

PART I - CHARTER OF THE CITY OF BERKLEY, MICHIGAN^[1]**PREAMBLE**

To ensure that the citizens of Berkley, County of Oakland, State of Michigan, shall have an effective government that meets the growing needs of this community; that preserves the will of the majority and protects the rights of the individual; that maintains the public peace, health and safety; and reflects intelligent opinions to secure the fullest measure of self-government according to state and county law, the electors of the City of Berkley hereby establish this charter.

State Constitution reference— Power and authority of city to frame, adopt and amend the charter, Const. of 1963, Art. VII, § 22.

State Law reference— Home Rule cities generally, MCL 117.1 et seq., MSA 5.2071 et seq.

Footnotes:

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***Editor's note**—Printed herein is the charter of Berkley, Michigan, as adopted by the electors on August 5, 1980, and effective on September 1, 1980. Amendments to the charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.*

CHAPTER 1. - BOUNDARIES AND SUBDIVISIONS OF THE CITY

Sec. 1.1. - Boundaries.

The following described territory, together with all territories that may hereafter be annexed thereto, shall continue and remain a body corporate under the official name and title of "City of Berkley," and shall be subject to the municipal control of said city:

All of the following described territory situated in the County of Oakland, State of Michigan, to wit: Beginning at the western quarter post of Section 7, Town 1 North, Range 11 East, Royal Oak Township, Oakland County, Michigan, thence southerly along the common line of Sections 7, and 18, Town 1 North, Range 11 East, and Sections 12 and 13, Town 1 North, Range 10 East, to the common line to Sections 18 and 19 Town 1 North, Range 11 East, thence easterly along the common line to Sections 19, 20 and 21, and Sections 18, 17 and 16, Town 1 North, Range 11 East, to the centerline of Woodward Avenue (through) thence northwesterly along the centerline of Woodward Avenue, through Sections 16, 17 and 8, Town 1 North, Range 11 East, to the east and west quarter line of Section 8, Town 1 North, Range 11 East; thence westerly along the quarter line of Sections 8 and 7 to the point of beginning, and being bounded on the east by the centerline of Woodward Avenue, on the north by the centerline of Twelve and One-Half Mile Road, on the west by the western line of Royal Oak Township, and on the south by the centerline of the Eleven Mile Road.

Sec. 1.2. - Ward.

The City of Berkley shall consist of one ward.

State Law reference— Mandatory that charter provide for establishment of one or more wards, MCL 117.3(e), MSA 5.2073, (e).

Sec. 1.3. - Election precincts.

The election commission shall establish and maintain convenient election precincts which shall comply with the provisions of the state law.

State Law reference— Election precincts, MCL 168.654 et seq., MSA 6.1654 et seq.

Sec. 1.4. - City parks.

The following described properties are hereby designated as city parks.

Assessor's Replat of Meadow Farms Subdivision: Lots 133 to 135, inclusive, and westerly 30 feet of vacated portion of Gardner Avenue adjacent thereto. Lots 150 to 152, inclusive, and easterly 30 feet of vacated portion of Gardner Avenue adjacent to Lot 150. Also vacated portion of Gardner Avenue adjacent to Lot 150. Also vacated portion of Oxford Road adjacent to Lots 150 and 151. Lots 177 to 212, inclusive, and Lots 237 to 246, inclusive; also vacated portion of Oxford Road adjacent to said lots and vacated portion of Griffith Avenue adjacent to said lots.

Denler Acres Subdivision: Lots 31, 44 and 45.

Benjamin F. Mortenson's Pleasant Gardens Subdivision: Lots 82 to 84, inclusive, and Lots 71 to 73, inclusive.

Hannan's West Royal Oak Subdivision: East 20 feet of Lot 14 and all of Lots 15 to 18, inclusive.

Glen Ford Park Subdivision Number 1: Lot 415, excluding the north five feet. Also Lots 416 to 428, inclusive; Lots 470 to 482, inclusive, and south 45 feet of Lot 483 and westerly ½ of vacated Phillips Street adjacent to same.

Cottage Homes Subdivision: Lots 455 to 461, inclusive; Lots 391 to 396, inclusive; also north 35 feet of Lot 397 and north 35 feet of Lot 455.

CHAPTER 2. - GENERAL MUNICIPAL POWERS

Sec. 2.1. - Powers of the city.

The municipal corporation now existing and known as "City of Berkley" shall be, and continue a municipal corporation under the name of "City of Berkley," and shall be vested with any and all powers which cities are, or may hereafter be, required or permitted to exercise or to provide for in their charters under the constitution and laws of the State of Michigan, as fully and completely as though the powers were specifically enumerated herein, except for such limitations and restrictions as are provided in this charter, and no enumeration of particular powers of the city in this charter shall be held to be exclusive.

Sec. 2.2. - Exercise of powers.

Where no procedure is set forth in this charter for the exercise of any power granted to or possessed by the city and its officers, resort may be had to any procedure set forth in any statute of the State of Michigan which was passed for the government of cities, or in any other statute of the State of Michigan. If alternate procedures are to be found in different statutes, then the council shall select the procedure which it deems to be most expeditious and to the best advantage of the city and its inhabitants. Where no procedure for the exercise of any power of the city is set forth, either in this charter or in any statute of the State of Michigan, the council may prescribe by ordinance a reasonable procedure for the exercise thereof.

Sec. 2.3. - Intergovernmental relations.

The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or the United States or any agency thereof.

Sec. 2.4. - Trusts.

The city may, in its discretion, receive and hold any property in trust for municipal purposes and shall apply, use and continue the same for no other purposes whatsoever, except in cases where the common law cy pres doctrine shall apply.

Sec. 2.5. - City planning.

The city shall provide for the adoption and maintenance of a comprehensive plan for future development. The plan and all its elements shall serve as a guide as it relates to the physical, social and environmental development, redevelopment and conservation in the city.

State Law reference— Municipal planning, MCL 125.31 et seq., MSA 5.2991 et seq.

Sec. 2.6. - Continuation of rights and liabilities.

The adoption of this charter shall not be regarded as discharging, impairing or limiting any right vested in the City of Berkley at the time of the adoption of this charter.

CHAPTER 3. - GENERAL PROVISIONS AFFECTING ELECTED OFFICERS OF THE CITY

Sec. 3.1. - Elected officers.

The elected officers of the city shall be the mayor and six councilmembers all of whom shall be elected from the city at large.

(Res. No. 17-86, 2-3-1986, passed Ref. 8-5-1986)

State Law reference— Mandatory that charter provide for election of certain officers, MCL 117.3(a), MSA 5.2073, (a).

Sec. 3.2. - Eligibility for office in city.

To be eligible for an elected office, a person must be a registered elector in the City of Berkley.

State Law reference— Qualifications for registration as elector, MCL 168.492, MSA 6.1492.

Sec. 3.3. - Terms of office.

The mayor shall be elected for a term of two years. In the biennial city election of 1981, the three candidates receiving the highest number of votes for the council shall be elected as councilmembers to serve for a term of four years; and in the biennial city election of 1983, the three candidates receiving the highest number of votes for the council shall be elected as councilmembers to serve for a term of four years; thereafter, in each biennial city election the three candidates for council receiving the highest number of votes shall be elected to serve a term of four years.

(Res. No. 17-86, 2-3-1986, passed Ref. 8-5-1986)

Sec. 3.4. - Vacancies of office.

Every city office shall become vacant upon the happening of any of the following events before the expiration of the term of such office:

- (a) For any reason specified by state law as grounds for creating a vacancy;
- (b) If the officer of the city shall absent himself or herself continuously from the city for more than 60 days without the permission of the council, or, in any case, for more than 90 days;
- (c) In the case of the mayor and members of the council, where such officer shall miss 25 percent of the regular meetings in any fiscal year of the city, unless such absences shall be excused by the council and the reason therefor entered in the proceedings of the council;
- (d) If the officer shall be convicted of any act constituting misconduct in office.

State Law reference— Grounds for vacancies, MCL 201.3, MSA 6.693.

Sec. 3.5. - Resignations.

Resignations of elected officers shall be made in writing and filed with the clerk and shall be acted upon by the council at its next regular meeting following receipt thereof by the clerk.

State Law reference— Resignations MCL 201.1, MSA 6.691.

Sec. 3.6. - Filling vacancies.

When a vacancy occurs in any elected office, the council, within 30 days after such vacancy occurs, shall by the affirmative vote of not less than four of its members appoint an eligible person to fill that vacancy. Such appointees shall hold office until the next biennial city election. If vacancies occur in the office of [the] council, such appointees shall hold office until the next biennial city election, at which election candidates receiving the highest number of votes after the three candidates receiving the highest number of votes for the regular four-year term, shall be elected for the unexpired term of the persons in whose office the vacancy occurs.

State Law reference— Vacancies in city office to be filled as provided in the charter and MCL 201.37, MSA 6.717.

Sec. 3.7. - Emergency appointments.

In the event the provisions of section 3.6 cannot be complied with, the Governor of the State of Michigan shall appoint qualified citizens of the City of Berkley to fill any vacancies until a special election shall be held in accordance with state law and this charter.

Sec. 3.8. - Increase or decrease in compensation.

The salary of the mayor and council shall not be increased or decreased except by charter amendment.

Sec. 3.9. - Oath of office.

Every person, elected or appointed to an elective office, before entering upon the duties of office, shall take the oath of office prescribed by state law and shall file the same with the clerk. In case of failure to comply with the provisions of this section within ten days from the date of appointment or commencement of the term, such person shall be deemed to have declined the office and such office shall thereupon become vacant unless [the] council shall, by resolution, extend the time in which such person may qualify as above set forth.

Sec. 3.10. - Delivery of property and effects.

When any elected officer vacates office, all properties of the city shall be returned to the city clerk upon demand, but not later than 15 days after vacating office. Failure to comply with this provision shall constitute a misdemeanor.

Sec. 3.11. - Personal financial interest.

Any city officer who has a financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the city or in the sale of any land, material, supplies or services to the city or to a contractor supplying the city shall be governed by state law regarding conduct of public servants.

State Law reference— Contractual conflicts of interest, MCL 15.321 et seq., MSA 4.1700(51) et seq.; public ethics, MCL 15.341 et seq., MSA 4.1700(71) et seq.

Sec. 3.12. - The holding of other city office or employment prohibited.

No elective officer of the city shall hold any other compensated city office or employment.

CHAPTER 4. - THE CITY COUNCIL

Sec. 4.1. - City governing body.

The council shall be composed of a mayor and six councilmembers. All powers of the city shall be vested in the council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

Sec. 4.2. - Organization of the council.

The council shall, at its first regular meeting following each biennial city election, select one of its members to serve as mayor pro tem. The person selected to serve as mayor pro tem shall be deemed to be selected on receiving not less than four votes of the council. The mayor pro tem shall perform the duties of the mayor when the mayor is temporarily unable to perform such duties or if the office of mayor is vacant. The mayor pro tem shall preside over the meetings of the council at the call of the mayor. In the event of a vacancy occurring in the office of mayor pro tem, the council shall appoint from its membership to fill such vacancy.

Sec. 4.3. - Judge of qualifications.

The council shall be the sole judge of whether its members are eligible for office under the provisions of this charter, the statutes and constitution of this state.

Sec. 4.4. - Salaries of members of the council.

The members of the council shall receive the sum of \$30.00 for each attended regular or special meeting of the council, but not to exceed \$1,080.00 per annum. The mayor shall receive the sum of \$40.00 for each attended regular or special meeting of the council, but not to exceed the sum of \$1,440.00 per annum. Upon authorization of the council, the mayor and councilmembers may receive their reasonable and necessary expenses actually incurred on behalf of the city outside of its corporate limits. This section shall be effective July 1, following the adoption of this charter.

Sec. 4.5. - Duties of mayor.

(a)

Insofar as required by law, and for all ceremonial purposes, the mayor shall be recognized as the executive head of the city. The mayor shall have an equal voice and vote in the proceedings of the council, but shall have no veto power.

- (b) In case of an emergency which is not covered by [the] city charter, it shall be the duty of the mayor to call upon the governor to declare a state of emergency, as provided for in the state statutes.
- (c) The mayor shall authenticate by signature such instruments as the council, this charter or the laws of the State of Michigan or of the United States shall require.
- (d) The mayor shall exercise only such powers as the state laws, this charter or the council shall specifically confer upon or require of the office.

Sec. 4.6. - Meetings of the council.

- (a) The council shall provide by resolution for the time and place of its regular meetings and shall hold at least one regular meeting each month.
- (b) Special meetings of the council may be called by the clerk on the written request of the mayor, any three members of the council or the city manager on at least 24 hours' written notice to each member of the council, designating the time, place and purpose of any such meeting and served personally or left at his or her usual place of residence by the clerk, or someone designated by the clerk. Any special meeting of the council at which all members of the council are present, or at which a quorum of the council is present and the members not present have waived the requirement of such notice in writing, shall be a legal meeting.
- (c) All regular and special meetings of the council shall be open to the public and the rules of order of the council shall provide that citizens shall have a reasonable opportunity to be heard. However, upon two-thirds roll call vote of the members of the council elected and serving, the council may meet in closed session to discuss personnel; to hold strategy and negotiation sessions, relating to collective bargaining; to consider purchase or lease of real estate; to consult with the attorney regarding litigation; and to review applications for employment or appointment to public office.
- (d) Four members of the council shall be a quorum for the transaction of business at all meetings of the council, but, in the absence of a quorum, two members may adjourn any regular or special meeting to a later date.
- (e) No business shall be transacted at any special meeting of the council unless the same has been stated in the notice of such meeting. However, if all members of the council are present at any special meeting of the council, then any business which might lawfully come before a regular meeting of the council may be transacted at such special meeting.
- (f) The council shall determine its own rules and order of business and shall keep a journal of all of its proceedings in the English language, which shall be signed by the mayor and the clerk and shall be available for inspection to the public at all reasonable times. The vote upon the passage of all ordinances and upon the adoption of all resolutions shall be taken by "yes" and "no" votes and entered upon the record, except that where the vote is unanimous, it shall only be necessary to so state. Each member of council who shall be recorded as present shall vote on all questions decided by the council, unless excused by the unanimous consent of the other members present, or as otherwise provided in section 3.11 of this charter. Any member of the council who refuses to vote as herein required shall be deemed to have vacated the office, and the council shall fill the vacancy so created as provided in this charter.
- (g)

The council may, by vote of not less than two of its members, compel the attendance of its members and other officers of the city at its regular and special meetings and enforce orderly conduct therein; and any member of the council or other officer of the city who refuses to attend such meetings or conduct himself or herself in an orderly manner thereat shall be deemed guilty of misconduct in office. A council designate shall serve as the sergeant-at-arms of the council in the enforcement of the provisions of this section.

State Law reference— Mandatory that the charter provide that all council sessions be public, MCL 117.3(l), MSA 5.2073, (l); mandatory that charter provide for keeping in the English language a written or printed journal of every council session, MCL 117.3(m), MSA 5.2073, (m).

Sec. 4.7. - Restrictions on powers of the council.

- (a) The council shall not have the power to make any contracts with or give any official position to any person who is in default to the city. Further, the council shall not have the power to sell any property of a value in excess of \$5.00 per capita according to the last preceding United States census, or any park, playground, cemetery, or any part thereof; or engage in any business enterprise requiring an investment of money in excess of \$0.10 per capita, unless approved by a majority vote of the electors voting thereon at any general or special election.
- (b) Except as otherwise provided in this charter, no ordinance or resolution shall be adopted or passed except by the affirmative vote of at least four members of the council.
- (c) There shall be no standing committees of the council.
- (d) The council shall not grant or authorize extra compensation to any city officer, elected or appointed, or any employee, agent or contractor after the service has been rendered or the contract entered into.

Sec. 4.8. - Investigations.

The council, or any person or committee authorized by it for the purpose, shall have power to inquire into the conduct of any department or office of the city and to make investigations into municipal affairs, and for that purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Failure on the part of any elected officer of the city to obey such subpoena or to produce such evidence as ordered under the provisions of this section shall constitute misconduct in office. If such failure shall be on the part of any employee of the city, the same shall constitute a misdemeanor.

Sec. 4.9. - Publication of council proceedings.

The proceedings of the council shall be published at least once within 15 days after each meeting of the council. The publication of a synopsis of such proceedings, prepared by the clerk and approved by the mayor, showing the substance of each separate proceeding of the council shall be sufficient compliance with the requirements of this section.

CHAPTER 5. - POWERS OF THE COUNCIL

Sec. 5.1. - Public health and safety.

Through the established departments and agencies of the city government together with any such departments or agencies as may be created under authority of this charter, the council shall provide for the public peace and health and for the safety of persons and property.

State Law reference— Mandatory that the charter provide for the council to provide for the public

peace, health, etc., MCL 117.3(j), MSA 5.2073, (j).

Sec. 5.2. - Streets and alleys.

The council shall have [the] power to establish and vacate and to use and control, and regulate, the use of its streets, alleys, bridges and public places, whether such public places be located within or without the limits of the city, and the space above and beneath them.

Sec. 5.3. - Licenses.

The council shall not grant licenses, except when required to do so by state law. The council shall by ordinance prescribe the terms and conditions upon which licenses may be granted, suspended or revoked. In such ordinance the council may require an exact payment of such reasonable sums for any licenses as it may deem proper.

Sec. 5.4. - Rights as to property.

The council shall have the power to acquire for the city by purchase, gift, condemnation, lease, construction or otherwise, either within or without its corporate limits, and either within or without the County of Oakland, public or private property and buildings thereon.

Sec. 5.5. - Cemeteries and parks.

The city shall not sell, exchange, dispose of or use for any other purpose any park, or portion thereof, unless and except the proposition for such purpose shall first have been submitted to the electors of the city and approved by them by a majority vote of the electors voting thereon. All contracts, negotiations, licenses, grants or other forms of transfer in violation of this provision, shall be void and of no effect as against the city.

The council shall have power to enact all ordinances deemed necessary for the maintenance and protection of all cemeteries and parks, together with the improvements thereof and appurtenances thereto, owned or hereafter acquired by the city either within or without its corporate limits. In any cemetery established by the city, a plan for the perpetual care of all lots, plots and lands therein shall be provided.

Sec. 5.6. - Publication.

The council shall annually designate an official newspaper of general circulation for the publication of notices, and of proceedings and ordinances of the council, for the next fiscal year of the city, or shall determine that such of the same as are not specifically required by this charter or by law to be published in a newspaper, shall be published during the next fiscal year of the city by posting printed or written copies thereof in at least three different public places in the city to be designated by the council.

Sec. 5.7. - Sanitary and storm sewer contracts.

The council, upon a vote of five of its members, shall have power to contract with any political subdivision, or any agency thereof, for the disposal of sanitary and/or stormwater sewage from the city, for a period not to exceed 40 years; provided that before authorizing the execution of any such contract, the council shall deposit a copy with the clerk and a notice of such copy to be published in a newspaper of general circulation in the city at least once not less than ten days prior to such authorization. The contract, as so deposited, may not be substantially amended before execution without further notice. The amounts to be paid by the city under such contract shall not constitute an

indebtedness of the city within the meaning of any charter debt limitation. The council shall impose rates, charges and/or assessments upon the users and beneficiaries of sewage disposal services and facilities, limited to an amount sufficient to promptly meet the obligations under such contract, but in the event the receipts therefrom are not sufficient to pay all sums when due under the contract, then the city shall be responsible for any deficit. Such rates, charges and/or assessments shall be made and the payment thereof enforced, by any method permissible by law. The provisions of this section shall not be limited by those of any other section or sections of this charter.

CHAPTER 6. - CITY LEGISLATION^[2]

Footnotes:

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State Law reference— *Mandatory that the charter provide for adopting, continuing, amending and repealing the city ordinances and for the publication of all ordinances before they become operative, MCL 117.3(k), MSA 5.2073, (k).*

Sec. 6.1. - Prior city ordinances and regulations.

All ordinances, resolutions, rules, and regulations of the City of Berkley, which are not inconsistent with the provisions of this charter, and which are validly in force and in effect at the time of the adoption of this charter, shall continue in full force, as ordinances, resolutions, rules, and regulations of the City of Berkley until repealed or amended by action of the proper authorities.

Sec. 6.2. - Ordinance enactment.^[3]

All legislation of the City of Berkley shall be by ordinance. Each ordinance shall be identified by a number and a short title. Each proposed ordinance shall be introduced in written or printed form. The style of all ordinances passed by the council shall be, "The City of Berkley Ordains..." No ordinance shall be finally passed by the council at the same meeting at which it is introduced, except as otherwise provided by this charter. No ordinance shall be revised, altered or amended by reference to its title only, but the section or sections of the ordinance revised, altered or amended shall be reenacted and published at length, and all ordinances, when enacted, shall be immediately recorded by the clerk in a book to be called "The Ordinance Book"; and it shall be the duty of the mayor and clerk to authenticate such records by their official signatures thereon. All ordinances, except ordinances declared by the council to be emergency ordinances, shall become effective 30 days following [the] date of adoption, or at any later date specified therein. An ordinance may be repealed by adoption of a repealing ordinance in the same manner specified in this section for [the] adoption of ordinances.

Footnotes:

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Editor's note—*There were two sections 6.2 adopted by this charter.*

Sec. 6.2. - Emergency ordinances.^[4]

To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, or grant, renew or extend a franchise, or regulate the rate charged by any public utility for its services, or authorize the borrowing of money. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted, with or without amendment, or rejected at the meeting at which it is introduced, by a majority vote of the members present. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency

ordinance shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in the section for adoption of emergency ordinances.

Footnotes:

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Editor's note—*There were two sections 6.2 adopted by this charter.*

Sec. 6.3. - Actions of council by resolution.

Matters required or permitted to be done by resolution by this charter or by any state or federal law and matters pertaining to the internal concerns of the city government shall be acted upon by the council by simple motion or resolution.

Sec. 6.4. - Penalties.

The council may provide in each ordinance for the punishment of those who violate its provisions. No punishment for the violation of any city ordinance or for the commission by any officer of the city of any act declared by this charter to constitute misconduct in office shall exceed a fine of \$500.00 or imprisonment for 90 days, or both, in the discretion of the court, except that any officer of the city found guilty of any act, declared by this charter to constitute misconduct in office, shall, in addition to such fine or imprisonment or both, forfeit office.

State Law reference— Limitations on penalties, MCL 117.4i(10), MSA 5.2082, (10).

Sec. 6.5. - Publication of ordinances.

Each ordinance passed by the council shall be published at least once within ten days after the adoption of an ordinance by the council. The publication shall consist of [the] same in a newspaper of general circulation, or at the discretion of the council, by posting copies of said ordinance in three different public and conspicuous places within the city, provided that a summary of the ordinance and places of posting be published in a newspaper of general circulation. The publication of any ordinance, in full, as a part of the published proceedings of the council, shall constitute publication of such ordinance as required herein.

Sec. 6.6. - Technical codes.

The council may adopt any provision of state law or any detailed technical regulations as a city ordinance or code by citation of such provision of state law or by reference to any recognized standard code, official or unofficial, provided that any such provision of state law or recognized official or unofficial standard code shall be clearly identified in the ordinance adopting the same as an ordinance of the city. Where any recognized official or unofficial standard code is so adopted, it may be published by providing and maintaining on hand in the office of the clerk copies thereof in book or booklet form, available for public distribution at a reasonable charge. Any amendment to or revision of such adopted code or detailed technical ordinance may be published in the same manner.

State Law reference— Authority to adopt technical codes, MCL 117.3(k), MSA 5.2073, (k).

Sec. 6.7. - Franchises and contracts.

Every ordinance or contract granting any franchise establishing water rates or granting the right to occupy or use the streets, highways, bridges or public places in the city for any purpose shall be complete in the form in which it is finally passed, and remain on file with the clerk for public inspection for at least one week before the final passage or adoption thereof.

Sec. 6.8. - Compilations.

- (a) Copies of all ordinances which are in effect and all amendments to this charter shall be prepared and kept on hand in the office of the clerk available for public distribution.
- (b) At least once in every ten years the council shall direct the compilation or codification and the publication of the charter and of all ordinances of the city, then in force, in loose-leaf or pamphlet form, and may provide for a reasonable charge for copies thereof. No further publication of any such compilation or codification shall be required for the validity thereof. In case the compilation or codification of the ordinances for the city shall have been maintained current and up to date during any ten-year period, no recompilation or recodification of the ordinances of the city shall be required during or at the end of such period, but the same shall be published as herein required. The copies of ordinances and of any compilation code, or codes referred to in this chapter, may be certified by the clerk and, when so certified, shall be competent evidence in all courts and legally established tribunals as to the matters contained therein.

State Law reference— Authority to codify, MCL 117.5b, MSA 5.2084(2).

Sec. 6.9. - Marijuana.

Nothing in the Code of Ordinances shall apply to the use, possession or transfer of less than one ounce of marijuana, on private property not used by the public, or transportation of less than one ounce of marijuana, by a person who has attained the age of 21 years.

(Res. No. R-26-14, § 1, 7-21-14)

CHAPTER 7. - INITIATORY AND REFERENDUM PETITIONS^[5]

Footnotes:

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State Law reference— Initiative and referendum, MCL 117.4i(6), MSA 5.2082, (6).

Sec. 7.1. - General authority.

- (a) *Initiative.* The qualified voters of the city shall have power to propose ordinances to the council. If the council fails to adopt an ordinance, so proposed, without any change in substance, the voters may adopt or reject it at a city election. Such powers shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of administrative officers or employees.
- (b) *Referendum.* The qualified voters of the city shall have [the] power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.
- (c) *Commencement of proceedings.* An initiatory or referendum petition may be commenced by filing [the] same with the clerk by any qualified voter, who must be responsible for circulating the petition and filing it in proper form, stating the name and registered address of the petitioner and

setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. The clerk, upon request, shall supply the appropriate petition blanks to the petitioner.

Sec. 7.2. - Petitions.

- (a) *Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of the city equal in number to at least eight percent of the total number of voters registered.
- (b) *Form and content.* All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the residence address of the person signing and the date signed. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (c) *Affidavit of circulator.* Each paper of a petition shall contain an affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- (d) *Time for filing referendum petitions.* Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered.

Sec. 7.3. - Action on petitions.

- (a) *Procedure after filing.* Such petition shall be filed with the clerk who shall, within ten days, canvass the signatures thereon to determine the sufficiency thereof. Any signatures obtained more than six months before the filing of such petition with the clerk shall not be counted. If found to contain an insufficient number of signatures of registered electors of the city, or to be improper as to form or compliance with the provisions of this section, the clerk shall forthwith notify the person, in writing, filing such petition, and ten days from such notification shall be allowed for the filing of supplemental petition papers. When found sufficient and proper, the clerk shall present the petition to the council at its next regular meeting.
- (b) *Action of council.* Upon receiving an initiatory or referendary petition from the clerk, the council shall, within 30 days, either:
 - (1) If it be an initiatory petition, adopt the ordinance as submitted in the petition;
 - (2) If it be a referendary petition, repeal the ordinance to which the petition refers; or
 - (3) Take action to submit the proposal to the electors.
- (c) *Ordinance suspension.* The certification by the clerk of the sufficiency of a referendary petition, within 30 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 final determination by the electors, as the case may be.
- (d) *Submission to electors.* Should the council act to submit the proposal to the electors, it shall be submitted at the next election held in the city for any other purpose. If the signatures obtained on the petition are equal to 13 percent of the registered voters at the last biennial city election, and no election is to be held within 120 days, then a special election shall be held within that time.

Sec. 7.4. - Initiatory petition—Restriction on council powers.

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

CHAPTER 8. - THE ADMINISTRATIVE SERVICE

Sec. 8.1. - The administrative officer—General.

- (a) The administrative officers of the city shall be the city manager, clerk, treasurer, assessor and the city attorney. No person shall be eligible to appointment as an administrative officer of the city unless they are a citizen of the United States of America. The city manager and city attorney need not be a resident of the city at the time of appointment, but shall become a resident of the city within 12 months after appointment, unless the time be extended by the council, and in no event longer than 18 months after appointment, and shall remain a resident throughout their tenure of office.
- (b) The city manager and city attorney shall hold office by virtue of appointment by the council, which body shall also set their salaries. They shall each hold office at the pleasure of the council. The clerk shall be appointed by the city manager, with the approval of the council. The council shall set the salary of the city clerk as well as the salary of any other offices held by the clerk, if these offices have been consolidated with the office of city clerk pursuant to the city charter. If the city clerk holds other offices in the city's administrative service, the city council may set one joint salary for all of the offices held by the city clerk, or it may set a separate salary for each office held by the city clerk.
- (c) The treasurer, assessor and such other officers, subordinates or clerks, as may be determined by the council to be necessary to properly conduct the business of the city, and all positions for which no other mode of appointment is provided, shall be appointed or selected by the city manager who shall set their salaries or wages in accordance with budget appropriations. All such appointees or employees may be suspended or removed by the city manager, subject to the provisions of section 8.14 of this charter.
- (d) The council may by resolution, upon the recommendation of the city manager, create such additional administrative offices as it may deem necessary for the proper operation of the city government, or for reasons of economy, combine any of the administrative offices of the city. All appointments to such additional offices and of persons in whom any offices may have been combined shall be made by the city manager.
- (e) All personnel employed by the city who are not elected officers of the city, or declared to be administrative officers by or under authority of this section, shall be deemed to be employees of the city.
- (f) The administrative officers of the city, except the city attorney and the city clerk, insofar as their duties as attorney and clerk for the council are concerned, shall, in the performance of the duties of their respective offices, be subordinate to and under the direction of, and shall report and be directly responsible to, the city manager.
- (g) Except as provided in section 8.1(b), neither the council nor any of its committees or members shall direct or request the appointment or removal of any person from office or employment. Except for the purpose of inquiry, the council and its members shall deal with the administrative

service solely through the city manager, and neither the council nor any member thereof shall give orders to any subordinate of the city manager, either publicly or privately. Any violation of the provisions of this section by a councilmember shall constitute misfeasance in office.

- (h) Resignations of the city manager and the city attorney shall be made in writing and filed with the city clerk, and shall be acted upon by the council at its next regular meeting following receipt thereof by the clerk. Resignations of other administrative officers shall be made in writing to, and immediately be acted upon by the city manager.
- (i) Whenever the employment of any administrative officer or employee shall cease, said person shall deliver to the city, upon demand, all properties of the city in that person's possession. Failure to comply with this provision shall constitute a misdemeanor.

(Res. No. 100-92, 8-24-1992, passed Ref. 11-3-1992; Res. No. 72-93, § 1, 7-26-1993, passed Ref. 11-2-1993)

Sec. 8.2. - Oath of office.

All administrative officers and appointees, as the council shall deem necessary, shall take an oath of office supporting the Constitution of the United States, the constitution of the State of Michigan, and faithfully discharging the duties of such office before entering upon the duties of the respective offices, and file [the] same with the city clerk. In case of failure to comply with the provisions of this section within ten days from the date of appointment or commencement of their term, such officer shall be deemed to have declined the office, and such office shall thereupon become vacant unless [the] council shall, by resolution, extend the time in which such officer may qualify as above set forth.

Sec. 8.3. - Surety bonds.

Except as otherwise provided in this charter, the council shall require all officers and employees to be bonded, in such sum as the council shall determine by ordinance. The resignation, removal or discharge of any bonded officer or employee shall not, nor shall the appointment of another to the office or employment, exonerate such officer or employee or their sureties from any liability. The bond premiums shall be paid by the city, except as otherwise provided in this charter. No bond required by this section shall be renewed upon its expiration or in the event of the reappointment of any officer or employee to a position for which a bond is required, but a new bond shall be furnished. No bond shall be issued for a term exceeding four years. All bonds of all officers and employees shall be filed with the clerk, except that of the clerk, which shall be filed with the treasurer. [The] council shall review the amounts of all bonds within 90 days following each biennial city election.

Sec. 8.4. - City manager.

The council shall appoint a manager who shall be responsible to the council. The manager shall be the chief administrative officer of the city government. The manager shall be selected on the basis of training and ability alone. The council may designate an appointive officer or employee of the city to serve as an acting city manager who shall perform the duties of the manager during temporary absence or incapacity. The council shall designate a qualified person as interim manager during a vacancy in the office. No person who has been elected a member of the council under this charter shall be eligible for appointment as manager or acting manager until two years have elapsed following the expiration of the term for which they were elected.

Sec. 8.5. - Functions of the city manager.

The functions of the manager shall be:

- (a) To see that all laws and ordinances are enforced;
- (b) To manage and supervise all public improvements, works and undertakings of the city. The manager shall have charge of the construction and maintenance of all public buildings or other properties belonging to the city. The manager shall manage and supervise all city utilities, and shall be responsible for the preservation of property, tools and appliances of the city;
- (c) To see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed;
- (d) To attend all meetings of the council, with the right to take part in discussions, but without the right to vote;
- (e) To be a member, ex officio, of all committees of the council;
- (f) To prepare and administer the annual budget under policies formulated by the council and keep the council fully advised at all times as to the financial condition and needs of the city;
- (g) To recommend to the council for adoption such measures as may be deemed necessary or expedient;
- (h) To be responsible to the council for the efficient administration of all departments of the city government;
- (i) To assume all the duties and responsibilities as personnel director of all city employees, or delegate such duties to some other officer or employee of the city. No such delegation shall relieve the manager of any responsibility for the proper conduct of such duties.
- (j) To exercise and perform all administrative functions of the city that are not imposed by this charter or any city ordinance upon some other official;
- (k) To perform such other duties as may be prescribed by this charter or as may be required of the manager by ordinance or by direction of the council.

Sec. 8.6. - Purchasing agent.

- (a) The manager shall be purchasing agent for the city and shall make all purchases of supplies for the city, in accordance with the procedures to be established by the council. The manager shall also conduct all sales of personal property belonging to the city which the council may authorize to be sold as having become unnecessary or unfit for the city's use, in accordance with procedure to be established by council.
- (b) All purchases and sales shall conform to such regulations as the council may from time to time prescribe, but in either case, if an amount in excess of \$500.00 is involved, opportunity for competition shall be given. Partial and cumulative bids or quotations made for the purpose of permitting the purchase of any item having a total cost exceeding \$500.00, without opportunity for competition, are hereby prohibited.

Sec. 8.7. - City clerk.

- (a) The clerk shall be clerk of the council. The clerk shall attend all meetings of the council and shall keep a permanent journal of its proceedings in the English language. The clerk shall keep a record of all ordinances, resolutions and actions of the council. All bonds of all officers or employees shall be filed with the clerk, except that of the clerk, which shall be filed with the treasurer.
- (b) The clerk shall be custodian of the city seal, and shall affix it to all documents and instruments requiring the seal, and shall attest the same. The clerk shall also be custodian of all papers, documents and records pertaining to the City of Berkley, the custody of which is not otherwise

provided for. The clerk shall give to the proper department officials ample notice of the expiration or termination of any franchises, contracts or agreements. The clerk shall administer all oaths required by this charter or by the council.

- (c) The clerk shall certify by signature all ordinances and resolutions enacted or passed by the council, and perform any other duties required by state statute, this charter, council or by the manager and ordinances of the city.
- (d) The clerk, or such person as designated by council, shall countersign all checks issued by the city. The clerk shall receive a monthly report of all receipts and disbursements.

Sec. 8.8. - City attorney.

- (a) The attorney shall act as legal advisor to, and attorney and counsel for, the council in matters relating to their official duties. The attorney shall give legal opinions to the council and manager only. A copy of all written legal opinions shall be filed with the clerk.
- (b) The attorney shall represent the city in all legal proceedings.
- (c) The attorney shall prepare, or officially pass upon, all contracts, bonds and other instruments, in writing, in which the city is concerned, and shall certify before execution as to their legality and correctness of form.
- (d) The attorney shall file in the office of the clerk the original, when available, or a copy of all legal documents which involve the city as a party, together with the proper data and information concerning the same.
- (e) The attorney shall be charged with the responsibility of calling to the attention of the council and the manager all matters of law and changes or developments therein affecting the city.
- (f) The attorney shall perform such other duties as may be prescribed by this charter or by the council.
- (g) The council may retain special legal counsel to handle any matter in which the city has an interest, or to assist as co-counsel with the attorney therein. The remuneration set by the council for the attorney as required in this chapter shall be in contemplation of the normal duties of that office. Special compensation may be provided at the discretion of the council in cases of appeals to, or litigation commenced in, higher courts than the circuit court, work requiring extensive hearings before any quasijudicial tribunals, and for legal work in connection with the issuance of bonds of the city. No such special compensation shall be given by the council, except in accordance with an agreement between itself and the attorney, made before the service for which such special compensation is to be paid has been rendered.

Sec. 8.9. - City treasurer.

- (a) The treasurer shall have custody of all moneys of the city, the clerk's bond, and all evidences of value belonging to the city, or held in trust by the city.
- (b) The treasurer shall receive all moneys belonging to and receivable by the city, including license fees, taxes, assessments and all other charges belonging to and payable to the city, and shall in all cases give a receipt therefor.
- (c) The treasurer shall keep and deposit all moneys in such manner and only in such places as the council may determine. The treasurer shall report the same in detail to the clerk.
- (d) The treasurer shall have such powers and duties in regard to the collection and custody of state, county, school district and city taxes and moneys as may be conferred upon the treasurer by this charter or by state law, except as limited by this charter.

- (e) The treasurer shall perform such other duties as may be prescribed by this charter or by the manager.
- (f) No funds shall be drawn from the treasury except in pursuance of the authority and appropriation of the council, and upon warrants signed by the clerk and countersigned by the mayor, or their designate. Such warrant shall specify the funds from which it is payable, and shall be paid from no other fund.

Sec. 8.10. - City assessor.

- (a) The assessor shall possess all the powers vested in and shall be charged with all the duties imposed upon assessing officers by the general laws of the state.
- (b) The assessor shall make and prepare all regular and special assessment rolls in the manner prescribed by this charter and the general laws of the state.
- (c) The assessor shall perform such other duties as may be prescribed in this charter or by the manager.

Sec. 8.11. - Deputy clerk, treasurer or assessor.

The clerk, treasurer and assessor may deputize a member of their office, subject to the written confirmation of the manager. Each deputy shall possess all the powers and authority of their superior officer, except as the same may be from time to time limited by their superior or the manager. The clerk, treasurer or assessor may terminate the status of their deputy at pleasure, upon notice to the manager.

Sec. 8.12. - Nepotism.

Except and unless relatives by blood or marriage of the mayor, any councilmember or the city manager, within the second degree of consanguinity or affinity, are bona fide appointive officers or employees of the city at the time of the election of such officers, or appointment of such city manager, such relatives shall be disqualified from holding any appointive office or from being employed by the city, during the term for which such mayor or councilmember was elected, or during the tenure of office of such city manager. If the status of relationship between any employee of the city and any officer of the city changes to a relationship prohibited hereby after one year following the employment of such person or election or appointment of such officer, the provisions of this section shall not apply.

Sec. 8.13. - Political activities of city employees.

An appointed city officer or city employee may seek city elective office in accordance with state law except that an appointed city officer or employee shall request and be granted a leave of absence without pay when the employee complies with the candidacy filing requirements, or 60 days before any election relating to that position, whichever date is closer to the election.

State Law reference— Political activities by public employees, MCL 15.401 et seq., MSA 4.1702(1) et seq.

Sec. 8.14. - Merit system.

The council shall provide, by resolution, for a merit system of personnel management for all administrative officers and employees of the city, except for the city manager and the city attorney and employees included within the coverage of a collective bargaining agreement to which the city is a party.

Sec. 8.15. - Employee benefits.

The council shall make available to and maintain for the regular employees and administrative officers of the city, a sound pension and retirement plan. In such plan, the council shall recognize the service of employees prior to the adoption of the plan, at least to the extent that the city would have contributed financially to the plan on behalf of the employees, had such a plan been in effect at the time they commenced their current employment with the city. Participation by the city in any statewide pension plan for municipal employees which is established by state law shall constitute compliance with the pension provisions of this section. The council shall have power to make available to the employees and administrative officers of the city any benefits which may be lawfully granted to any public employee.

Sec. 8.16. - Personal financial interest.

Any administrative officer or employee who has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the city or in the sale of any land, material, supplies or services to the city, or to a contractor supplying the city, shall be governed by state law regarding conduct of public servants.

State Law reference— Contractual conflicts of interest, MCL 15.321 et seq., MSA 4.1700(51) et seq.; public ethics, MCL 15.341 et seq. MSA 4.1700(71).

CHAPTER 9. - GENERAL FINANCE; BUDGET PROCEDURE^[6]

Footnotes:

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State Law reference— *Municipal Finance Act, MCL 131.1 et seq., MSA 5.3188(1) et seq.; uniform budgeting and accounting requirements, MCL 141.421 et seq., MSA 5.3228(21) et seq.*

Sec. 9.1. - Fiscal year.

The fiscal year of the city shall begin on the first day of July and end on the last day of June of the next succeeding calendar year.

Sec. 9.2. - Budget preparation.

- (a) The city manager shall prepare and recommend a complete budget for the next fiscal year and shall submit it to council on or before the last day of April. On the same day, copies of the recommended budget shall be made available for public inspection at the office of the city clerk and the public library and shall remain available until final adoption of the budget by [the] council.
- (b) The recommended budget shall include a brief and concise budget summary showing the estimated receipts and expenditures of each fund and the total for all funds and such data and information as required by law, and such other information as may be required by the council.

Sec. 9.3. - Budget hearing.

A public hearing on the recommended budget shall be held no sooner than two weeks after its submission to council, and before its final adoption. Notices of the time and place of such hearing shall be given by publication at least two weeks prior thereto.

Sec. 9.4. - Adoption of budget; tax limit.

At a regular or special meeting on or before the last day of May, the council shall, by resolution, adopt a budget for the next fiscal year, and shall provide in such resolution for a levy of the amount necessary to be raised by taxation for municipal purposes. Such levy shall not exceed 1.3 percent of the assessed valuation of all real and personal property subject to taxation in the city, of which levy 0.3 percent of the assessed valuation shall be devoted exclusively to police and fire.

State law references—Limit on taxation, MCL 117.5(a), MSA 5.2084, (a). See also Mich. Const. 1963, Art. VII, § 21.

Sec. 9.5. - Transfer of appropriations.

After the budget has been adopted, no money shall be drawn from the treasury of the city, nor shall any obligation for the expenditure of money be incurred, except pursuant to the budget appropriation. The council may transfer any unencumbered appropriation balance or any portion thereof from one activity, fund or agency to another, except as prohibited by law. The balance in any appropriation which has not been encumbered at the end of the fiscal year shall revert to the fund balance and be reappropriated during the next fiscal year.

Sec. 9.6. - Budget control.

At the end of each quarterly period during the fiscal year, and more often if required by the council, the city manager shall submit to the council data showing the relation between the estimated and actual income and expenses to date; and if it shall appear that the income is less than anticipated, the council may reduce appropriations, except amounts required for debt and interest charges, to such a degree as may be necessary to keep expenditures within the cash income. If the revenues exceed the amounts estimated in the budget, the council may take supplemental appropriations.

Sec. 9.7. - Depository.

The council shall designate the depository or depositories for city funds, and shall provide for the regular deposit of all city moneys. The council shall provide for such security for city deposits as is authorized or permitted by the general laws of the state, except that personal surety bonds shall not be deemed proper security.

State Law reference— Deposit of public money, MCL 211.43b, MSA 7.86.

Sec. 9.8. - Independent audit.

In accordance with state law, an independent audit shall be made of all accounts of the city government at least annually and more frequently if deemed necessary by the council. Such audit shall be made by certified public accountants experienced in municipal accounting. The results of such audit shall be made available for public inspection in the office of the city clerk. An annual report of the city business shall be made available for distribution to the public by the city manager in such printed form as will disclose pertinent facts concerning the activities and finances of the city government. The council shall provide the funds to defray the cost of the annual audit and report herein required in each annual budget of the city.

Sec. 9.9. - Internal accounting.

The city manager, or such person as the manager may designate, shall keep books of account of the receipts and expenditures of the city. The system of accounts of the city shall conform to such uniform system as may be required by law.

CHAPTER 10. - GENERAL TAXATION^[7]

Footnotes:

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State Law reference— Property taxes generally, MCL 211.1 et seq., MSA 7.1 et seq.; provisions of tax act shall apply except where inconsistent with the charter, MCL 211.107, MSA 7.161.

Sec. 10.1. - Power to tax.

In order to carry out the purposes, powers and duties of the city government established by this charter, the city may assess, levy and collect taxes, rents, tolls and excises.

Sec. 10.2. - Subjects of taxation.

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 state law.

State Law reference— Mandatory that the charter provide for subjects of taxation, MCL 117.3(f), MSA 5.2073, (f).

Sec. 10.3. - Exemptions.

No exemptions from taxation shall be allowed, except such as are expressly permitted to be made by state law.

State Law reference— Property exempt from taxation, MCL 211.7 et seq., MSA 7.7 et seq.

Sec. 10.4. - Tax day; assessment.

Unless otherwise provided by state law, the 31st day of December in each year shall be the tax day for both real and personal property in the city. The council shall provide for the installation and maintenance of a systematic or standardized plan of property assessment based upon the uniform application of established rules, techniques and procedures, and shall annually provide funds for the proper administration and application of said plan of assessment. Such plan shall be a factor in estimating the true cash value of all real and personal property in the city.

State Law reference— Tax day designated, MCL 211.2, MSA 7.2.

Sec. 10.5. - Time for making assessment rolls.

Prior to the first meeting of the board of review in each year, the assessor shall make and complete an assessment roll in the manner and form provided in the general tax law of the state.

State Law reference— Mandatory that the charter provide for preparation of assessment roll, MCL 117.3(i), MSA 5.2073, (i); preparation of assessment roll, MCL 211.24, MSA 7.24.

Sec. 10.6. - Valuing of real and personal property.

Said assessor shall estimate, according to state law, the value of every parcel of real property and set the same down opposite such description. The assessor shall also estimate the value of all taxable personal property of each person and set the same down opposite the name of such person. Except in the case of uniform general increases in property assessments, in which case notice shall be given by publication, the assessor shall give notice by first class mail of any increase in the assessment of any property to the owner thereof of record according to the last assessment roll of the city addressed to the address of such owner shown on such roll, but the failure on the part of the assessor to give any such notice or of any such owner to receive any such notice shall not invalidate any assessment roll of the city or any assessment thereon.

Sec. 10.7. - Board of review.

The board of review shall consist of five appointed members whose remuneration shall be determined by ordinance.

(Res. No. 17-86, 2-3-1986, passed Ref. 8-5-1986)

Sec. 10.8. - Meeting of the board of review.

The board of review shall meet on such days as provided by state law.

State Law reference— Mandatory that the charter provide for meetings of board of review, MCL 117.3(i), MSA 5.2073, (i).

Sec. 10.9. - Notice of meeting.

The clerk shall give notice to the public of the time and place of meeting of the board of review by publication at least once not less than ten days immediately preceding such meeting.

Sec. 10.10. - Organization and functions of the board of review.

On the first day of its meeting in each year, the board of review shall elect one of its members as chairperson. The assessor shall be secretary of the board. It shall be the duty of the assessor to keep a permanent record of all proceedings, and to enter therein all resolutions and decisions of the board. A majority of the members of the board shall constitute a quorum. The members of said board shall take the constitutional oath of office which shall be filed with the clerk. For the purpose of reviewing and correcting assessments, the board of review shall have the same powers and perform like duties in all respects as are by the general tax law conferred upon and required of boards of review. It shall hear the complaints of all persons considering themselves aggrieved by assessments, and 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 shall deem just. In all cases, the assessment roll shall be reviewed according to the facts existing on the tax day and no change of the status of any property after said day shall be considered by the board in making its decisions. No person other than the board of review shall make or authorize any change upon or additions or corrections to the assessment roll.

Sec. 10.11. - Endorsement of roll; validity.

The board shall complete its review of the assessment roll no later than the first Monday of April, and a majority of the 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 shall not affect the validity of such roll. Upon the completion of said roll and following the last meeting of the board of review, the same shall be the assessment roll of the city for county, school and city taxes, and for any other taxes on real and personal property that may be authorized by law, and shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes set forth in the general laws of the state.

State Law reference— Mandatory that the charter provide for the confirmation of the assessment roll, MCL 117.3(i), MSA 5.2073, (i); mandatory that review of assessments are completed not later than first Monday in April, MCL 211.30a, MSA 7.30(1).

Sec. 10.12. - Clerk to certify tax levy.

Within three days after the council shall adopt the budget for the ensuing year, the clerk shall certify to the assessor the total amount which the council determines shall be raised by general tax; all amounts of special assessments which the council required to be assessed or reassessed upon any property or against any person; and all other amounts which the council may determine shall be charged, assessed or reassessed against any person or property.

Sec. 10.13. - City tax roll.

After the last day for the meeting of the board of review, the assessor shall prepare a copy of the assessment roll to be known as the city tax roll, and upon receiving the certification of the several amounts to be raised, as provided in the preceding section, the assessor shall proceed forthwith to spread upon said tax roll the several amounts determined by the council to be charged, assessed or reassessed against persons or property; and shall also proceed to spread the amounts of the general tax according to and in proportion to the several valuations set forth in said assessment roll. For the purpose of avoiding fractions in computations, the assessor may add to the amount of the several taxes to be raised, as provided by state law, and said excess shall belong to the city. Such taxes shall be separately assessed and may be entered in separate columns or may be entered as one total sum; provided that if such taxes are entered as one total sum, there shall be printed upon the face of each tax bill and receipt the percentage which each such tax is of said total sum.

Sec. 10.14. - Tax roll certified for collection.

After extending the taxes aforesaid and not later than the 15th day of June in each year, the assessor shall certify said tax roll and the mayor shall, by resolution, direct and require the treasurer to collect from the persons named in said roll the sums, mentioned therein opposite their respective names as a tax or assessment, and granting to the treasurer, for the purpose of collecting the taxes, assessments and charges on such roll, all the powers and immunities possessed by township treasurers for the collection of taxes under the general laws of the state.

Sec. 10.15. - Tax lien on property.

The city taxes, thus assessed, shall become at once a debt due to the city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of July, become a lien upon such real property, and the lien for such amounts and for all interest and other charges thereon shall continue until payment thereof. All personal property taxes shall also be a first lien, prior, superior and paramount, upon all personal property of the persons so assessed from and after the first day of July in each year, and shall so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, execution, levy, judgement or otherwise, and whether arising before or after the assessment of said personal taxes, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien except where such personal property is actually sold in the regular course of retail trade.

Sec. 10.16. - Taxes due.

The taxes assessed on the general city tax roll shall be due and payable on the first day of July in the year assessed, and may be paid on or before August 31 without penalty or interest.

(Amd. of 2-22-2000)

Sec. 10.17. - Notification of taxes due.

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 shall give notice to the taxpayers of the city, at least six days prior to the first day of July 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, or shall give such notice 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, which notice shall be deemed sufficient for the payment of all taxes on said roll. Failure on the part of the treasurer to give said notice shall not invalidate tax on said tax roll nor release the person or property assessed from the penalty provided in this chapter in case of nonpayment of the same.

Sec. 10.18. - Collection of taxes; penalties.

Taxes unpaid after August 31 shall be deemed delinquent and shall bear interest at the rate set by [the] council, but in no event greater than one percent per month or fraction thereof. The treasurer shall add to all taxes paid after the 31st of August, except such as are paid on an installment plan and are not delinquent under that plan, a three percent collection fee in addition to the rate of interest herein required to be paid. The council may, by ordinance or resolution, provide for the payment of the city tax in one or more installments, and designate the date for the payment of such installments, and further provide that should an installment be paid upon the date as specified, interest will not be charged against the unpaid installments until the due date of the payment thereof. The provision for the payment of taxes in installments shall apply to special assessment taxes and other taxes and charges levied on the tax roll. The added collection fees and interest herein provided shall belong to the city and shall constitute a charge, and shall be a lien against the property to which the taxes themselves apply, collectible in the same manner as the taxes to which they are added.

(Amd. of 2-22-2000)

Sec. 10.19. - Apportioning of tax on portion of taxed item.

Any person owning an undivided share or other part of any parcel of real property, assessed in one description, may pay on the share or part thus owned by paying an amount having the same relation to the whole tax as the value of the part on which payment is made has to the value of the whole parcel. The person making such payment shall accurately describe the part or share on which they make payment, and the receipt given and the record of the receiving officers shall show such description and by whom paid; and in case of the sale of the remaining part or share, for nonpayment of taxes, they may purchase the same in like manner as any disinterested person. The values above referred to shall be determined, upon the request of any interested party, by the assessor, who, before making such determination, shall set a time for hearing and shall notify the interested parties by first class mail at their last known addresses, such notice to be mailed at least ten days before the hearing.

Sec. 10.20. - Uncollected taxes.

All city taxes on real property remaining uncollected by the treasurer on the first day of March following the date when said roll was received shall be returned to the county treasurer in the same manner and with like effect as provided by statute for returns by township treasurers of township, school and county taxes. Such returns shall include all the additional assessments, charges and fees herein before provided, which shall be added to the amount assessed in said tax roll against each property or person. The taxes thus returned shall be collected in the same manner as other taxes returned to the county treasurer are collected in accordance with statute, and shall be and remain a lien upon the property against which they are assessed until paid. If by change in statute or otherwise, the treasurer of the County of Oakland is no longer charged with the collection of either delinquent real or delinquent personal property taxes, such delinquent taxes shall be collected in the manner then provided by the statute for the collection of delinquent township, school and county taxes.

State Law reference— Return of delinquent taxes, MCL 211.55, MSA 7.99.

Sec. 10.21. - 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 may hold, lease or sell the same for the purpose of securing therefrom the amount of such taxes or special assessments, or both, together with any incidental expenses 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 a public purpose.

Sec. 10.22. - State, county and school taxes.

For the purpose of collecting and assessing taxes in the city for 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 such taxes and the fees to be paid therefor, the accounting therefor to the appropriate taxing units, and the returning of property to the county treasurer for nonpayment thereof shall apply to the performance thereof by the treasurer, who shall perform the same duties and have the same powers as township treasurers.

CHAPTER 11. - GENERAL FINANCE; BORROWING POWER^[8]

Footnotes:

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State Law reference— Authority to borrow money, MCL 117.4a, MSA 5.2074; restrictions on issuance of bonds, MCL 117.5, MSA 5.2084.

Sec. 11.1. - General borrowing.

Subject to the applicable provisions of state law and this charter, the council, by proper ordinance or resolution, may authorize the borrowing of money for any purpose within the scope of the powers vested in the city and the issuance of bonds of the city or other evidences of indebtedness therefor, and may pledge the full faith, credit and resources of the city for the payment of the obligation created therefor.

Sec. 11.2. - Special assessment bonds.

The council shall, subject to the applicable provisions of the general laws of the state, have authority to borrow money in anticipation of the payment of special assessments made for the purpose of defraying the cost of any public improvement, or in anticipation of the payment of any combination of such special assessments, and to issue bonds therefor. Such special assessment bonds may be an obligation of the special assessment district or districts or may be both an obligation of the special assessment district or districts and a general obligation of the city. All collections on each special assessment roll or combination of rolls shall be set apart in a separate fund for the payment of the principal and interest of the bonds issued in anticipation of the payment of such special assessments, and shall be used for no other purpose.

Sec. 11.3. - Other bonds.

The city shall have power to issue revenue and any other type of bonds or enter into any other form of debt in the manner and for the purposes permitted by the constitution and general laws of the State of Michigan.

Sec. 11.4. - Preparation and record.

Each bond or other evidence of indebtedness shall contain on its face a statement specifying the purpose for which the same is issued, and it shall be unlawful for any officer of the city to use the proceeds thereof for any other purpose, and any officer who shall violate this provision shall be deemed guilty of misconduct in office. All bonds and other evidences of indebtedness issued by the city 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 evidence of indebtedness issued by the city shall be kept by the clerk. Upon the payment of any bond or other evidence of indebtedness, the same shall be marked "cancelled."

Sec. 11.5. - Unissued bonds.

No unissued bonds of the city shall be issued or sold to secure funds for any purpose other than that for which they were specifically authorized, and if any such bonds are not sold within five years after authorization, such authorization shall, as to such bonds, be null and void, and such bonds shall be cancelled.

CHAPTER 12. - SPECIAL ASSESSMENTS^[9]

Footnotes:

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State Law reference— *Power re: special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5, MSA 5.2074, 5.2075, 5.2077, 5.2084.*

Sec. 12.1. - General power relative to special assessments.

The council shall have the power to determine the necessity of any local or public improvement and to determine that the whole or any part of the expense shall be defrayed by special assessment upon the property especially benefited.

Sec. 12.2. - To initiate special assessments.

Proceedings for the making of public improvements within the city may be commenced by resolution of the council, on its own initiative, or by an initiatory petition signed by property owners whose aggregate property in the special assessment district was assessed for not less than 51 percent of the total assessed value of the privately owned real property located therein, in accordance with the last preceding general assessment roll; provided, however, that in case of special assessments for paving or similar improvements which are normally assessed on a frontage basis against abutting property, such petitions shall be signed by owners to the extent of at least 51 percent of the frontage of property to be assessed. All petitions received by the city clerk shall be presented to the council. Such petitions, in addition to the signatures of the owners, shall contain a brief description of the property owned by the respective signers thereof. Such petition shall be verified by the affidavit of one or more of the owners or by some person or persons, with knowledge that said signers are such owners and that such signatures are genuine. The initiatory petition herein referred to shall be addressed to the council and filed with the clerk. Such petition shall in no event be mandatory upon the council.

Sec. 12.3. - Survey and report.

Before the council shall consider the making of any local or public improvement, the same shall be referred by resolution to the city manager, who shall prepare a report which shall include necessary plans, profiles, specifications and estimates of cost, an estimate of the life of the improvement, a description of the assessment district or districts, and such other pertinent information as will permit

the council to decide the cost, extent [extent] and necessity of the improvement proposed and what part or proportion thereof should be paid by special assessments upon the property benefited and what part, if any, should be paid by the city at large. The council shall not determine to proceed with the making of any local or special improvement until such report of the city manager has been filed, nor until after a public hearing has been held by the council for the purpose of hearing objections to the making of such public improvement.

Sec. 12.4. - Cost of condemned property added.

Whenever any property is acquired by condemnation, or otherwise, for the purpose of any special improvement, the cost thereof, and of the proceedings required to acquire such property, may be added to the cost of such special improvement.

Sec. 12.5. - Determination on the project; notice.

After the city manager has presented the report required in section 12.3, for making any local or public improvement as requested in the resolution of the council, and it has reviewed said report, a resolution may be passed determining the necessity of the improvement; setting forth the nature thereof; prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property benefited, and what part, if any, shall be paid by the city at large; designating the limits of the special assessment district to be affected; designating whether to be assessed according to frontage or benefits; placing the complete information on file in the office of the clerk where the same shall be available for examination; and directing the clerk to publish a notice of public hearing on the proposed improvement at which time and place opportunity will be given interested persons to be heard. Such notice shall be made by publication in a newspaper published or circulated within the city and by first class mail addressed to the owners of the property affected by the proposed improvement at their last known address per the last tax roll, at least one week prior to the holding of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the council.

Sec. 12.6. - Objections to improvement.

If, at or prior to such meeting of the council, more than 50 percent of the number of owners or privately owned real property to be assessed for any improvement, or in case of improvements assessed on a frontage basis, owners of more than 50 percent of the frontage to be assessed for any such improvement, shall object in writing to the proposed improvement, the improvement shall not be made by proceedings authorized by this chapter without a five-sevenths vote of the members of the council.

Sec. 12.7. - Determination by the council.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the council may modify the scope of the public improvement, if necessary, in such manner as they shall deem to be in the best interest of the city as a whole. If the determination of the council shall be to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications and estimates of cost, and directing the assessor to prepare a special assessment roll in accordance with the council's determination and report the same to them for confirmation.

Sec. 12.8. - Deviation from plans and specifications.

No deviation from original plans or specifications as adopted shall be permitted by any officer or employee of the city without authority of the council by resolution. A copy of the resolution authorizing such changes or deviation shall be certified by the clerk and attached to the original plans and specifications on file.

Sec. 12.9. - Financing public improvements.

The council shall specify the provisions and procedures for financing the improvements. No contract or expenditure, except for the cost of preparing necessary profiles, plans, specifications and estimates of cost shall be made for the same until special assessments to defray the costs of the improvement shall have been levied.

Sec. 12.10. - Special assessment roll.

The assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefited by the proposed improvement and assess to each lot or parcel of land the amount benefited thereby. The amount spread in each case shall be based upon the detailed estimate of the city manager as approved by the council.

Sec. 12.11. - Assessor to attach certificate to assessment roll.

When the assessor completes such assessment roll, it shall be filed with the clerk for presentation to the council for review and certification.

Sec. 12.12. - Meeting to review special assessment roll; objections in writing.

Upon receipt of such special assessment roll, the council, by resolution, shall accept such assessment roll and order it to be filed in the office of the clerk for public examination; shall fix the time and place the council will meet to review such special assessment roll; and shall direct the clerk to publish a notice of a public hearing for the purpose of giving an opportunity for interested persons to be heard. Such notice shall be made by publication and by first class mail addressed to the owners of the property affected by the proposed improvement at least one week prior to the holding of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the council. At this meeting, all interested persons or parties shall present their objections, if any, to the assessments against them in writing. The assessor shall be present at every meeting of the council at which a special assessment is to be reviewed.

Sec. 12.13. - Changes and corrections in assessment roll.

The council shall meet at the time and place designated for the review of such special assessment roll and, at such meeting, or proper adjournment thereof, shall consider all objections thereto submitted in writing. The council may correct said roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein; or it may, by resolution, annul such assessment roll, and the same proceedings shall be followed in making a new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the council deems justified, the council is satisfied with said special assessment roll, it shall thereupon pass a resolution confirming such roll, placing it on file in the office of the clerk, and directing the clerk to certify the copy within ten days, therein commanding the assessor to spread the various sums and amounts appearing thereon on a special assessment roll or upon the tax rolls of the city for the full amounts, or in annual installments as directed by the council. Such rolls shall have the date of

confirmation endorsed thereon and shall, from that date, be final and conclusive for the purpose of the improvement to which it applies, subject only to adjustment to conform to the actual cost of the improvement, as provided in section 12.19 of this chapter.

Sec. 12.14. - Collection of special assessments.

All special assessments, except such installments thereof as the council shall make payable at a future time, as provided in this chapter, shall be due and payable upon confirmation of the special assessment roll.

Sec. 12.15. - Partial payments; when due.

The council may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed ten in number, the first installment being due upon confirmation of the roll and the deferred installments being due annually thereafter or, in the discretion of the council, may be spread upon and made a part of each annual city tax roll thereafter, until all annual installments have been spread. Interest shall be charged on all deferred installments at a rate not to exceed six percent per annum, payable annually; the whole or any deferred installments, with interest accrued thereon, to the date of payment, may be paid in advance of the due dates herein established.

Sec. 12.16. - Delinquent special assessments.

Special assessments and all interest and charges thereon, from the date of confirmation of the roll, shall be and remain a lien upon the property assessed of the same character and effect as the lien created by general law for state and county taxes, and by this charter for city taxes, until paid. From such date after confirmation, as shall be fixed by the council, the same penalties and interest shall be collected on delinquent special assessments and upon delinquent installments of such special assessment as are provided by this charter to be collected on delinquent city taxes. The lands upon which the same are a lien shall be subject to sale therefor the same as are delinquent city taxes and the lands upon which they constitute a lien.

Sec. 12.17. - Hazards and nuisances.

When any lot, building or structure within the city, becomes, in the opinion of the council, a public hazard or nuisance which is dangerous to public health, safety or welfare, the council may, after investigation, give notice by registered mail, addressed to the last known address of the owner or owners of the land upon which such nuisance exists, or to the owner of the building or structure itself, specifying the nature of the nuisance and requiring such owner to alter, repair, tear down, abate or remove the nuisance within a time to be specified by the council, which shall be commensurate with the nature of the nuisance. 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, the council may order such hazard or nuisance 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 addressed against the lot, premises or description of real property upon which such hazard or nuisance is located, by special assessment.

Sec. 12.18. - Amount; council to determine.

The council shall determine what amount or part of each such expense shall be charged, and the person, if known, against whom, and the premises upon which the same shall be levied as a special assessment; and as often as the council shall deem it expedient, it shall require all of the several

amounts so reported and determined, and the several lots or premises and the persons chargeable therewith, respectively, to be notified by the clerk either by registered mail sent to their last known address as shown on the assessment roll of the city or by publication. Such notice shall state the basis of the assessment, the cost thereof and shall give a reasonable time, which shall not be less than 30 days, in which payment shall be made. In all cases where payment is not made within the time limit, the same shall be reported by the clerk to the assessor who shall spread such amounts against the several persons or descriptions of real property chargeable therewith on the next roll for the collection of city taxes.

Sec. 12.19. - Additional assessments; refunds.

The city manager shall, within 60 days after the completion of each local or special public improvement, compile the actual cost thereof and certify the same to the assessor, who shall adjust the special assessment roll to correspond therewith, subject to the limitation contained in section 12.10. When any special assessment roll shall prove insufficient to meet the costs of the improvement for which it was made, the council may make an additional pro rata assessment, but the total assessed shall not exceed the maximum amount permitted by section 12.10. Should the assessment prove larger than necessary by five percent or less, the same shall be reported to the council which may place the excess in the city treasury or make a refund thereof pro rata according to the assessments. If the assessment exceeds five percent, the entire excess shall be refunded to owners of property upon which payments have been made in full pro rata according to assessments.

Sec. 12.20. - Special assessment accounts.

Except as otherwise provided in this chapter, moneys raised by special assessment to pay the cost of any local improvement shall be held in a special fund to pay such cost or to repay any money borrowed therefor. Each special assessment account must be used only for the improvement project for which the assessment was levied, except as otherwise provided in this chapter.

Sec. 12.21. - Contested assessments.

Except and unless notice is given to the council in writing of an intention to contest or enjoin the collection of any special assessment for the construction of any public improvement, or the removal or abatement of any public hazard or nuisance, within 15 days after the date of the resolution of the council confirming the assessment roll for such improvement, as required by section 12.12 of this chapter, which notice shall state the grounds on which the proceedings are to be contested, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of such special assessment.

Sec. 12.22. - Reassessment for benefits.

Whenever the council shall deem any special assessment invalid or defective for any reason whatever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the council shall have power to cause a new assessment to be used for the same purpose for which the former assessment was made, whether the improvement or any part thereof has been completed or not, and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for the collection thereof shall be made in the same manner as provided for the original assessment. If any portion of the original

assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

Sec. 12.23. - Additional procedures.

In any case where the provisions of this chapter may prove to be insufficient to carry into full effect the making of any special assessment, the council shall provide by ordinance any additional steps or procedures required to effect the improvement by special assessment.

CHAPTER 13. - ELECTIONS^[10]

Footnotes:

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State Law reference— *Michigan Election Laws, MCL 168.1 et seq., MSA 6.1001 et seq.; mandatory that the charter provide for the time, manner and means of holding elections, MCL 117.3(c), MSA 5.2073, (c).*

Sec. 13.1. - Qualifications of electors.

Each person who has the constitutional qualifications of an elector in the State of Michigan, or who will have such qualifications at the next ensuing regular or special city election, shall be entitled to register as an elector of the City of Berkley.

State Law reference— The charter to provide qualifications for registration as an elector, MCL 117.3 (c), MSA 5.2073, (c).

Sec. 13.2. - Election commission.

An election commission is hereby created, consisting of the clerk, the mayor and the city attorney. The clerk shall be chairperson. The commission shall have charge of all activities and duties required of it by state law and this charter relating to the conduct of elections in the city. The compensation of election personnel shall be determined in advance by the council, and shall be a fixed amount for each election; provided such compensation shall not exceed the amount appropriated for elections in the budget, unless such increase shall first have been approved by the council as are other increases in appropriations for any department or function. In any case where election procedure is in doubt, the election commission shall prescribe the procedure to be followed.

Sec. 13.3. - Nomination for elective office.

Persons desiring to become candidates for any elective city office shall qualify as such by the filing of nomination petitions in accordance with the provisions of section 13.9 of this charter. Persons qualifying by the filing of nomination petitions shall be certified to the election commission to be placed upon the ballot for the next subsequent regular city election.

State Law reference— Mandatory that the charter provide for nomination of elective officers, MCL 117.3(b), MSA 5.2073, (b).

Sec. 13.4. - Regular elections.

A nonpartisan regular city election shall be held on the Tuesday succeeding the first Monday in November in every odd-numbered year.

State Law reference— Odd-year general election, MCL 168.644a et seq., MSA 6.1644(1) et seq.

Sec. 13.5. - Special elections.

Special elections shall be held when called by resolution of the council at least 60 days in advance of such election, or when required by this charter or the general laws of the state. Any resolution calling a special election shall set forth the purpose of such election. No more than two special elections shall be held in any one calendar year.

State Law reference— Approval of special elections, MCL 168.639, MSA 6.1639.

Sec. 13.6. - Election procedure.

The general election laws of the state shall apply to and control, as near as may be, all procedure relating to registration and city elections, except as such general laws relate to political parties or partisan procedure, and except as otherwise provided by this charter.

Sec. 13.7. - Notice of election.

Notice of the time and place of holding any election and of the officers to be elected and the questions to be voted upon shall, except as herein otherwise provided, be given by the clerk in the same manner and at the same times as provided in the state election laws for the giving of notices by city clerks in state elections.

State Law reference— Notices of election, MCL 168.653 et seq., MSA 6.1653 et seq.

Sec. 13.8. - Voting hours.

The polls of all elections shall be opened during the time prescribed by law for the opening of polls at state elections.

State Law reference— Opening and closing of polls, MCL 168.720, MSA 6.1720.

Sec. 13.9. - Nominating petitions.

Persons desiring to qualify as candidates for any elective office under this charter shall file a petition therefor with the clerk signed by not less than 100, nor more than 150, registered electors of the city not later than 4:00 p.m. on the Tuesday succeeding the first Monday in August of every odd-numbered year. The city clerk shall prepare, and keep on hand, blank forms of nominating petitions according to state law. At least one week before, and not more than three weeks before, the last day for filing nomination petitions, the clerk shall publish notice to that effect. Where any name appears on more petitions than there are candidates to be elected to said office, such name shall not be counted upon any petition for that office.

State Law reference— Nonpartisan nominating petitions, MCL 168.544a, MSA 6.1544(1).

Sec. 13.10. - Approval of petitions.

The clerk shall accept for filing only nomination petitions on official blanks containing the required number of signatures for candidates having those qualifications required for elective city officers by this charter. When petitions are filed by persons other than the person whose name appears thereon as a candidate, they may be accepted for filing only when accompanied by the written consent of the person in whose behalf the petition or petitions were circulated. The clerk shall, within five days, determine the sufficiency of the signatures on each petition filed, and if [it is] found that any petition does not contain the required number of legal signatures of registered electors, the clerk shall immediately notify the candidate in writing of the insufficiency of their petition. Each petition which is

found by the clerk to contain the required number of signatures of registered electors for candidates shall be marked "in order," with the date thereof, and the clerk shall so notify in writing the candidate whose name appears thereon.

Sec. 13.11. - Public inspection of petitions.

All nomination petitions shall be open to public inspection after being filed in the office of the clerk.

Sec. 13.12. - Form of ballots.

The form of the ballot used in any election shall conform as nearly as may be to that prescribed by the general laws of the state, except that no party designation or emblem shall appear upon any city ballot. The names of qualified nominees for each office shall be listed in single column and shall be rotated on the ballots. In all other respects the printing and numbering of ballots shall conform to the general laws of the state.

State Law reference— Arrangement of ballot, MCL 168.706, MSA 6.1706.

Sec. 13.13. - Board of canvassers.

A board of canvassers of four members shall be appointed by the council to canvass the votes cast at all elections under this charter. Initial appointments shall be for a term of two years for two members, and four years for two members. Prior to December 1 of each odd-numbered year thereafter, two members, one from each of the political parties receiving the most votes in the preceding election for the office of secretary of state, shall be appointed for four-year terms. A majority of any board of canvassers shall not be composed of members of the same political party. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of the board of canvassers. The council shall establish a procedure for determining eligibility of all applicants and determine the compensation thereof.

Sec. 13.14. - Canvass of votes.

The board of canvassers shall meet at a time designated by the clerk on the first Thursday after each city election and publicly canvass the election 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 what persons have been elected at such election. The candidate, or candidates, where more than one are to be elected to the same office, who shall receive the greatest number of votes, shall be declared to be elected.

(Res. No. 17-03, 6-16-2003, passed Ref. 11-4-2003)

State Law reference— Canvass of returns, MCL 168.323, MSA 6.1323.

Sec. 13.15. - Tie vote.

If, at any city election, there shall be no choice between candidates by reason of two or more persons having received an equal number of votes, then the council shall name a date for the appearance of such persons for the purpose of determining the election of such candidates by lot as provided by state law.

State Law reference— Determination of election by lot, MCL 168.851, 168.852, MSA 6.1851, 6.1852.

Sec. 13.16. - Recount.

A recount of the votes cast at any city election for any office, or upon any proposition, may be had in accordance with state law.

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

Sec. 13.17. - Recall.

Any elective official may be removed from office by the electors of the city in the manner provided by state law. A vacancy created by the recall of any elective official shall be filled in the manner prescribed by law.

State Law references—Recall, MCL 168.951 et seq., MSA 6.1951 et seq. See also Mich. Const. 1963, Art. 11, § 8.

CHAPTER 14. - CONTRACTS; FRANCHISES; PERMITS

Sec. 14.1. - City may perform public work.

The council shall have power to do any public work or make any public improvement by the employment of the necessary labor and the purchase of the necessary supplies and materials with separate accounting as to each improvement so made, or to do such work by contract duly let after competitive bidding. Where competitive bids are secured, the city, or any city department qualified to do the work, may enter a bid on equal footing with other bidders. The council shall also have power to do any public work or make any public improvement under any legally constituted plan under which the labor is furnished by any other governmental unit, department or agency of the United States or the State of Michigan, or which is wholly or in part financed by them, or either of them.

Sec. 14.2. - Plans and specifications.

Except as otherwise provided in this charter the responsibility for the preparation of plans and specifications, estimating of the cost, advertising for bids, supervision and approval of the work upon or for any public work or public or special improvement is vested in the city manager.

Sec. 14.3. - Contracts.

Whenever it becomes desirable for the city to enter into a contract with a second party for any purpose whatsoever, such instrument shall be drawn or approved as to form by the city attorney and certified to by the city manager as to sufficiency of funds. The lettings and makings of such contracts is hereby vested in the council. The council, in its discretion, shall have the power to reject any or all bids. Copies of all contracts shall be filed in the office of the city clerk.

Sec. 14.4. - Modifications in contracts.

When it becomes necessary to make alterations or modifications in any work or improvement done under contract, such alterations or modifications shall be made only upon resolution of the council. No such order shall be effective until the price to be paid for the material and work or both under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager, upon [the] authority of the council, and a copy thereof and of the proceedings authorizing such alteration or modification certified by the clerk, [shall be] attached by the clerk to the original contract on file in the office of the clerk.

Sec. 14.5. - Franchises.

No franchise or grant which is not revocable at the will of the council shall be granted or become operative until the same shall have been referred to the people at a regular or special election and has received the approval of the three-fifths of the electors voting thereon at such election. All irrevocable public utility franchises, and all renewals, extensions and amendments thereof, shall be granted only by ordinance. No such ordinance shall be adopted before 30 days after application therefor has been filed with the council, nor until a full public hearing has been held thereon. No such ordinance shall be submitted to the electors at an election to be held less than 30 days after the grantee named therein has filed with the clerk its unconditional acceptance of all the terms of such franchise, and it shall not be submitted to a special election unless the expense of holding the election, as determined by the council, shall have been paid to the treasurer by the grantee. No exclusive franchise shall ever be granted and no franchise shall be granted for a longer term than 30 years.

State Law reference— Submittal of franchise to electors required if irrevocable, Mich. Const. 1963, Art. VII, § 25; expenses of special election to be paid by grantee, MCL 117.5(i), MSA 5.2084, (i); franchises limited to 30 years, Mich. Const. 1963, Art. VII, § 30.

Sec. 14.6. - Licenses and franchises remain in effect.

All licenses and franchises granted by the City of Berkley and in force within the city when this charter becomes law shall remain in full force and effect until the expiration of the time for which they were respectively granted have lapsed under conditions contained in the license or franchise granted, or until any such license or franchise may have been taken over by the city by purchase, condemnation, grant or otherwise.

Sec. 14.7. - Control and revocation.

The council shall cause to be instituted such actions or proceedings as may be necessary to prosecute a public utility company for violations of its franchise, the city charter, or ordinances of the city, and may revoke, cancel or annul all franchises that have been granted by the city which, for any reason, have become inoperative, illegal or void and not binding upon the city.

Sec. 14.8. - Provisions stated not to be exclusive.

The enumeration and specification of particular matters in this charter, which must be included in every franchise or grant, shall never be construed as impairing the right of the council to insert in such franchise or grant any other and further matters, terms or conditions as may be within the power of the city to impose or require, and which the council shall deem proper to protect the interests of the people of the city.

Sec. 14.9. - Rights of regulation.

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:

- (a) To repeal the same for misuse, or nonuse, or for failure to comply with the provisions thereof;
- (b) To require proper and adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency;
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.
- (d) To require continuous and uninterrupted service to the public in accordance with the terms of

the franchise throughout the entire period thereof;

- (e) To impose such other regulations as may be determined by the council to be conducive to the safety, welfare and accommodation of the public.

Sec. 14.10. - Regulation of rates.

All public utility franchises shall make provision therein for fixing rates, fares and charges, and for readjustments thereof at periodic intervals at the election of the city. The value of the property of the utility used as a basis for fixing such rates, fares and charges shall in no event include a value predicated upon the franchise, good will or prospective profits.

Sec. 14.11. - Revocable permits.

Temporary permits for public utilities, revocable at any time at the will of the council, may be granted by the council by ordinance on such terms and conditions as it shall determine, provided that such permits shall in no event be construed to be franchises or amendments to franchises.

Sec. 14.12. - Use of public property.

Every public utility franchise shall be subject to the right of the city to use, control and regulate the use of its streets, alleys, bridges and public places, and the space above and beneath them. Every public utility shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges and public places, as shall arise from its use thereof, and shall protect and save the city harmless from all damages arising from said use; and may be required by the city 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 any public utility, the council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, and the arbitration award shall be final.

Sec. 14.13. - Permits for installation of water mains.

Notwithstanding anything contained in this charter to the contrary, the council may grant permits for the installation and maintenance of water mains, sewers and drains in the streets, alleys and public places, without the approval of the electors, which permits may be made irrevocable unless the grantee be a private person, firm or corporation.

Sec. 14.14. - No estoppel by representation.

No officer or employee of the city shall have power to make any representation or recital of fact in any franchise, contract, document or agreement, contrary to any public record of the city. Any such representation shall be void and of no effect as against the city.

CHAPTER 15. - UTILITIES^[11]

Footnotes:

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State Law reference— Authority to operate utilities, MCL 117.4c, 117.4f, MSA 5.2076, 5.2079. See also Mich. Const. 1963, Art. VII, § 24.

Sec. 15.1. - General powers respecting utilities.

The city shall possess and hereby reserve to itself all the powers granted to cities by the constitution and general laws of the State of Michigan to acquire, construct, own, operate, improve, enlarge, extend, repair and maintain, either within or without its corporate limits, public utilities including, but not by way of limitation, public utilities for supplying water, light, heat, power, gas and

sewage treatment, and garbage disposal facilities, or any of them, to the municipality and the inhabitants thereof; and also, unless a greater amount is permitted by the state constitution, in which event said amount shall govern, to sell and deliver water, light, heat, power, gas, and other public utilities and services, without its corporate limits to an amount not to exceed the limitations set by state law and constitution.

Sec. 15.2. - Appropriation of private property.

Private property may be taken and appropriated, either within or without the city, for any public use in connection with any acquisition, enlargement or extension of public utilities, but not by the way of limitation, for supplying water, light, power, gas and sewage treatment, and garbage disposal, or any of them; for the purpose of opening, widening, altering and extending street, alleys and avenues; for the construction of bridges, for public buildings and for other public structures; for public grounds, parks, for the improvement of waters and watercourses within the city; for sewers, drains and ditches; for public hospitals and public cemeteries; and for other lawful and necessary public uses, and may hold the same. The ownership of such property shall be acquired by the city by negotiation and purchase, or in any other manner permitted by the general laws of the state for the taking of private property for public use.

Sec. 15.3. - Rates.

The council shall have the power to fix, as necessary, rates only sufficient to cover the cost to the city for providing the residents and others with water and other such utility services as the city may acquire.

Sec. 15.4. - Utility charges; collection.

The council shall provide, by ordinance, for the collection of all public utility charges made by the city and for taking appropriate action for delinquent utility charges; and for such purposes shall have all the power granted to cities or public utilities by law.

Sec. 15.5. - Disposal of plants.

The city shall not sell, exchange, lease or in any way alien or dispose of the property, easements, income or other equipment privilege or asset belonging to and appertaining to any utility which it may acquire, unless and except the proposition for such purpose shall first have been submitted and approved by a three-fifths majority of the electors voting in an election. All contracts, negotiations, licenses, grants, leases or other forms of transfer in violation of this provision, shall be void and of no effect as against the city. The provisions of this section shall not, however, apply to the sale or exchange of any articles of equipment of any city-owned utility as are worn out or useless, or which could, with advantage to the service, be replaced by new and improved machinery or equipment.

CHAPTER 16. - CITY LIABILITY^[12]

Footnotes:

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State Law reference— *City liability for injury on public ways, MCL 242.1 et seq., MSA 9.591 et seq.*

Sec. 16.1. - Notice to city of claim for negligent injury.

No action shall be brought against the city for any negligent injury to person or property unless brought within the period limited by law from the time such injury was sustained, nor unless the person or persons claiming to be so injured shall serve or cause to be served, within 60 days after such

injury shall have occurred, a notice in writing upon the clerk, which notice shall set forth substantially the time and place of such injury, and the nature thereof, the manner in which it occurred, the extent of such injury so far as the same has become known, the names and addresses of the witnesses known at the time by [the] claimant, and a statement that the person receiving such injury intends to hold the city liable for such damages as may have been sustained by him. No person shall bring any action against the city to recover for any negligent injury to person or property unless he shall also present to the clerk this claim in writing and under oath, setting forth particularly the nature and extent of such injury and the amount of damages claimed by reason thereof, which claim shall be presented to the council.

Editor's note— Charter § 16.1 is superseded by MCL 691.1401 et seq., MSA 3.996(101) et seq.

CHAPTER 17. - MISCELLANEOUS

Sec. 17.1. - Headings.

The chapter and section headings used in this charter are for convenience only and shall not be considered to be a part of this charter.

Sec. 17.2. - Effect of illegality of any part of charter.

Should any provision or section, or portion thereof, of this charter be held by a court of competent jurisdiction to be invalid, illegal or unconstitutional, such holding shall not be construed as affecting the validity of this charter as a whole or of any remaining portion of such provision or section, it being hereby declared to be the intent of the charter commission and of the electors who voted thereon that such unconstitutionality or illegality shall not affect the validity of any other part of this charter except that specifically affected by such holding.

Sec. 17.3. - Amendments.

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

State Law reference— Charter amendment procedures, MCL 117.21—117.26, MSA 5.2100—5.2105.

NEW SCHEDULE

Election to adopt charter.

Section 1. This charter shall be submitted to a vote of the qualified electors of the City of Berkley at a special city election to be held on Tuesday, August 5, 1980. If this charter is adopted at such election, it shall, except for the purpose of the election of the first officers under the charter, take effect and become the charter of the City of Berkley at 12:00 o'clock, midnight, Monday, September 1, 1980.

Form of ballot.

Section 2. The form of the ballot on the submission of this charter shall be as follows:

Instruction: A cross (x) in the square before the word "yes" is in favor of the proposed charter, and a cross (x) in the square before the word "no" is against the proposed charter.

"Shall the proposed charter, drafted by the charter commission be adopted?"

Yes

No

Filing of charter.

Section 3. If this charter is adopted, the clerk of the charter commission shall, before September 1, 1980, certify the adoption of this charter upon her journal, and six printed copies thereof shall be duly certified. Two such certified copies, together with the vote for and against, duly certified by the city clerk, shall, within the time limited by state law, be filed with the secretary of state, and a like number with the county clerk and in the office of the city clerk, respectively.

> RESOLUTION OF ADOPTION

At a meeting of the charter commission of the City of Berkley held on the 29th day of May, 1980, the following resolution was offered and seconded:

Resolved that the charter commission of the City of Berkley does hereby adopt the foregoing proposed charter of the City of Berkley, and that a copy thereof shall be forthwith transmitted to the Governor of the State of Michigan for his approval in accordance with state law.

The resolution was adopted by the following vote:

YEAS: Commissioners Elvin J. Bomaster, Mark Griffin, Neil T. Jordan, Martin McGaffey, Elaine A. Martin, Delphine C. O'Brien, Lawrence J. Savel, Edward C. Stowe, Keith Till, Chairman.

NAYS: None.

The chairman declared the foregoing resolution carried unanimously and requested the members of the charter commission to authenticate said resolution and also the copy of the charter presented to the governor and filed with the city clerk by attesting their names thereto in the following manner:

Attested by commissioners:

ELVIN J. BOMASTER

MARK GRIFFIN

NEIL T. JORDAN

MARTIN MC GAFFEY

ELAINE A. MARTIN

DELPHINE C. O'BRIEN

LAWRENCE J. SAVEL

EDWARD C. STOWE

KEITH TILL

All of the commissioners having attested as to said resolution as above and also having attested the copy to be signed by the governor, the meeting adjourned subject to the call of the chairman.

STATE OF MICHIGAN

COUNTY OF OAKLAND

Maryann Burton, clerk of the charter commission of the City of Berkley, being duly sworn, says that at an election duly called and held in the City of Berkley on the 8th day of November, 1977, the following named persons were duly elected as a charter commission to frame a revised charter for the charter for the City of Berkley, namely:

Commissioners Elvin J. Bomaster; Lawrence T. Farley; Neil T. Jordan; Martin McGaffey; Elaine A. Martin; Delphine C. O'Brien; Lawrence J. Savel; Edward C. Stowe; Keith Till; upon the resignation of Commissioner Lawrence T. Farley on October 25, 1979, the charter commission of the City of Berkley appointed Mark Griffin to fill the vacancy; and that the foregoing charter was duly framed and adopted by said charter commission by the foregoing resolution, which is a true and correct copy thereof, and that the said charter commission directed that said charter be presented to the electors of the City of Berkley in accordance with the requirements of the laws of the State of Michigan which provide therefor.

I, Maryann Burton, the duly authorized clerk of the charter commission of the City of Berkley, do hereby certify that the foregoing is a true and correct copy of the revised charter adopted by the City of Berkley charter commission on Thursday, May 29, 1980.

	/s/ Maryann Burton, Clerk of the Charter Commission of the City of Berkley
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STATE OF MICHIGAN

COUNTY OF OAKLAND

Subscribed and sworn to before me this 2nd day of June, 1980.

(SEAL)	/s/ Patricia L. Stowe, Notary Public
	My Commission Expires 7-11-81

I do hereby approve the above and foregoing charter of the City of Berkley.

Dated: 7-23-80	_____ William G. Milliken Governor of the State Michigan
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I hereby certify that this is the official charter of the City of Berkley and that any and all amendments are included therein as of August 31, 1980.

(SEAL)	/s/ Maryann Burton City Clerk
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