

## Chapter C. Charter

[HISTORY: Adopted by the City of Batavia at referendum 11-3-2009.<sup>[1]</sup> Amendments noted where applicable.]

[1] *Editor's Note: This enactment also repealed the former Charter, adopted at referendum 11-6-2001, as amended.*

### CHAPTER 1.

#### § 1-1. Incorporation.

The inhabitants of the City of Batavia, in the County of Genesee, State of New York, within the boundaries herein described, shall continue to be incorporated as a body politic and corporate with perpetual succession.

#### § 1-2. Name.

The corporate name of the City shall be "City of Batavia."

#### § 1-3. Boundaries.

The boundaries of said City shall be as follows:

BEGINNING in the southerly bounds of the old Buffalo Road at the point of intersection thereof by the westerly bounds of original village lot number 102;

Thence easterly along the southerly line of the said old Buffalo Road to the point of its intersection with the easterly line of the Lewiston Road or a continuation thereof;

Thence northwesterly along said continuation and along the easterly line of the said Lewiston Road to the point of intersection thereof with the easterly line of Park Road, so called;

Thence northeasterly along the easterly line of that part of Park Road which runs in a generally northeasterly direction to the south line of that part of Park Road which runs in generally southeasterly direction (it being the intention herein to describe that last mentioned boundary line as it was originally laid out prior to the filing of a map thereof in the Genesee County Clerk's office on June 4, 1921, which map is now in Book One of Maps at pages 26 and 27);

Thence southeasterly along the southerly line of that part of Park Road which runs in a generally southeasterly direction to the east bounds of original village lot number two;

Thence northerly along the easterly bounds of said original village lot number two to the northeasterly corner thereof;

Thence southeasterly in a direct line, parallel with West Main Street and on the same line as the northwest corner of original village lot number 14, to the center line of State Street;

Thence at a right angle to State Street Road easterly 24.75 feet to the east boundary of State Street Road;

Thence running northerly along the easterly boundary of State Street Road 818.5 feet;

Thence running westerly along the southern boundary of land conveyed to Chester Bachorski by Deed recorded in Genesee County Clerk's office in Liber 312 page 113 a distance of 818.85 feet;

Thence running southerly along the east line of said lot 8 a distance of 991.05 feet to the northern bounds of lot 15;

Thence still southeasterly in a direct line to the northeast corner of original village lot number 52;

Thence easterly in a direct line parallel with the southerly bounds of lot numbers 9 and 11 in township 12, section

nine, range one of the tract of land known as the Holland Purchase, to the easterly bounds of said lot number nine; Thence south on the easterly bounds of said lot number nine and the easterly bounds of lot number 10 in section eight, township 12 and range one of the said Holland Purchase to its point of intersection with the west bounds of lands of the Grand View Cemetery Association, as described in a deed recorded in the Genesee County Clerk's office on April 14, 1906, in Liber 207 of Deeds at page 109;

Thence southeasterly along the said west bounds of Grand View Cemetery Association lands to a point in the northerly bounds of lands of the Erie Railroad Company;

Thence westerly along the northerly bounds of the said Erie Railroad Company's lands to their point of intersection with the east bounds of said lot number 10, section eight, township 12, range one of the Holland Purchase;

Thence south on the easterly bounds of said lot number 10 and of lot nine in section eight, township 12, and range one of the Holland Purchase to the southerly bounds of the lands constituting the right-of-way of the Lehigh Valley Railroad Company;

Thence westerly in a direct line, of the point where the center lines of Cedar Street and Ellicott Street intersect, to the eastern boundary of lot 11;

Thence S-00-51'-35"-W, 515.44 feet along the eastern boundary of lot 11;

Thence S-89-33'-01"-W, 882.44 feet;

Thence S-44-00'-36"-W, 190.42 feet;

Thence S-00-65'-56"-W, 251.98 feet to the northeasterly boundary of Ellicott Street Road;

Thence northwesterly along the northeasterly boundary of Ellicott Street to the eastern boundary of Cedar Street;

Thence southwestwesterly in a direct line to the intersection of center lines of Cedar Street and Ellicott Street;

Thence westerly in a direct line to a point in the westerly bank of the Tonawanda Creek at the west end of the Lehigh Valley Railroad bridge;

Thence westerly along the left bank of said Tonawanda Creek to a point in said left bank, which point is opposite the southeast corner of lot number 23 in said City and in a direct line with the easterly boundary of said lot;

Thence northwesterly, on a line to a point in the westerly bounds of original village lot number 61, which point is three-fourths of a mile from the southerly bounds of West Main Street, to the north boundary of the abandoned New York Central Railroad main-line being part of original village lot 61;

Thence S-76-39'-28"-W, 1330.11 feet along the northern boundary of the abandoned New York Central Railroad main-line;

Thence S-30-56'-56"-W, 23.05 feet along the northern boundary of the abandoned New York Central Railroad main-line;

Thence S-76-39'-28"-W, 791.81 feet along the northern boundary of the abandoned New York Central Railroad main-line;

Thence N 58-22'-00"-W, 149.04 feet along the southwest corner of original lot 65;

Thence N-31-38/-00"-E, 1492.71 feet as described in Map 930 filed in the Genesee County Clerk's office;

Thence northwesterly in a direct line to a point in the westerly bounds of original village lot number 66, which point is three-fourths of a mile from the southerly bounds of West Main Street;

Thence continuing westerly, still in a direct line, to the westerly bounds of original village lot number 68;

Thence northeasterly along the westerly bounds of the original village lots numbers 68 and 102 to the right bank of the Tonawanda Creek;

Thence westerly along the right bank of the Tonawanda Creek 910 +/- feet to the western boundary of land described in Liber 417 page 724 and Map 969 as filed in the Genesee County Clerk's office;

Thence N-00-30'-00", 720 +/- feet to the northern boundary of land described in Liber 417 page 724 and Map 969 as filed in the Genesee County Clerk's office;

Thence S-84-15'-00" E, 287.88 feet;

Thence N-05-45'-00"-E, 169.70 feet;

Thence S-84-15'-00" E, 25.00 feet;

Thence N-05-45'-00" E, 165.30 feet to the southern bounds of West Main Street;

Thence S-84-15'-00"-E, 354.54 feet along the southern bounds of West Main Street;

Thence S-05-45'-00"-W, 167.45 feet;

Thence S-84-15'-00"-E, 85.03 feet;

Thence S-05-45'-00"-W, 35.48 feet;

Thence N-32-49'-40"-E, 39.36 feet;

Thence S-84-19'-59"-E, 58.56 feet;  
 Thence N-13-05'-12"-E, 96.07 feet;  
 Thence N-05-45'-00"-E, 72.15 feet to the southern bounds of West Main Street;  
 Thence S-84-15'-00"-E, 100.65 feet along the southern boundary of West Main Street;  
 Thence S-68-09'-00"-E, 228.56 feet along the southern boundary of West Main Street, the place of beginning.

## § 1-4. Wards.

[Amended 6-9-2014 by L.L. No. 2-2014]

Wards of the City of Batavia are hereby established as follows:

WARD #1 — Bordered on the south by East Main Street; on the west by Vine Street to Bank Street and then Bank Street to the City line; on the north and east by the City line.

WARD #2 — Bordered on the east by Vine Street, to Bank Street and then Bank Street to the City line; on the south by Main Street; on the west by Bank Street to Denio Street and then Denio Street to State Street and then State Street to the City line; on the north by the City line.

WARD #3 — Bordered on the east by Bank Street to Denio Street and then Denio Street to State Street and then State Street to the City line; on the south by Main Street; on the west by Oak Street; on the north by the City line.

WARD #4 — Bordered on the east by Oak Street [to La Crosse Avenue and then La Crosse Avenue to Montclair Avenue; and Montclair Avenue to West Main Street]; on the south by West Main Street to South Lyon Street and then South Lyon Street to South Main Street; South Main Street to Roosevelt Avenue, and then Roosevelt Avenue to Pearl Street; Pearl Street to the City line; on the west and north by the City line.

WARD #5 — Bordered on the east by Liberty Street to South Liberty Street and then South Liberty and a straight line continuation of South Liberty south to the City line; on the south by the City line; on the west by Pearl Street to Roosevelt Avenue and then Roosevelt Avenue to South Main Street and South Main Street to South Lyon Street to West Main Street; on the north by West Main Street to Montclair Avenue and then Montclair Avenue to La Crosse Avenue and La Crosse Avenue to Oak Street; Oak Street to Main Street and then Main Street to Liberty Street.

WARD #6 — Bordered on the east and south by the City line; on the west by Liberty to South Liberty Street and then South Liberty Street and a straight line continuation of South Liberty Street to the City line; on the north by East Main Street to the City line.

## § 1-5. Election districts.

Within 12 months of the United States census final report, the City Manager will report the official population for each of the six City wards. If two or more of the wards have a population differential of 10% more than the average of the six wards, City Council will submit a redistricting plan at the next November general election for the City Council members at large.

## § 1-6. Corporate Seal.

The Corporate Seal of the City shall consist of the device of the Knickerbocker statue surrounded by the words "City of Batavia, N.Y."

# CHAPTER 2. DEFINITIONS AND POWERS

## § 2-1. Definitions.

For the purpose of this Charter, except as the content may otherwise require:

"Charter" shall mean the Charter of the City of Batavia, New York.

"Department" shall mean an overall organizational unit of City government containing within said unit other subdivisions.

"Bureau" shall mean a subdivision of a department within the City government.

"Agency" and/or "Authority" shall mean an entity, created by the State of New York, with defined separate and distinct powers and duties including the power to act in specific areas on behalf of the City, the power to incur debt independent of the City and such other powers as shall be set forth in legislation creating the agency and/or authority.

"Local Law" shall have the same meaning as set forth in Municipal Home Rule Law Section 2(9).

"Council" shall mean the local legislative body of the City elected in the manner provided by this Charter.

"Manager" shall mean the Manager of the City government appointed pursuant to the Charter or any Assistant Manager temporarily serving in place of the Manager pursuant to the Charter or local law.

"Ordinance" shall mean a rule established by authority; a permanent rule of action; a law or statute. In its most common meaning, the term is used to designate the enactments of the legislative body of a municipal corporation. . . An ordinance is the equivalent of a municipal statute, passed by City Council, or equivalent body, and governing matters not already covered by federal or state law. Ordinances commonly govern zoning, building, safety, etc., matters of the municipality.

"Resolution" shall mean a formal expression of opinion or will of an official body or public assembly, adopted by vote; as a legislative resolution. . . The term is usually employed to denote the adoption of a motion, the subject matter of which would not properly constitute a statute, such as a mere expression of opinion; . . . Such is not law, but merely a form in which legislative body expresses an opinion.

## § 2-2. General powers.

Subject to the provisions of the Charter, the City shall have all powers of local government, functions, rights, privileges and jurisdiction delegated to cities under the Constitution and Laws of the State of New York, or which it would be competent for this Charter specifically to enumerate. The City may provide for the distribution of such powers among and within its departments and regulate and control the exercise thereof by its officers and employees. All powers of the City, whether express or implied, shall be exercised in the manner provided by this Charter or by local law or ordinance not inconsistent herewith.

## § 2-3. Auxiliary powers.

In the exercise of its powers for any municipal purpose, the City may use a corporate seal; may sue and be sued; may acquire property within and without its boundaries for any municipal purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, hold, manage and control such property as its interests may require; may require licenses and permits and enter into contracts; may exercise powers of taxation delegated to it; and may adopt, amend and repeal local laws, ordinances and resolutions.

# CHAPTER 3. COUNCIL

## § 3-1. The Council.

The legislative power of the City shall be exercised by the Council, which shall have all powers of legislation conferred herein or by the laws of the State of New York.

## § 3-2. Composition and qualifications.

- (A) The Council shall consist of nine Council members of whom one shall be elected from each of the City's six wards and three from the City at large. Members of the Council shall be qualified electors of the City, and, in the case of ward Council members, of the ward from which they are elected.
- (B) A Council member's office shall be vacant upon the happening of one of the following events, before the expiration of the term thereof:

- (1) His or her death.
- (2) His or her resignation.
- (3) His or her removal from office.
- (4) His or her ceasing to be a resident of the City, or, if a member of Council from a ward, of the ward represented.
- (5) His or her conviction of a crime.
- (6) The entry of a judgment or order of a court of competent jurisdiction declaring him or her to be insane or incompetent.
- (7) The judgment of a court declaring void his or her election or appointment, or a judgment declaring that his or her office is forfeited or vacant.
- (8) His or her refusal or neglect to file his or her official oath or undertaking before or within 30 days after the commencement of his or her term of office.
- (9) A resolution of Council pursuant to § 3-9 herein.
- (10) A violation of his or her oath of office.

### § 3-3. Term; vacancies.

Council members shall be elected at the general election every four years each to serve for a term of four years. The term of office of each Council member shall commence on the first day of January next following his or her election. He or she may be inaugurated by filing an oath of office within 72 hours prior to January 1. Vacancies in the office of Council member shall be filled by election for the remainder of the unexpired term at the next general election occurring not less than 60 days after the occurrence of the vacancy. Such election to fill a vacancy where it occurs after the last day to file nominating petitions for the primary election shall be filled upon nominations made in the manner provided by law for the filling of vacancies in primary nominations occurring after the primary election. Pending such election and qualification of a Council member to fill a vacancy, Council shall fill the vacancy temporarily by appointment of a qualified person who shall be of the same political affiliation as the Council member whose place has become vacant and, if he or she was a ward Council member, a resident of the same ward. In the event that Council shall fail to appoint within 30 days after the vacancy, such appointment must be made by the Council President. This appointment must be made within 10 days under the same conditions as to political affiliation and residency noted in the paragraph above.

### § 3-4. Compensation.

Council members shall receive compensation with the Council President receiving 40% above the rate for the other Council members. Compensation shall be computed and paid on the fiscal year on a quarterly basis. In addition thereto, Council members may be reimbursed for actual expenses incurred in the performance of their official duties.

### § 3-5. Continuing body.

The Council shall be a continuing body and no measure pending before it shall abate or be discontinued by reason of expiration of the term of office or removal of the members thereof.

### § 3-6. Organization and procedure.

The Council shall organize biennially at a meeting to be scheduled prior to the first regularly scheduled Council

meeting in the January following each regular election of Council members. The Council shall adopt rules governing its procedure, the conduct of its meetings and the discipline of its members. Council shall appoint someone other than Council President as Parliamentarian and adopt rules governing its members.

### § 3-7. Presiding officer.

The Council shall at each organizational meeting by a vote of a majority of its whole number select from among the Council members elected at large, a Council member who shall be known as the President of the Council, who shall serve until the selection of his or her successor. He or she shall be the ceremonial head of the City government and shall preside at all meetings of the Council. He or she shall sign all contracts, bonds, deeds, obligations and agreements on behalf of the City. In the event the President of the Council permanently leaves Council or is permanently removed from office with more than 60 days before the next organization meeting, Council must reorganize. The Council shall also select from among its members a President Pro Tempore of the Council who shall act in place of the President of the Council in the event of the President's temporary absence or disability to perform the duties of the office.

### § 3-8. Meetings of Council.

- (A) Regular meetings. The regular meetings of the City Council shall be held at a place and time set by City Council.
- (B) Special meetings. Special meetings may be called by the President of the Council or by any three members of Council at any time by delivering written notice to the residence of each member of Council or by personally phoning each member of Council at least 12 hours before the time of the meeting. In the event that a Council member is not contacted by either method, a written notice shall be affixed to the door of the residence of the Council member at least 12 hours before the time of the meeting. The call of the special meeting shall set forth the purpose of the meeting and no other business shall be transacted.

### § 3-9. Quorum.

Six members of the Council shall constitute a quorum to do business. The affirmative vote of at least five members shall be necessary to adopt any local law or ordinance, resolution or order. No member shall be excused from voting except on matters involving the consideration of his or her own official conduct or where his or her financial interests are involved.

Any members of Council not attending four consecutive regular meetings, and who in the judgment of the Council fail to show reasonable cause for such absences, may be removed from office by a resolution adopted by a majority of the whole Council. This resolution may only be offered after a public hearing on the question.

### § 3-10. Removal.

Any officer of the City of Batavia, including, but not limited to, any Council member, may be removed from office by the Supreme Court for any misconduct, maladministration, malfeasance or malversation in office. An application for such removal may be made by any citizen resident of the City of Batavia or by the Genesee County District Attorney. An application for removal shall be made to the Appellate Division of the Supreme Court, 4th Judicial Department, or such other court of competent jurisdiction. Such application shall be made upon notice to such officer or Council member of not less than eight days, and a copy of the charges upon which the application will be made must be served with such notice.

### § 3-11. Legislative powers.

In the exercise of its legislative power, the Council shall, subject to any restriction herein contained or contained in any state or federal law, adopt, amend or repeal local laws, ordinances or resolutions to:

- (A) Organize and regulate the property, affairs and government of the City, and to establish, alter, and abolish offices, positions and employments and define the functions, powers, and duties thereof, and to fix the term, tenure and compensation thereof.
- (B) Exercise the local police power for the good rule and government of the City; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the City and its inhabitants; and to effectuate the purposes and provisions of this Charter or of the other laws relating to the City.
- (C) Construct, acquire, operate or maintain any and all properties, public improvements, projects, or enterprises, for any public purpose, subject to referendum requirements otherwise imposed by law.
- (D) Provide for the exercise of all powers of local government vested in the City by Charter or otherwise.
- (E) Provide for the enforcement of ordinance and local laws by legal or equitable proceedings, prescribe that violations thereof shall constitute offenses, and provide for the punishment of such violations by civil penalty, fine, forfeiture or imprisonment, or by two or more punishments. Any enumeration of powers in this Charter shall not be held to limit the legislative power of the Council except as otherwise specifically provided herein.
- (F) Provide insurance protection for the property of the City and for the officers and employees of the City while in their official capacity or employment, in the discretion of the Council, or as may be required by law or contract.

## § 3-12. Local legislation.

The Council shall act in relation to legislative matters by local law or ordinance. The enacting clause of all local laws and ordinances shall be: "be it enacted by the Council of the City of Batavia as follows."

## § 3-13. Ordinances and resolutions.

- (A) All ordinances for any purpose and all resolutions involving the expenditure of money shall be introduced in the Council only in typewritten or printed form. Copies thereof shall be made available to the public, upon request, immediately following introduction. No ordinance shall be passed at the same meeting at which it is introduced, except upon the unanimous consent of all the members of the Council. The final reading of each ordinance shall be in full unless a copy thereof shall have been furnished to each member of the Council prior to such reading. Ordinances shall be confined to one subject, and such subject shall be clearly expressed in the title. In case of codification of ordinances, however, a general codification shall be deemed to embrace one subject and may include revisions, deletions and new material without limitation. The yeas and nays shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the Council.
- (B) An ordinance levying a tax or making an appropriation relating to local improvements or assessments or directing an investigation of City affairs shall take effect at such time as it may provide; all other ordinances shall take effect not less than 30 days after the date of passage unless the Council shall by resolution adopted by a vote of seven Council members declare an emergency requiring the ordinance to take effect within such time.
- (C) 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, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in § 16-10. 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, but the affirmative vote of at least seven members shall be required for adoption. 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, except

one made pursuant to § 16-10, 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 this section for adoption of emergency ordinances.

### § 3-14. Local laws, generally.

All local laws shall be introduced, considered and enacted in accordance with the procedure prescribed by the Municipal Home Rule Law. Notice of public hearing on local laws shall be given by publication in one or more newspapers, including the official newspaper, at least three days prior to such hearing.

### § 3-15. Local laws; mandatory referendum.

A local law shall be submitted for the approval of the electors at the next general election held not less than 60 days after the adoption thereof, and shall become operative according to its terms only upon the approval of a majority of those voting thereon at such election, if such local law:

- (A) Abolished or changes the form or composition of the Council, or the vote to which any member of the Council is entitled, or delegates or transfers any appointive or legislative power of the Council.
- (B) Abolishes, transfers or curtails the authority of any department head created by Charter, or creates a new elective office.
- (C) Changes the manner of appointment or removal, or the tenure of office of the Manager, or abolishes, transfers or modifies the functions, powers or duties of the Manager.
- (D) Changes a provision of law relating to public utility franchises.
- (E) Reduces the salary or compensation of a City officer or employee, increases his or her hours of employment or changes his or her working conditions if such salary, compensation, hours or conditions have been fixed by state statute and approved by the vote of the qualified electors of such City.
- (F) Modifies any provision of this section.
- (G) Is required by the Municipal Home Rule Law to be submitted to referendum.
- (H) Reduces Council compensation.

### § 3-16. Presiding officers.

No person who is or who shall become presiding officer of any City agency, authority, board or commission shall be eligible to serve concurrently as the presiding officer of any other City agency, authority, board or commission. Further, if any person accepts the role of presiding officer on any identical county agency, he or she must not act concurrently as the presiding officer of the comparable City agency.

## CHAPTER 4. ADMINISTRATIVE ORGANIZATION

### § 4-1. Council action.

The Council shall be responsible to the electorate for the efficient and economical management of the City government. It shall deal with administrative matters as a body and effectuate its policy decisions solely through the office of the Manager, as hereinafter established. There shall be no committees where Council members make up a majority of the members, except for subcommittees of the Council itself and no individual Council member shall hold an executive or administrative office, position or employment under the City government; nor shall any Council member deal individually with the Manager or with any department head regarding any administrative matter for

which the Council as a whole is responsible under this Charter.

## § 4-2. Departmental organization.

The Council may establish City departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or, unless this Charter specifically so provides, assigned to any other.

## § 4-3. Filling vacancies at expiration of term.

Unless otherwise filled by existing provision(s) of this Charter, any vacancy occurring at the expiration of an annual term at the end of a calendar year, in the membership of any City board, agency or authority shall be filled by Council at its organizational meeting in January of the following year.

# CHAPTER 5. MANAGER

## § 5-1. Qualifications, appointments and compensation.

The Council shall appoint a Manager who shall be chosen solely on the basis of his or her executive and administrative qualifications for the duties of his or her office. Prior to his or her appointment, he or she shall be qualified by at least one year's special training in public administration and finance, and by at least three years' successful experience in a responsible executive position in governmental administration, or by any equivalent training or combination of experience and training sufficient to indicate capacity for effective governmental administration. At the time of his or her appointment, he or she need not be a resident of the City or state, but during his or her tenure of office he or she may reside outside the City only temporarily and only upon the approval of the Council by resolution. The Manager's compensation shall be in such amount annually as may be fixed by the Council.

## § 5-2. Removal.

The Manager may be suspended by a resolution approved by the majority of the total membership of the Council which shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the Manager. The Manager shall have 15 days in which to reply thereto in writing, and, upon request, shall be afforded a public hearing, which shall occur not earlier than 10 days nor later than 15 days after such hearing is requested. After the public hearing, if one be requested, and after full consideration, the City Council by a majority vote of its total membership may adopt a final resolution of removal. The Manager shall continue to receive full salary until the effective date of a final resolution of removal.

## § 5-3. General powers and duties.

The Manager shall be the chief executive and administrative officer of the City. He or she shall see that the Charter and all local laws, ordinances, resolutions and policies of the Council, and all state laws subject to enforcement by City action are faithfully enforced and executed. He or she shall:

- (A) Appoint and, when necessary for the good of the City, suspend or remove any City employee or appointive administrative officer provided for by or under this Charter, except as otherwise provided by law, or personnel rules adopted pursuant to this Charter. The Manager may authorize any administrative officer, subject to the Manager's direction and supervision, to exercise these powers with respect to subordinates in that officer's department, office or agency.
- (B) Have, exercise and perform all functions, powers and duties vested by state or local law or ordinance in the

Mayor or chief executive officer of the City, except as may be otherwise specifically provided by this Charter.

- (C) Represent the City and assert its proper interest in relation to the state and other political subdivisions, and with respect to municipal contracts and franchises.
- (D) Attend all meetings of the Council with the right to take part in the discussions, but without the right to vote.
- (E) Keep the Council advised of the financial condition of the City, make report to the Council as requested by it, and at least twice a year make a semiannual report to Council and the citizens on the administration of the City government.
- (F) Prepare and submit a proposed annual budget and capital program to the Council and implement the final budget approved by the Council to achieve the goals of the City.
- (G) Study the governmental and administrative operations and needs of the City government, and prepare and recommend to the Council necessary and desirable plans and programs to meet present and foreseeable needs.
- (H) Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.
- (I) Examine and inquire into at any time the affairs of any officer or department of the City, other than the Council.
- (J) Negotiate all contracts with employee bargaining units subject to ratification thereof by Council, or delegate such duty to such other person or persons as he or she may deem qualified.
- (K) Make such other reports as the Council may require concerning the operations of City departments, offices and agencies subject to the Manager's direction and supervision.
- (L) Administer the civil service law and regulations and effectuate the City's personnel policies and programs.
- (M) Perform such other duties as may be required of the Manager by Charter, local law or resolution of the Council.

## **§ 5-4. Assistant Manager.**

There shall be an Assistant Manager who shall generally assist the Manager and shall possess the powers to perform the duties of the Manager during the Manager's absence or inability to act or during a vacancy in the office of the Manager. The Council may revoke such designation at any time and appoint another qualified individual to serve until the Manager returns.

## **CHAPTER 6. DEPARTMENT OF THE CITY CLERK-TREASURER**

### **§ 6-1. Clerk-Treasurer; appointment and qualifications.**

There shall be a department of the City Clerk-Treasurer. The Clerk shall be appointed by and subject to removal by the Manager.

### **§ 6-2. Clerk-Treasurer.**

The Clerk shall:

- (A) Serve as Clerk of the Council, attend all meetings of the Council, keep accurate minutes of each meeting of the Council and arrange for their preservation in properly bonded and indexed volumes.
- (B) Be the custodian of the City Seal and all records, books and documents of the City other than those committed by Charter, local law or ordinance to some other office or transferred thereto by the Manager.

- (C) Be the depository and custodian of all performance bonds running to the City and of official surety bonds furnished by or on account of any officer or employee, except his or her own bond (which shall be placed in the custody of the Director or Finance); of all insurance policies upon with or with respect to risks insured for the benefit of the City or to protect it against any claim, demand or liability whatsoever; and all leases and formal contracts for work, labor, services, supplies, equipment, and materials to which the City may be a party.
- (D) Serve as Registrar of Vital Statistics and perform all other functions required of the Clerk by any state law and administer such provisions of local law or ordinance, which gives licenses, permits or certificates to be obtained from the Clerk.
- (E) Have custody of and disburse City funds from the treasury pursuant to the appropriations made by the Council and only upon warrant of the Director of Finance.
- (F) Maintain a complete system of books and records to record all assessments, charges, payments, credits and delinquencies and render bills in such form and at such intervals, and make such regular accountings of his or her cash receipts and disbursements as shall be approved or required by the Manager.

### **§ 6-3. Deputy City Clerk-Treasurer.**

There shall be a Deputy City Clerk-Treasurer who shall generally assist the Clerk and shall possess the powers to perform the duties of the Clerk in the Clerk's absence or inability to act or during a vacancy in the office of the City Clerk-Treasurer.

## **CHAPTER 7. DEPARTMENT OF ADMINISTRATION AND FINANCE**

### **§ 7-1. Department of Administration and Finance.**

There shall be a Department of Administration and Finance, the head of which shall be the Director of Finance. Unless and until the Council shall by local law authorize the appointment of a separate director, the Manager shall serve as Director of Finance without additional compensation.

### **§ 7-2. Director of Finance.**

The Director of Finance shall:

- (A) Serve as Chief Fiscal Officer of the City.
- (B) Pre-audit all payrolls, bills, claims and demands against the City, upon certification by the department head that the amount is due and unpaid according to the records and information of his or her department.

### **§ 7-3. Commitments and disbursements.**

- (A) No department, office or agency of the City government shall expend or commit any funds of the City unless the Director shall first certify that there is an unencumbered balance of appropriation and funds available for the purpose.
- (B) Prior to payment of any bill, claim or demand against the City, a department head shall certify that the materials, supplies or equipment have been received according to purchase order or that the work, labor or services have been rendered according to order or contract.
- (C) Disbursements in payment of bills, claims and demands shall be made by the Clerk-Treasurer upon pre-audit and warrant of the Director of Finance. Every warrant shall be in the form of a warrant check payable to the order of the person entitled to receive it, and shall specify the purpose for which it is drawn and the account of

appropriation to which it is chargeable. Each warrant check shall bear the signature of the Clerk-Treasurer or Deputy Clerk-Treasurer and of the Director of Finance or Acting Director of Finance, as the case may be.

## CHAPTER 8. DEPARTMENT OF ASSESSMENT

### § 8-1. Department of Assessment.

City Council shall provide for the assessment of real property in the City of Batavia, the function of which shall be performed by an Assessor appointed by the City Manager or by contract services.

### § 8-2. Assessment roll calendar.

The Assessor shall adhere to the following calendar in preparing the assessment roll:

Valuation Date	July 1 of previous year
Taxable Status Date	March 1
Exemption Filing Deadline	March 1
File Tentative Roll	May 1
Grievance Day	The first Thursday after the fourth Tuesday in May
File Final Roll	July 1

### § 8-3. Board of Assessment Review.

There shall be a Board of Assessment Review, for the purpose of reviewing assessment complaints made in accordance with the New York State Real Property Tax Law. The Board of Assessment Review shall consist of no less than three nor more than five members appointed by the Council. Members shall have a knowledge of local property values. The terms of office of the members shall commence on the first day of October and terminate on the 30th day of September, five years thereafter. Each member of the Board of Assessment Review shall be limited to two consecutive terms and may be reappointed upon a one-year absence from the Board.

## CHAPTER 9. DEPARTMENT OF PUBLIC WORKS

### § 9-1. Department.

There shall be a Department of Public Works, the head of which shall be the Director of Public Works appointed by and under the direct supervision and subject to removal by the City Manager according to Civil Service Law.

### § 9-2. Director.

The Director of Public Works shall be responsible for the proper and efficient conduct of all public works functions. The Director shall be qualified by a combination of training and experience.

### § 9-3. Bureaus.

The Department of Public Works shall consist of the following bureaus:

- (A) Bureau of Engineering.
- (B) Bureau of Inspection.
- (C) Bureau of Water and Wastewater.

(D) Bureau of Maintenance.

## § 9-4. Plumbing Inspector.

A qualified person shall be appointed by the Manager as Inspector of Plumbing to have, exercise and discharge the functions, powers and duties of that office as provided by Charter, local law or ordinance.

## § 9-5. Plumbing and drainage.

The Manager shall appoint an Examining Board of Plumbers. It shall consist of five members. Two members shall be master plumbers of not less than 10 years' plumbing experience and one member shall be a journeyman plumber of like experience. The other members shall be the Chief Inspector of Plumbing and Drainage and the Director of Public Works having charge of sewers, or other City officers having such duties. The term of office of each member shall be three years, from the first day of January following his or her appointment. No board member other than the Chief Inspector of Plumbing and Drainage and the Director of Public Works may serve more than two consecutive terms. The Examining Board of Plumbers shall have jurisdiction over and examine all persons desiring to engage in the trade of plumbing as employing or master plumbers in the City. It shall also be responsible for formulating in conjunction with the Board of Health a code of rules regulating the work of plumbing and drainage in the City.

# CHAPTER 10. POLICE DEPARTMENT

## § 10-1. Police Department.

It is the responsibility of the City Council to provide for the safety of its citizens, and to further provide for a means to enforce local laws and ordinances, serve criminal process pursuant to law and execute orders and commitments of the City Court. The Council may choose to establish a Police Department in order to meet these obligations. In that circumstance, the City Police Department shall have all the common law and statutory powers of constables, except that it may serve civil process only on behalf of the City or any department or officer thereof.

## § 10-2. Police Chief.

Within any such Police Department, the head shall be the Police Chief, who shall be appointed by the Manager pursuant to Civil Service Law.

## § 10-3. Police officers.

The Council shall determine the number of active officers and patrolmen who shall constitute the Police Department. Subject to the Manager's approval, the Police Chief shall, pursuant to such determination and to the Civil Service Law of the State of New York, appoint, promote, discipline, suspend, or remove such police officers.

## § 10-4. Volunteer parking officials.

The Police Chief is hereby authorized to establish and administer all aspects of a program whereby volunteer persons shall be trained to enforce parking infractions in all public and private parking areas in the City of Batavia which are governed by handicapped or other parking ordinances, laws and regulations. Sworn members of said program are hereby designated as officials authorized to issue notices of parking violations in the same manner as City of Batavia police officers.

# CHAPTER 11. FIRE DEPARTMENT

## § 11-1. Fire Department.

It is the responsibility of the City Council to provide for the safety of the citizens, and to further provide fire prevention and fire suppression service for the City. The Council may choose to establish a Fire Department in order to meet these obligations.

## § 11-2. Fire Chief.

Within any such Fire Department, the head shall be the Fire Chief, who shall be appointed by the Manager pursuant to the Civil Service Law.

## § 11-3. Fire fighters.

The Council shall determine the number of active fire fighters who shall constitute the Fire Department. Subject to the Manager's approval, the Fire Chief shall, pursuant to such determination and to the Civil Service Law of the State of New York, appoint, promote, discipline, suspend, or remove such firemen.

# CHAPTER 12. DEPARTMENT OF LAW

## § 12-1. Department.

There shall be a legal officer of the City, appointed by the Manager to serve for two years with compensation determined by the Council.

The City Attorney may be removed by the Manager during said period with or without cause or by a resolution approved by 2/3 of the total members of the Council.

## § 12-2. Legal officer.

The City Attorney shall be the legal officer of and attorney for the City, the Council, the Manager and all City departments, bureaus, boards and commissions thereof, in matters relating to their official duties and, when requested by either the Council or Manager, shall prosecute or defend all actions, suits and proceedings for and on behalf of the City.

## § 12-3. Contract, bonds and other instruments.

The City Attorney shall review all contracts, bonds and other instruments in which the City is concerned, and before execution thereof shall endorse on each his or her approval of the form and correctness thereof. No such contract, bond or instrument providing for or involving the payment by or on account of the City of \$10,000 or more shall be valid without such endorsement or approval.

## § 12-4. Employment of counsel.

The City Attorney, when authorized or directed by the Council or the Manager, may employ counsel to assist in the argument and conduct of cases or proceedings in which the City is interested or is a party.

# CHAPTER 13. PLANNING AND DEVELOPMENT COMMITTEE

## § 13-1. Planning and Development Committee.

- (A) There shall be a Planning and Development Committee whose five members shall be appointed by the City Manager. No member of City Council may be appointed to this Committee.
- (B) There shall be one alternate member position established for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. The alternate member of the Planning and Development Committee shall be appointed by the City Manager. When acting in place of a member of the Planning and Development Committee who is unable to participate due to a conflict of interest, the alternate member shall possess all the powers and responsibilities of such member of the Committee. All provisions of this section shall apply to such alternate member, to include attendance rules.

## § 13-2. Term and appointment.

The terms of office of the City Planning and Development Committee shall be for five years. A member may only serve two consecutive terms. After a break of two years, a member may be reappointed. Any vacancy occurring in the Committee other than by the expiration of a term shall be filled by the City Manager for the unexpired term. The City Manager shall have the power to remove, after a public hearing, any member of the Committee for cause. Any member will be removed for noncompliance with the minimum requirements relating to attendance as set in Chapter 15 of this Charter and of training as set by City Council by local law or ordinance.

## § 13-3. Powers and duties.

The City Planning and Development Committee shall have such powers and duties as are given to Planning Boards pursuant to the New York State General City Law, the Zoning Ordinance of the City of Batavia, and any other local law, ordinance or resolution of the City Council not inconsistent with said General City Law and Zoning Ordinances. The Planning and Development Committee shall serve in an advisory capacity to the City Council and shall have such powers and duties as given by the City Council, including but not limited to the following: developing a plan to maximize the proper use of public and private lands as outlined in the Comprehensive Plan of the City, to provide such advice as to assist the City Council in developing a strategy that interprets, plans and leads in the implementation of the land use components of the Comprehensive Plan of the City; to review and approve or disapprove the aesthetics and architectural design on all new construction plans and/or extensive renovations to the exterior of any building within the City of Batavia, excluding industrial buildings; and with authorization of Council, the power to review and approve or disapprove site plans and plats.

# CHAPTER 14. ZONING BOARD OF APPEALS

## § 14-1. Appointment of members.

The City Manager shall appoint the members of the Zoning Board of Appeals and shall appoint the Chairperson of the Board. The number of members shall be five. No member of the City Council or of the Planning and Development Committee may be appointed. All members shall be residents of the City of Batavia.

## § 14-2. Term of appointment.

The term of appointment shall be five years on the Zoning Board of Appeals. On the date that this revision is approved, any current member will continue to serve their original term and this term will be considered a full term. Members may serve no more than two consecutive terms and must have a two-year break before they can be reappointed.

## § 14-3. Vacancy.

If a vacancy occurs otherwise than the expiration of term, the City Manager shall appoint a new member for the rest

of the unexpired term.

## § 14-4. Removal.

The City Manager shall have the power to remove, after a public hearing, any member of the Zoning Board of Appeals, for cause. Any member will be removed for noncompliance with any minimum requirements of attendance under Chapter 15 of this Charter or of training requirements under state law or as established by the City Council by local laws or ordinance.

## § 14-5. Alternate member.

The City Council may establish one alternate member of the Zoning Board of Appeals in accordance with General City Law § 81. The alternate member shall serve in accordance with General City Law § 81.

# CHAPTER 15. POLICY FOR VOLUNTEER BOARDS/COMMITTEES

## § 15-1. Appointments.

Unless established by state law, rule or regulation, appointments to volunteer boards and committees will be made by the City Council.

## § 15-2. Length of terms.

Unless established by state law, rule or regulation, or by local law, appointments to volunteer boards and/or committees will be limited to two consecutive terms. Term lengths are limited from one to three years as set by City Council. If there are no applicants for a board or committee when a vacancy occurs, then after three months, and upon verification by the City Manager that there were no applicants, a volunteer who had served his/her second term may be reappointed and allowed to serve another two consecutive terms.

## § 15-3. Attendance requirements.

Any member of a volunteer board or committee who misses more than 1/3 of the total meetings for the calendar year or who misses three consecutive meetings shall be in violation of this chapter and is automatically terminated from his or her respective board or committee effective within 30 days of violation. The Chair will notify the City Manager if someone is in violation of the attendance policy. The member being terminated may appeal to the appointing authority for a one-time waiver.

## § 15-4. Notice of termination.

The City Manager shall at any time after the violation send a written notice by regular mail to any member violating the attendance policy requirement advising of their termination. The termination is not dependent on the mailing of the notice.

## § 15-5. Filling the vacancy.

The City Council or the City Manager required by law shall appoint people to fill any vacancy which is created by the termination, resignation or for any other reason, of a member of a board or committee as stated herein. The person appointed to fill a vacancy shall complete the initial term and be allowed to serve two additional terms.

## § 15-6. Residency requirement.

Any person appointed to a City volunteer board and/or committee shall be required to be a legal resident of the City of Batavia at the time of appointment and during his/her term, and be required to execute an Affidavit of Residency.

# CHAPTER 16. BUDGET AND FINANCE

## § 16-1. Fiscal year.

The fiscal year of the City shall begin on April 1 in each year and shall end with the next succeeding 31st day of March.

## § 16-2. Budget preparation.

The City Manager shall prepare a recommended City budget for each fiscal year. Each department head is required to appear before the Manager to submit requests for appropriations for the ensuing budget year. Prior to submitting the recommended budget to the Council, the Manager shall give each department head the opportunity to review and comment on the recommended budget.

## § 16-3. Budget document.

Upon the basis of the departmental requests, the budget hearings, an analysis of the needs and resources of the City, and such policy guides as may be prescribed by resolution of the Council, the Manager shall prepare a recommended budget in such a form as may be approved by the Council, subject to any requirements of state law. On or before January 15 in each year, the Manager shall present to the Council a budget document consisting of:

- (A) The recommended budget; and
- (B) A budget message.

## § 16-4. Budget.

The budget shall consist of a balanced program of revenues and expenditures for the fiscal year. It shall be in conformity with state law and such rules and regulations as may be promulgated by the New York State Department of Audit and Control. It shall further conform to any additional requirements as to form and content which the Council may by resolution impose. It shall set forth all anticipated revenues and their source and it shall separately state the amount to be raised by taxation of real property.

## § 16-5. Budget message.

The budget message shall consist of such explanatory comments, exhibits and schedules concerning the budget as the Manager may deem desirable, together with:

- (A) An outline of the proposed financial policies for the ensuing budget year, including explanations of the important features of the budget and of any major changes in policy.
- (B) An analysis of revenue and costs, relating to work performance contemplated by the budget so far as appropriate units of measurement may have been developed and installed.
- (C) A statement of pending capital projects and proposed new capital projects, relating the amounts required for capital purposes to the downpayments and other expenditures financed from current appropriations and to the amount of bonds to be issued during the budget year.

## § 16-6. Budget adoption; tax levy.

- (A) Upon receipt of such budget, the Council shall present it during at least one public hearing thereon, beginning between the hours of 7:00 p.m. and 9:00 p.m. Notice of such hearing shall be published in the official newspaper at least five days prior to such hearing. Upon such publication, complete copies of the budget shall be available to the public, upon request, free of charge.
- (B) Following said hearing the Council may, by resolution, modify any item or items of said budget.
- (C) The Council shall, following said hearing, and on or before March 20 in each year, adopt a budget ordinance. Said ordinance shall constitute an appropriation of all amounts stated therein, a levy of the amount to be raised by taxation as stated therein, and a warrant to the Clerk-Treasurer to spread and extend such levy upon the current assessment rolls and to collect the same. If the Council fails to adopt a budget by this date, the budget proposed by the Manager shall go into effect but Council shall have until March 31 to make amendments to the Manager's budget.

## § 16-7. Capital reserve fund.

The Council may establish capital reserve funds pursuant to the provisions of Article 2 of the General Municipal Law, and subject to the restrictions and controls therein provided.

## § 16-8. No expenditure without appropriation.

No expenditure shall be made or obligation authorized by the Council, or by any officer or board, unless an appropriation therefor has previously been made and there is at the time a sufficient unencumbered balance for such appropriation.

## § 16-9. Transfer of appropriations.

At any time during the fiscal year the Council may by resolution transfer part or all of the unencumbered appropriation balance from one department or major organizational unit to the appropriational unit to the appropriations for other departments or major organizational units. The Manager may transfer part or all of any unencumbered appropriation balances among accounts within a department or organizational unit and shall report such transfers to the Council in writing in a timely manner.

## § 16-10. Emergency appropriations.

To meet a public emergency affecting health, property or the public peace, the Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of § 3-13(C). To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the Council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time. The emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

## § 16-11. Amount to be raised by taxation of property.

Except as otherwise provided by the Charter, the amount to be raised annually by taxation of property shall be levied, assessed, apportioned and collected in accordance with the provisions of the Real Property Tax Law of the State of New York.

## § 16-12. Extensions and apportionment.

The City Clerk shall, upon adoption of the City budget as provided by the Charter and delivery to him or her of the assessment roll, immediately extend and apportion the state, county and City taxes upon the roll delivered to him or her in each year, and no other extension and apportionment of said taxes need be made.

## **§ 16-13. Due dates.**

The amount of taxes on property apportioned and assessed annually shall be due and payable as follows: 1/2 the total tax on the first day of May and the balance of the tax without payment of interest on the first day of August in each year. The amount of taxes on property apportioned and assessed annually which shall aggregate an amount of \$50 or less shall be due and payable on the first day of May in the total amount. Such taxes shall become delinquent 30 days after the due dates. Interest on the amount of taxes due and delinquent shall be charged and collected by the Clerk-Treasurer at the rate of 5% the first month the tax payment is delinquent and then 1% per month or any part thereof for each subsequent month thereafter until December 31, and at the rate of 15% on January 1 of the subsequent year and 1% per month or any part thereof for each subsequent month of the year following the year that the taxes are due until December 31 of that year. Thereafter interest shall be charged at the rate of 1 1/2% per month until paid in full, and the amount thereof shall be a lien upon the real property assessed to the same extent as the tax.

## **§ 16-14. Lien of taxes.**

The amount of all annual taxes and assessments duly levied by the Council on taxable real property shall be and become a lien thereon as of the first day of April of the fiscal year for which such taxes and assessments are levied and shall remain such a lien until paid.

## **§ 16-15. Sale of real property for unpaid taxes.**

In addition to other remedies provided by law, whenever any such tax, penalty or interest or any part of them shall remain unpaid on the 15th day of November in the year in which the lien attaches, the City Clerk shall proceed to advertise and sell the lands and premises upon which the same was imposed for the payment of such tax, penalty or interest, or the part remaining unpaid. The expense of such sale as hereinafter prescribed shall also be a charge upon such lands.

## **§ 16-16. Sale and redemption.**

The Council may provide by local law for the manner in which the sale of lands or of the liens thereon for nonpayment of taxes shall be conducted; for the manner in which any interested person may redeem the property from such sale at any time within three years from the date of such sale; and for the manner in which the results of any such sale or redemption shall be recorded and given effect.

## **§ 16-17. Delinquent taxes.**

The City may employ any of the Alternative Procedures for Enforcement of Collection of Delinquent Taxes as set forth in Titles 1, 2, 3 and 4 of Article 11 of the Real Property Tax Law.

## **§ 16-18. Water and sewer charge liens.**

Any delinquent water and/or sewer charges which remain unpaid on March 1 of each year shall be a lien on the real property where the water is used or the sewer connection provided to the same extent as City taxes, and they will be included in the general City tax roll for the following May 1 and enforced in the same manner as other City taxes.

## § 16-19. Special improvement in specific areas of the City.

- (A) The Council may levy and collect taxes in the form of special assessments upon property in a limited and determined area for special benefits conferred upon property by any municipal work, service or improvement. The Council may provide for the payment of all or any part of the cost of the work, service or improvement out of the proceeds of such special assessments.
- (B) Prior to levying any special assessment for special improvement in restricted areas of the City, the Council shall adopt a resolution specifying the improvement or improvements to be made, the municipal purpose therefor, the geographical limits of the area to be benefitted thereby, the proportion of the cost to be assessed against the area, the number of installments in which the special assessment may be paid, and the method proposed for spreading the levy over the parcels of real property in the area benefitted.
- (C) An abstract of such resolution shall be published at least once in the official newspaper within seven days of its adoption.

## CHAPTER 17. ELECTED OFFICIALS, OFFICERS AND EMPLOYEES

### § 17-1. County legislators.

There shall be three legislators elected from within the boundaries of the City, one to be elected by the electors of the first and sixth wards, one to be elected by the electors of the fourth and fifth wards, and one to be elected by the electors of the second and third wards with three districts to be determined by the County Board of Elections.

### § 17-2. Elections.

The members of the Council shall be elected at the general elections every four years pursuant to the Election Law of the State of New York. The provisions of the Election Law of the State of New York shall apply to and govern all elections of City officers of the City of Batavia elected from wards or at large, including any special elections as hereinafter stated. In a case of a tie vote in any election, the office shall be filled as follows:

- (A) In the event that there is a tie vote in any election for members of the City Council, the office shall be filled by the drawing of lots among the tied candidates to be conducted as follows:
  1. Within 10 days after the election results are final, the tied candidates will personally appear in the City Courtroom to observe the selection process.
  2. Two uniform objects which cannot be differentiated by size or touch shall be used for the drawing.
  3. Two objects each shall be marked in front of the candidates, by the City Clerk with each candidate's initials.
  4. The City Manager will then place all the labeled objects in an opaque container, close the lid, mix the objects, then hold the container in a manner where it is beyond the view of the selector once the lid is opened.
  5. The City Clerk shall serve as the selector and choose one object from the container.
  6. The candidate whose initials appear upon the object chosen shall be declared the winner of the election.
- (B) If a person occupies the office for which a tie vote occurs, as of the date of the general election, this person shall remain in office until the tie vote is resolved. If no such person holds the office on said date, or the person declines or is unable to continue to serve, then the office shall remain vacant after the term expires until the selection process herein is completed.

### **§ 17-3. Appointive officers and employees.**

In addition to the offices created by Charter, there shall be such other officers and employees of the City, and they shall receive such compensation, as the Council may provide by resolution, ordinance or local law. Except as otherwise specifically provided by the Charter, subordinate officers and employees shall be appointed and subject to removal by the head of the department in which they are employees, subject to the provisions of the Civil Service Law and regulations and subject to approval of the Manager.

### **§ 17-4. Surety bonds.**

Unless otherwise provided by law, each officer of the City who has possession of or control over any funds of the City shall give bond for the faithful performance of their duties in such sum as may be fixed and with such sureties as may be approved by the Council. Such bonds shall run to the City and shall be subject to approval as to form and sufficiency by the City Attorney. The premium shall be paid out of City funds.

### **§ 17-5. Failure to testify.**

If any member of the Council or other officer or employee of the City shall, after lawful notice or process, willfully refuse or fail to appear before any court or judge, any legislature committee or any officer, board or body authorized to conduct any hearing or inquiry; or having appeared shall refuse to testify or to answer any question regarding the property, government or affairs of the City, or regarding the nomination, election, appointment or official conduct of any officer or employee of the City on the ground that his or her answer would tend to be self-incriminating, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which one may be asked to testify upon such hearing or inquiry, his or her term or tenure of office or employment shall terminate and such office or employment shall be vacant, and he or she shall not be eligible to election or appointment to any office or employment under the City or any agency.

### **§ 17-6. Conflicts of interest.**

Any City 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 make known that interest and shall refrain from voting upon or otherwise participating in the making of such a contract or sale. Any City officer or employee who willfully conceals such a substantial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office and shall forfeit his or her office or position. Violations of this section with the knowledge expressed or implied of the person or corporation contracting with or making the sale to the City shall render the contract voidable by the Manager or the Council.

### **§ 17-7. False reports.**

Any officer or employee of the City who shall knowingly make a false or deceptive report or statement in the course of performing his or her duty or who shall, except as in this Charter otherwise provided, receive compensation other than from the City for performing any official duty, or who shall accept or receive any gratuity from any person whose interests may be affected by the officer's or employee's official action, shall be charged with the appropriate crime(s) and if convicted shall forfeit his or her office or employment.

## **CHAPTER 18. CLAIMS AND ACTIONS**

### **§ 18-1. Limitations of actions against the City.**

All claims for injury to the person or property alleged to have been caused or sustained by reason of any defects in want of repair or obstruction of any of the highways, streets, alleys, sidewalks or crosswalks or public places of the City shall be presented in accordance with the General Municipal Law. The City Manager or City Clerk shall notify Council of any claims that might materially adversely affect the City. Nothing contained in this section shall be held to repeal or modify existing requirements or statutes of limitation which are applicable to this class of actions, but on the contrary shall be held to be an additional requirement for the right to maintain such action; nor shall anything herein contained be held to modify any existing rule of law relative to the questions of comparative negligence, nor to impose upon the City any greater duty or obligation than that it shall keep its streets and public places in a reasonably safe condition for public use and travel.

## § 18-2. Actual notice of defects.

- (A) The City shall not be liable, and no action shall be maintained against it for damages, for injuries to person or property sustained by reason of any street, sidewalk, roadway, highway, bridge, culvert, drain, sewer, crosswalk, public park, or public place being out of repair, unsafe, dangerous, defective or obstructed unless it appears that written notice of such defective, unsafe, dangerous or obstructed condition, specifying the particular location thereof, has been served upon the City Clerk and unless there was a failure or neglect by the City to repair or remove the defect, danger or obstruction complained of, within a reasonable time after the service of such notice.
- (B) The City shall not be liable, and no action shall be maintained against it for damages, for injuries to person or property sustained in consequence of the existence of snow or ice, or both, upon any sidewalk, crosswalk, street, highway, roadway, bridge, culvert, public park, or public place unless written notice thereof, specifying the particular place and location of the snow or ice, or both, complained of, has been served upon the City Clerk and unless there was a failure or neglect by the City to cause such snow or ice, or both, to be removed or the place to be otherwise made reasonably safe, within a reasonable time after the service of such notice.
- (C) Nothing contained in Subsection (A) and/or (B) above shall in any way be deemed or construed to modify any existing statute requiring such notice as contained in the General Municipal Law or any other statute governing such defects or accumulation of snow or ice.

## § 18-3. Civil action to recover penalties.

Civil actions to recover any penalties or forfeiture incurred under the Charter may be brought in any court having jurisdiction thereof. Such action shall be brought in the corporate name of the City, and in any action brought in the City Court it shall be lawful to complain generally for the amount of such penalty or forfeiture, stating the section of the Charter or of the local law or ordinance under which the penalty is claimed, and to give the special matter in evidence, and the defendant may answer by simply denying the truth of the complaint and give the special matter in evidence. If such action be brought in the City Court against an alleged owner of real property, the fact that title to the real property comes in question on the pleadings or appear on the trial shall not deprive the court of jurisdiction but may be litigated and determined by a judge as the right of the case may appear, but such judgment shall not be evidence concerning the title of real property in any other action or proceeding. The first process, in any such action brought in the City Court, shall be by summons, which may be made returnable forthwith, and in execution may be issued immediately on the rendition of judgment. All penalties and forfeitures shall upon collection be paid to the Clerk-Treasurer. When any judgment shall be rendered in the City Court in favor of or against the City of Batavia, in any action brought for the recovery of any penalty, or for forfeiture or any other action in which the City of Batavia shall be a party, the City Judge shall, within 10 days thereafter, file with the City Clerk a transcript of such judgment for which he or she shall be entitled to charge a fee, and include the same in the costs of said judgment. Whenever a judgment in favor of the City shall be recovered for \$25 or upwards, exclusive of costs, a transcript thereof may be filed in the office of the Clerk of Genesee County, and thereupon the same shall become a lien upon the property of the defendant in such judgment to the same extent and may be collected and enforced in the same manner as other judgments in the County Court.

## § 18-4. Constables.

The Council may at each of its organizational meetings appoint persons to serve as constables to serve for two years, and to have and discharge the powers and duties of that office as provided by law.

## **CHAPTER 19. CITY HISTORIAN**

### **§ 19-1. Established.**

There shall be a City Historian as required by Article 57 of the Arts and Cultural Affairs Law of the State of New York.

### **§ 19-2. Appointment.**

The City Historian shall be appointed by the City Manager with a term of office of four years. The City Historian may be appointed to consecutive terms by the City Manager. The City Historian must be a resident of the City of Batavia.

### **§ 19-3. Duties.**

The duties and job description will be determined by the City Manager and the City Historian will report to the City Manager.

### **§ 19-4. Compensation.**

Compensation, if any, is at the sole discretion of the Batavia City Council. Compensation, if any, must be reflected in the annual City of Batavia budget.

## **CHAPTER 20. TRANSITIONAL PROVISIONS**

### **§ 20-1. Charter supersedes certain laws; local laws and ordinances saved.**

Upon the adoption of this Charter, all laws and parts of laws relating to or affecting the City remaining in force when this Charter shall take effect are hereby repealed and superseded to the extent that they are not consistent with the provisions of this Charter. All local laws and ordinances of the City in effect on the effective date of this Charter shall remain in full force and effect thereafter to the extent that they are not inconsistent with any provisions of this Charter.

### **§ 20-2. Officers and employees.**

Except as otherwise provided herein, nothing contained in this Charter shall affect or impair the rights or privileges of officers or employees of the City or of any agency existing at the time when this Charter shall take effect, or any provision of law in force at the time when this Charter shall take effect and not inconsistent with the provisions of this Charter, in relation to the personnel, appointment, ranks, grades, tenure of office, promotion, removal, pension and retirement rights, civil rights or any other rights or privileges of officers or employees of the City generally or officers or employees of any agency. Whenever this Charter provides for an office, board or commission by the same name or title as existed under the prior Charter, the incumbent or incumbents of such prior office, board or commission upon the effective date of this Charter shall continue as officers or members of the board or commission, respectively, under this Charter for the remainder of their unexpired terms.

### **§ 20-3. Transfer of personnel and functions.**

Wherever, by any provisions of this Charter, functions, powers or duties are assigned to any department or officer which have been heretofore exercised by any other agency or officer, all officers and employee in the classified municipal civil service who at the time when this Charter shall take effect are engaged in the performance of such functions, powers or duties shall be transferred to the department to which such functions, powers or duties are assigned by this Charter, without examination and without affecting existing compensation or pension or retirement rights, privileges or obligations of such officers and employees.

## **§ 20-4. Continuation of powers and duties.**

Any department or officer to whom are assigned by this Charter any powers and duties shall exercise such powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such powers and duties were heretofore exercised. Any provisions in any law, rule, regulation, contract, grant or other document relating to the subject matter of such powers or duties and applicable to the agency or officer formerly exercising such powers and duties shall, so far as not inconsistent with the provisions of this Charter, apply to the department or officer to which such powers and duties are assigned by this Charter.

## **§ 20-5. Pending actions and proceedings.**

No action or proceeding, civil or criminal, pending at the time when this Charter shall take effect, brought by or against the City or any agency or officer, shall be affected or abated by the adoption of this Charter or by anything therein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this Charter be assigned or transferred to another agency or officer; but in that event the same may be prosecuted or defended by the head of the department to which such functions, powers and duties have been assigned or transferred by this Charter.

## **§ 20-6. Repealer.**

The Charter of the City of Batavia enacted effective January 1, 2002, as amended, is hereby repealed.

## **§ 20-7. Effective date.**

This Charter shall take effect January 1, 2010.

## **§ 20-8. Amendment.**

This Charter may be amended pursuant to a local law adopted pursuant to Articles 2 and 3 of the Municipal Home Rule Law or by procedure set forth in Article 4 (Part 2) of said Municipal Home Rule Law.

## **§ 20-9. Separability.**

In the event that any section or provision of this Charter be declared invalid or unconstitutional by a court of competent jurisdiction, the same shall in no manner whatsoever invalidate or affect any other section or provision of this Charter.