

THE CHARTER

§ 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:

LEGAL DESCRIPTIONS ARE YET TO BE DETERMINED...

§ 1-4. Wards.

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

WARD #1 — Bordered on the south by Rt. 33 to Roosevelt Avenue and then Roosevelt Avenue to S. Main Street then S. Main Street to S. Lyon Street and then S. Lyon Street W. Main Street and then W. Main Street to Vernon Avenue and then Vernon Avenue to Richmond Avenue and then Richmond Avenue to Union Street and then Union Street to Rt. 98/Oak Street; on the east by Rt. 98 and a straight line continuation north to the City line; on the north by Batavia Elba Townline Road to Batavia Oakfield Townline Road and then Batavia Oakfield Townline Road to the City line; on the west by ???.

WARD #2 — Bordered on the south by ???; on the east by Batavia Stafford Townline Road to ???; on the north by Rt. 5 to Cedar Street and then Cedar Street to Edward Street and then Edward Street to Buell Street and then Buell Street to Rt. 63/Ellicott Street and then Rt. 63/Ellicott Street to Rt. 5/West Main Street and then Rt. 5/West Main Street to Oak Street Extension and then Oak Street Extension to S. Main Street and then S. Main Street to Roosevelt Avenue and then Roosevelt Avenue to Rt. 33 to the City line; on the west ???.

WARD #3 — Bordered on the east by Seven Springs Road and ???; on the north by Clinton Street/Rt. 33 to East Avenue and then East Avenue to Ross Street and then Ross Street to Washington Avenue and then Washington Avenue to Summit Street and then Summit Street to Richmond Avenue and then Richmond Avenue to Vernon Avenue; on the west by Vernon Avenue to W. Main Street and then W. Main Street to S. Lyon Street and then S. Lyon Street to S. Main Street; on the south by S. Main Street to Oak Street Extension to and then Oak Street Extension to Rt. 5/ West Main Street and then Rt. 5/West Main Street to Rt. 63/Ellicott Street and then Rt. 63/Ellicott Street to Buell Street and then Buell Street to Edward Street and then Edward Street to Cedar Street and then Cedar Street to Rt. 5 and then Rt. 5 to the City line.

WARD #4 — Bordered on the east by Batavia Stafford Townline Road; on the north by Batavia Elba Townline Road; on the west by Rt. 98 to Union Street; on the south Richmond Avenue and then Richmond Avenue to Summit Street and then Summit Street to Washington Avenue and then Washington Avenue to Ross Street and then Ross Street to East Avenue and then East Avenue to Clinton Street/ Rt. 33 and a straight line continuation of Clinton Street/Rt. 33 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 four (4) City wards. If two (2) or more of the wards have a population differential of 10% more than the average of the four 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 word "City of Batavia, N.Y."

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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. Resolutions may also be used in place of ordinances to the extent permissible under State law.

"Inside Tax District": The inside tax district shall consist of all of that portion of the newly consolidated City of Batavia that is situated within the boundaries of the City of Batavia immediately prior to the consolidation with the Town of Batavia, together with any such portions of the consolidated City of Batavia outside of those boundaries which may hereinafter be added to the Inside District by action of the City Council of the City of Batavia. Such action shall be subject to mandatory referendum.

"Outside Tax District": The outside tax district shall consist of all of that portion of the City of Batavia after consolidation with the Town of Batavia that sits outside of the Inside Tax District.

"General City Tax District": The general city tax district shall consist of all of that property representing the entire enlarged City of Batavia as it may exist at any point in time after the merger of the City of Batavia with the Town of Batavia.

§ 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, Ordinance or Resolution 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.

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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 four wards and five 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 thirty (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 two years each to serve for a term of four years. Election of at large members shall not be held in the same election cycle as the election of ward members, but instead (after the initial election to fill all Council seats held after the adoption of this charter) there shall be a two year interval between the election of ward members and the subsequent election of at large members. At the first election held after adoption of this Charter, all Ward Council seats shall be for a term of two years and all At Large Council seats shall be 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 ten (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. 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 may be called by the Council President or by any 3 members of Council by delivering written notice to the residence of each member of Council at least 24 hours in advance or by other means not inconsistent with State law and having been agreed to by Council at its organizational meeting as proper means to provide notice. Further, Council members may, in writing, waive the receipt of notice of any special meeting provided such waiver is executed prior to the commencement 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 (6) members of the Council shall constitute a quorum to do business. The affirmative vote of at least five (5) 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, where his or her financial interests are involved or where an articulated conflict of interest is identified on the record.

Any members of Council not attending four (4) consecutive regular meetings, and who in the judgment of the Council fails 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 (8) 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 (unless otherwise specifically designated), 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, Ordinance or Resolution. The enacting clause of all Local Laws, Ordinances or Resolutions 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 thirty (30) days after the date of passage unless the Council shall by resolution adopted by a vote of seven (7) 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 §15.10. 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 (7) 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 § 15.10, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment 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. Nothing in this provision shall diminish the authority of the City Manager to utilize all of the statutory power granted by the State of New York pursuant to Executive Law or other statutory authority to declare a state of emergency and to take steps to manage an emergency within the City of Batavia.

§ 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 (3) 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 sixty (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.
- (I) Amends the boundaries of the Inside and Outside Tax Districts.

§ 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.

§ 3-17. Interference with Administration.

In recognition of the City Manager's role in administering the day to day operations of the City and its officers/employees, the Council, as a whole and individually through any of its members shall deal with all city offices and employees who are under the direction of the City Manager solely and exclusively through the City Manager unless instructed otherwise by the City Manager. Council members shall not give orders or direction to any such employees or officers. Such restrictions shall not apply in the case of a lawfully authorized investigation by the City Council.

§ 3-18. Investigations by City Council.

City Council shall have the authority, to investigate the actions of the members of City Council and the

operations of the City Council itself. Such investigations shall include the authority to issue subpoenas and take testimony. Failure or refusal to obey a lawful order pursuant to such an investigation shall constitute a misdemeanor punishable by up to 6 months in jail and a fine of \$500.

§ 3-19. Independent Audit.

The Council shall insure that an independent audit of all city accounts be accomplished annually, or at such other intervals as required by state law. The aforementioned audit shall be presented to Council and made a part of the public records of the City of Batavia.

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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 sub committees 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 (3) 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 fifteen days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten days nor later than fifteen 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, Ordinance or Resolution in the mayor or chief executive officer of the City, except as may be otherwise specifically provided by this Charter;
- (C) Execute, on behalf of the City, all contracts, bonds, deeds, obligations and agreements to be entered into by the City. Such actions, when requiring City Council approval of the aforementioned contract, bond, deed, obligation or agreement, shall only occur after all necessary City Council approvals.
- (D) 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;
- (E) Attend all meetings of the Council with the right to take part in the discussions, but without the right to vote;
- (F) 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 semi-annual report to Council and the citizens on the administration of the City government;
- (G) 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;
 - (H) Recognizing the Council's responsibility for establishing long term policy, facilitate the work of Council in developing policies for the City through the means set forth above in (G) above and take all necessary steps to uphold and implement municipal policies that are adopted by City Council;
 - (I) 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;
 - (J) Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law;
 - (K) Examine and inquire into at any time the affairs of any officer or department of the City, other than the Council;
 - (L) 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;
 - (M) 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;
 - (N) Administer the civil service law and regulations and effectuate the City's personnel policies and programs;
 - (O) 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.

- (A) The Clerk shall 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 to 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. The assessment roll shall be prepared in a manner that separately designates all of the assessed parcels in the Inside Tax District and Outside Tax District respectively.

§ 8-2. Assessment roll calendar. [Amended 11-28-2005 by L.L. No. 7-2005; 2-13-2006 by L L No. 2-2006]

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

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

§ 8-3. Board of Assessment Review. [Amended 9-26-2005 by L.L. No. 5-2005; 2-13-2006 by L.L. No. 1-2006]

- (A) 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 thirtieth day of September, five years thereafter. Each member of the Board of Assessment Review shall be limited to two (2) consecutive terms and may be reappointed upon a one year absence from the Board.
- (B) Upon the effective date of this Amended Charter, there shall be a newly appointed Board of Assessment review which shall supersede and replace the existing Board of Assessment Review. The initial set of appointments shall be for terms so fixed that one member's term shall expire at the end of the first official year and the remaining member's terms shall expire at the end of each official year thereafter. At the expiration of each official member's appointment, the replacement member shall be appointed for a full term.
- (C) In choosing the members of the Board of Assessment Review, the City Council shall be required to consider the background, experience and credentials of potential members as well as diversity in representation of the Tiers within the City of Batavia.

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. Provision of Services.

The determination and designation as to which public works services shall be provided in each Tier of the City shall be based upon the City annual budget, which shall be submitted by the City Manager to the City Council, in its final form.

§ 9-5. Inspector of Plumbing.

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 as well as by State law.

§ 9-6. Plumbing and drainage. [Amended 5-27-2003 by L.L. No. 1-2003]

The Manager shall appoint an Examining Board of Plumbers. It shall consist of five (5) members. Two (2) members shall be master plumbers of not less than ten (10) years' plumbing experience and one (1) 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 (3) 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 (2) consecutive terms except that, should there be insufficient applicants meeting the requirements for appointment to the Board, the Manager may re-appoint members for additional 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. Any Police Department established by the City of Batavia shall only be responsible for providing police protection within the Inner Tax District (Tier 2).

§ 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 police officers 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.

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. Any Fire Department established by the City of Batavia shall only be responsible for providing fire protection within the Inner Tax District (Tier 2). The City of Batavia shall permit other fire districts and other fire departments through fire protection districts to provide fire protection services to the remainder of the City of Batavia outside of the Inner Tax District.

§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 firefighters 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 firefighters.

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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 two-thirds 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. The City Attorney shall be admitted to practice law in the State of New York at the time of his or her appointment and shall continue to be so qualified throughout the length of the appointment.

§ 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 Ten Thousand Dollars (\$10,000.00) 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 BOARD

§ 13-1. Planning Board.

- A. There shall be a Planning Board whose five (5) members shall be appointed by the City Manager. No member of City Council may be appointed to this Committee.
- B. The Chair of the Planning Board shall be selected and appointed by the City Manager. Such appointment shall be on an annual basis.
- C. In choosing the members of Planning Board, the City Manager shall be required to consider the background, experience and credentials of potential board members as well as diversity in representation of the Tiers within the City of Batavia. All members shall be residents of the City of Batavia.
- D. Upon the effective date of this amended Charter, the Planning Board shall immediately replace and supersede the existing "Planning and Development Committee". The initial set of appointments, shall be for terms so fixed that one member's term shall expire at the end of the first official year in which such members were appointed and one of the remaining members terms shall expire at the end of each official year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term that shall be five years in length.
- E. There shall be one (1) 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 Board shall be appointed by City Manager. When acting in place of a member of the Planning Board 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 Board shall be for five (5) years. A member may only serve two (2) consecutive terms. After a break of two (2) years, a member may be reappointed. Any vacancy occurring in the Planning Board 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 Planning Board for cause. Any member will be removed for non-compliance 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 Board 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 Board 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.

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CHAPTER 14
ZONING BOARD OF APPEALS

§ 14-1. Appointment of members. [Amended 9-26-2005 by L.L. No. 6-2005]

The City Manager shall appoint the members of the Zoning Board of Appeals and shall appoint the Chairperson of the Board. Such appointment of the Chair shall be on an annual basis. The number of members shall be five. No member of the City Council or of the Planning Board may be appointed. All members shall be residents of the City of Batavia. In choosing the members of the Zoning Board of Appeals, the City Manager shall be required to consider the background, experience and credentials of potential members as well as diversity in representation of the Tiers within the City of Batavia.

§14-2. Term of Appointment

The term of appointment shall be five years on the Zoning Board of Appeals. Members may serve no more than two consecutive terms and must have a two year break before they can be reappointed. Upon the effective date of this amended Charter, this newly appointed Zoning Board of Appeals shall immediately supersede and replace the former Zoning Board of Appeals. The initial set of appointments shall be for terms so fixed that one member's term shall expire at the end of the first official year and the remaining members terms shall be so fixed that one member's term shall expire at the end of each official year thereafter. At the expiration of each official member's appointment, the replacement member shall be appointed for a term of five years in length.

§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 non-compliance 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 (1) alternate member of the Zoning Board of Appeals in accordance with General City Law, section 81. The alternate member shall serve in accordance with General City Law Section 81.

CHAPTER 15

POLICY FOR VOLUNTEER BOARDS / COMMITTEES

§15-1. Appointments

Unless established by State law, rule or regulation, or in another chapter of this Charter, appointments to volunteer Boards and Committees will be made by the City Council. In selecting members to all volunteer boards/committees, unless there are specific criteria designated by Charter or State law, the appointing authority (whether the City Manager or City Council) shall consider the background, experience and credentials of potential members as well as diversity in representation of the Tiers within the City of Batavia.

§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 (1) to (3) years as set by City Council unless otherwise provided by State Law or Charter. If there are no applicants for a board or committee when a vacancy occurs, then after three (3) 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 (2) 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 (3) consecutive meetings shall be in violation of this chapter and may be terminated from his or her respective Board or Committee effective within thirty (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 waiver.

§ 15-4. Notice of termination.

The City Manager; and in the case of a Board/Committee where members are appointed or approved by City Council, then upon approval of the City Council; 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 (2) additional terms.

§ 15-6. Residency requirement. [Added 4-26-2004 by L.L. No. 1-20041

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 1st 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 15th 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. All budget items, both of revenues and expenditures, shall be designated to indicate whether the source of said revenue or expenditure is from properties within the Inside Tax District, the Outside Tax District or the General City Tax District.

§ 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 down payments 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 (5) 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 31st 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.

§ 16-7. Tax levy/tiered taxation.

- (A) There shall be, in the City of Batavia an Inside Tax District, an Outside Tax District and General City Tax District as defined herein. The Council of the City of Batavia shall be authorized to expand the boundaries of the either the Inside Tax District or the Outside Tax District provided such expansion is to land contiguous to the current Inside Tax District and that such action is taken by adoption of a local law.
- (B) The Council of the City of Batavia shall be authorized through approval of the Budget an assessment of the tax levy to determine which services provided in the City of Batavia shall be provided to properties within the Inside Tax District, the Outside Tax District and the General City Tax District, provided, however, that they shall be required to provide police and fire protection through the City of Batavia Police and Fire Department to all properties within the Inside Tax District.
- (C) The Council shall cause to be levied and raised the amount necessary to meet expenses apportioned to the Inside Tax District, the Outside Tax District and the General City Tax District respectively.
- (D) The Council shall be further authorized to take any action necessary to assist in the levy or collection of fees for fire protection provided to any areas within the City of Batavia by entities other than the City of Batavia Fire Department.

§ 16-8. 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.

§ 16-9. No expenditure without appropriation.

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

§ 16-10. 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 shall report such transfers to the Council in writing in a timely manner.

§ 16-11. 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 § 3.12(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.

§ 16-12. 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.

§ 16-13. 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 the 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.

§ 16-14. Due dates. [Amended 2-12-2007 by L.L. No. 1.2007²]

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.

§ 16-15. 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.

§ 16-16. 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

² Editor's Note: This local law was introduced as L.L. No. 6-2006.

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.

§ 16-17. 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 non-payment 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 (3) 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.

§ 16-18. 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.

§ 16-19. Water and sewer charges 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.

§ 16-20. 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 therefore, 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 (7) days of its adoption.

CHAPTER 17
ELECTED OFFICIAL, OFFICERS AND EMPLOYEES

§ 17-1. 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 ten (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 (2) 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, and 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 (1) 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.

§ 17-2. 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.

§ 17-3. 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.

§ 17-4. 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.

§ 17-5. 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.

§ 17-6. 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 reasonable 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, public parking lot, public stairway, 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, public parking lot, public stairway, 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 (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 ten (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 Twenty-Five Dollars (\$25.00) 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 (2) years, and to have and discharge the powers and duties of that office as provided by law.

Draft

CHAPTER 19
CITY HISTORIAN

§19-1. Position of City Historian.

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 (4) 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.

Draft

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. All local laws, ordinances and resolutions previously existing in the Town of Batavia (excluding those relative to elected and/or appointed positions or those that are specifically contrary to this newly enacted Charter or to Chapter _____ of the Laws of 2012 enacted by the State Legislature and signed into law by the Governor) shall continue to be in full force and effect within the Outside Tax District for a period of up to two years or until earlier integrated into the City of Batavia Code of Ordinances, whichever is sooner.

§ 20-2. Officers and employees.

All existing elected positions shall, as authorized by the special law of the State Legislature creating this merger of the City and Town of Batavia (Chapter _____ of the Laws of 2012), be terminated following approval of this Charter by mandatory referendum and shall be filled by new elected terms by election the November following approval of this Charter. The same provision shall apply to appointed boards of the City of Batavia if so provided in the special law of the State Legislature or within the terms of this Charter. For all other positions within the City of Batavia, there shall be no effect or impairment upon the rights or privileges of employees in relation to personnel, appointment, rank, grade, tenure of office, promotion, removal, pension and retirement rights or other rights generally available to City employees. Employees of the former Town of Batavia shall receive all of the protections of the Civil Service Law in addressing the continuation of their positions and the determination of their rights.

§ 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. Effect of State Authorization.

Notwithstanding any contrary provisions of law, and in addition to all transitional provisions contained within this Charter, the transitional period shall be further guided by the language and authorizations contained within Chapter _____ of the Laws of 2012 of the State of New York authorizing this consolidation and charter revision.

§ 20-7. Repealer.

The Charter of the City of Batavia enacted January 1, 2010, as amended, is hereby repealed.

§ 20-8. Effective date.

This Charter shall take effect January 1, 2014.”

§ 20-9. 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.

§ 20-10. 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 of provision of this Charter.