for the conduct of recounts, but no petition therefor shall be required. If the result of such election is not changed by such recount, the Election Commission shall name a date for the appearance of such persons for the purpose of determining the election of one of them by lot. Should any person fail to appear, in person or by representative, to determine the result of any tie at the time and place named, such determination shall be made by lot in his absence, at the direction and under the supervision of the Election Commission. Such determination shall be final.

**State law reference**—Determination of winner by lot, MCL 168.851, 168.852, MSA 6.1851, 6.1852.

### **Sec. 12.13. Recount.**

A recount of the votes cast at any City election for any office, or upon any proposition, may be had in accordance with the general election laws of the State.

**State law reference**—Recounts, MCL 168.861 et seq., MSA 6.1861 et seq.

## CHAPTER 13. UTILITY FRANCHISES AND MUNICIPAL UTILITIES

### Sec. 13.1. Public Utility Franchises.

All public utility franchises granted after the adoption of this Charter, whether it be so provided in the granting ordinance or not, shall be subject to the right of the City:

- (1) To repeal the same for misuse, or nonuse, or for failure to comply with the provisions thereof;
- (2) To require proper and adequate extension of plant and service maintenance thereof at the highest practical standard of efficiency;
- (3) To establish reasonable standards of service and quality of products, and prevent unjust discrimination in service or rates;
- (4) To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;
- (5) To impose such other regulations as may be determined by the Council to be conducive to the safety, welfare, and accommodation of the public;
- (6) To require the public utility to which any franchise is granted to permit joint use of its property and appurtenances located in the streets, alleys, and public places of the City by the City and other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor: Provided, That, in the absence of agreement, upon application by the public utility, the Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor;
- (7) To pay such part of the cost of improvement or maintenance of the streets, alleys, bridges, and public places of the City, as shall arise from its use thereof, and to protect and save the City harmless from all damages arising from said use; and

- (8) Require the public utility to file with the City such drawings and maps of the location and nature of its facilities, as the Council may request.

**State law reference**—Permissible that charter provide for use of streets and other public ways, MCL 117.4h(2), MSA 5.2081, (2).

### Sec. 13.2. Limitations on the Granting of Franchises.

No franchise shall be granted by the City for a term exceeding thirty years and no exclusive franchise or contract in the nature of a franchise shall ever be granted. Each franchise shall include a provision requiring the franchise to take effect at the end of an existing franchise. An irrevocable franchise and any extension or amendment of such franchise may not be granted by the City, unless the ordinance granting such franchise has first received the affirmative vote of at least three-fifths of the electors of the City voting thereon at a regular or special City election. An irrevocable franchise ordinance may be approved by the Council, for referral to the electorate, only after a public hearing has been held thereon and after the grantee named therein has filed with the Clerk his unconditional acceptance of all the terms of the franchise. No special election for such purpose may be ordered by the Council, unless the expense of holding such election has first been paid to the Treasurer by the grantee.

**State law references**—Franchises limited to 30 years, Mich. Const. 1963, art. VII, § 30; submission of irrevocable franchise to electors required, Mich. Const. 1963, art. VII, § 25; expenses of special elections to approve franchises to be submitted to voters, MCL 117.5(i), MSA 5.2084, (i).

### Sec. 13.3. Procedure for Granting Franchises.

Every ordinance granting a franchise, license, or right to occupy or use streets, alleys, bridges, or public places shall remain on file with the Clerk for public inspection in its final form for at least thirty days before the final adoption thereof, or the approval thereof for referral to the electorate.

### Sec. 13.4. Sale or Assignment of Franchises.

The grantee of a franchise may not sell, assign, sublet or allow another to use the same, unless the Council gives its consent and approves the



vendee, assignee, sublessee, or person using the franchise. In the case of utilities which supply electricity, gas, and communication services within the City, Council consent shall not be required in any case where the approval of the Michigan Public Service Commission is given. Nothing in this section shall limit the right of the grantee of any public utility franchise to, in good faith, mortgage its property or franchise nor shall it restrict the rights of the purchaser, upon foreclosure sale, to operate the same, except that such mortgage purchaser shall be subject to the terms of the franchise and provisions of this chapter.

#### **Sec. 13.5. Plans of Facilities in Streets and Public Places.**

The Council may, by ordinance, require, as a condition to the placing or installment thereof, that each public utility conducting a business in the City file with the City a duplicate copy of layout plans of pipes, conduits, and other facilities which are to be placed on, under, or above the surface of the City's streets, alleys, bridges, and public places.

#### **Sec. 13.6. General Powers Respecting Utilities.**

The City shall possess and hereby reserve[s] to itself all the powers granted to cities by law to acquire, construct, own, operate, improve, enlarge, extend, repair, and maintain utility plants, systems, and facilities which cities are permitted by law to own and operate, either within or without its corporate limits, including, but not by the way of limitation, public utilities for supplying water, light, heat, power, gas, sewage treatment, and garbage disposal facilities, or any of them, for the benefit of the Municipality and the inhabitants thereof; and also to sell and deliver water, light, heat, power, gas, and other public utility services without its corporate limits to an amount not to exceed the limitations set by law or in accordance with law.

#### **Sec. 13.7. Management of Municipal Utilities.**

Each municipally owned utility shall be administered as a department of the City government.

The Council may provide for the administration of two (2) or more utilities by a single department. The City may require each utility owned by it to pay into the General Fund of the City from its earnings a sum annually equal to what it would have paid in property taxes were it on the assessment roll as a nonmunicipally owned utility.

#### **Sec. 13.8. Rates.**

The Council shall have the power to fix, from time to time, such just and reasonable rates as may be deemed proper for supplying the inhabitants of the City and others with such utility services as the City may provide.

**State law references**—Charter may provide for acquisition, etc., of utilities, MCL 117.4c, 141.104, MSA 5.2076, 5.2734; authority to acquire, operate, etc., water systems, MCL 124.251 et seq., MSA 5.2533(1) et seq.

#### **Sec. 13.9. Utility Rates, Charges, and Collection.**

(a) The Council shall provide, by ordinance, for the collection of all public utility rates and charges of the City. Such ordinances shall provide:

- (1) Whenever permitted by law, that the City shall have as security for the collection of such utility rates and charges a lien upon the real property supplied by such utility, which lien shall become effective immediately upon the supplying of such utility service and shall be enforced in the manner provided in such ordinance;
- (2) The terms and conditions under which utility services may be discontinued in case of delinquency in paying such rates or charges;[.]

(b) With respect to water, the City shall have all the powers granted to cities by Public Act No. 178 of 1939 (MCL 123.161 et seq., MSA 5.2531(1) et seq.), of the State of Michigan.

#### **Sec. 13.10. Disposal of Utility Plants and Property.**

Unless approved by a three-fifths ( $\frac{3}{5}$ ) majority vote of the electors voting thereon at a regular or special election, the City shall not sell, exchange, lease, or in any way dispose of any property, easement, equipment, privilege, or asset belong-

ing to and appertaining to any municipally owned utility. All contracts, negotiations, licenses, grants, leases, or other forms of transfer in violation of this section shall be void. The prohibition of this section shall not apply to the sale or exchange of any article of machinery or equipment of any City-owned utility which is worn out, or useless, or which have been, or which, with advantage to the service could be replaced by new and improved machinery or equipment.

**State law reference**—Charter may provide for sale of capital asset of municipally owned utility, MCL 117.4e(3), MSA 5.2078, (3).

#### **Sec. 13.11. Utility Accounts.**

Transactions pertaining to the ownership and operation by the City of each public utility shall be recorded in a separate group of accounts under an appropriate fund caption, which accounts shall be classified in accordance with generally accepted utility accounting practice. Charges for all service furnished to, or rendered by, other City departments or agencies shall be recorded. An annual report shall be prepared to show fairly the financial position of the utility and the results of its operation, which report shall be available for inspection at the office of the Clerk.

### **CHAPTER 14. MUNICIPAL COURT\***

### **CHAPTER 15. SUPERVISORS†**

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\***Editor's note**—The text of Charter ch. 14 was deleted in the prior publication of the Charter. Charter ch. 14 is superseded by MCL 600.9921, 600.9930, MSA 27A.9921, 27A.9930.

†**Editor's note**—The text of Charter ch. 15 was deleted in the prior publication of the Charter. Charter ch. 15 is superseded by MCL 46.401 et seq., MSA 5.359(1) et seq.