

# **CHARTER**

**CITY OF  
MCBAIN**

*Adopted by the People  
November 4, 1986*

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CITY OF MCBAIN

HOME RULE CITY CHARTER

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To become effective December 1, 1986

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## **Preamble**

We, the people of the City of McBain, Michigan (situated in the County of Missaukee), which was incorporated on March 8, 1907, in order to provide for the good government and welfare of its people, do hereby adopt, ordain and establish this charter for the City of McBain.

## **CHAPTER 1**

### **NAME AND BOUNDARIES**

Section 1.1 The following described territory, together with all territories that may be annexed, shall constitute the territory of the City of McBain, and shall be subject to its municipal control:

Located in the Townships of Riverside and Richland and described as: the Southwest 1/4 of Section 19 and the Northwest 1/4 of Section 30, Town 21 North, Range 7 West, Riverside Township and the Southeast 1/4 of Section 24 and the Northeast 1/4 of Section 25, Town 21 North, Range 8 West, Richland Township and the South 1/2 of the Northeast 1/4 of Section 24, Town 21 North, Range 8 West, Richland Township; except, commencing on the East line of Section 24, 239.60 feet North 03 degrees 17 feet 32 inches West from the East 1/4 corner of said section; thence South 88 degrees 22 feet 49 inches West 340.00 feet; thence North 03 degrees 17 feet 32 inches West 179.68 feet; thence North 88 degrees 24 feet 03 inches East 340.00 feet; thence South 03 degrees 17 feet 32 inches East along the East line of Section 24, 179.54 feet to the place of beginning.

Section 1.2 Upon annexation or detachment of territory, the boundaries shall be changed without

amendment to this charter.

Section 1.3 An official description and map of the current boundaries of the city shall be maintained and kept available in the clerk's office.

## **CHAPTER 2**

### **GENERAL PROVISIONS AND DEFINITIONS**

Section 2.1 Government Description. The legislative power of the city, except as reserved by this charter, shall be vested in a council consisting of a mayor nominated and elected at large, and six (6) councilmembers elected at large, all on a nonpartisan basis. The council shall have the power and authority to adopt such ordinances and resolutions as it shall deem proper.

Section 2.2 Wards. The city shall consist of a single ward.

Section 2.3 Titles and Immunities. The City of McBain and its officers shall be vested with any and all powers and immunities, expressed and implied, which cities and their officers are, or hereafter may be, permitted to exercise or to provide for in their charters under the constitution and laws of the State of Michigan, as fully and completely as though those powers and immunities were specifically enumerated in and provided for in this charter. In no case shall any enumeration of particular powers or immunities in this charter be held to be exclusive.

Section 2.4 Procedure. Where no procedure is set forth in this charter for the exercise of any power granted to or possessed by the city and its officers, statutory procedures enacted by the State of Michigan may be used. If alternative procedures are found in different statutes, the council

shall select that procedure most expeditious and to the best advantage of the city and its inhabitants. Where no procedure for the exercise of any power of the city is set forth, either in this charter or in any statute of the State of Michigan, the council shall prescribe by ordinance a reasonable procedure for the exercise thereof.

Section 2.5 Interlocal Agreements. The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or the United States or any agency thereof.

Section 2.6 Public Records. All public records of the city shall be in the English language. Public records shall be available to the public, except for personnel records of a personal nature, which may be protected by statute.

Section 2.7 Headings. The chapter and section headings used in this charter are for convenience only and shall not be considered to be a part of this charter.

Section 2.8 Estoppel. No estoppel may be invoked against the city.

Section 2.9 Penalties. Any person found guilty by a court of competent jurisdiction of any violation of this charter may be punished by a fine, imprisonment, or both such fine and imprisonment, as determined by the court and the laws of the State of Michigan.

Section 2.10 Regular Business Days. Whenever the date fixed by law or ordinance for the doing or completion of any act falls on a legal holiday or other non-business day for the city, such act shall be done or completed on the next succeeding regular business day for the city.

Section 2.11 Amendments. This

charter may be amended at any time in the manner provided by statute. Should two (2) or more amendments, adopted at the same election, have conflicting provisions, the one receiving the greatest number of votes shall prevail as to those provisions.

Section 2.12 Effect of Illegality of Any Part of Charter. Should any provisions or section, or portion, of this charter, be held by a court of competent jurisdiction to be invalid, illegal, or unconstitutional, such holding shall not be construed as affecting the validity of this charter as a whole, or of any remaining portion of such provision or section.

Section 2.13 Definitions and Interpretations. Except as otherwise specifically provided or indicated by the context of this charter:

- a. The word "assessor" shall mean the City Assessor;
- b. The word "charter" shall mean the City Charter of the City of McBain;
- c. The word "city" shall mean the City of McBain;
- d. The word "clerk" shall mean the City Clerk;
- e. The word "council" shall mean the City Council of the City of McBain;
- f. The word "officer" shall include, but shall not be limited to, the mayor, the councilmembers, and, as herein provided, the administrative officers, deputy administrative officers, and members of city boards and commissions created by or pursuant to this charter;
- g. The word "person" may extend and be applied to bodies politic and corporate and to partnerships and associations, as well as to individuals;
- h. The words "printed" and "printing" shall include printing, engraving, stenciling, duplicating, lithographing, typewriting, photostating, word processing printouts, or any similar method;

i. The words "public utility" shall include all common carriers in the public streets and rights of way: water, sewage, disposal, electric light and power, gas, telephone and telegraph lines and systems, cable television, garbage and refuse collection and disposal and reduction plants, transportation, and such other and different enterprises as the council may determine or designate;

j. The words "publish" or "published" shall include publication of any matter required to be published, in the manner provided by law, or where there is no applicable law, either (1) by publication by the city itself, or at the direction of the city, with copies available for review, and for purchase, at cost; or (2) in one or more newspapers of general circulation in the city, qualified by law for publication of legal notices or in accordance with this charter;

k. Quorum. Except as otherwise expressly provided in this charter (as, for example, in Section 5.11), a quorum of any board created by or under the authority of this charter shall consist of a majority of the number of its members as established by this charter, or by the ordinance creating such commission or board.

l. The word "state" shall mean the State of Michigan;

m. The word "Treasurer" shall mean the City Treasurer;

n. Except in reference to signatures, the words "written" and "in writing" shall include handwritten script, printing, teletype, telegraphic and similar communications;

o. All words indicating the present tense shall not be limited to the time of adoption of this charter, but shall extend to and include the time of happening of any event or requirement to which any provision of this charter is applied;

p. The singular shall include the plural, and plural shall include the singular; the masculine shall extend to and include the feminine; the feminine shall extend to and include the masculine; and either or both shall include the neuter;

q. All references to statutes shall be considered to be references to such statutes as amended.

## **CHAPTER 3**

### **ELECTIONS**

Section 3.1 Qualifications of Electors. City residents qualified to vote on State of Michigan issues, and who are registered voters in the city, shall be eligible to vote.

Section 3.2 Election Procedure. The election of all city officers shall be on a nonpartisan basis. The state election statutes shall apply and control, as near as may be, all procedures relating to city elections. The clerk shall give public notice of each city election in the same manner as is required for giving public notice of general elections in the state.

Section 3.3 Precincts. The election precincts shall remain as they existed on the effective date of this charter. Precinct boundaries may be altered by the City Election Commission, in accordance with statutes.

Section 3.4 Election Commission. An Election Commission is hereby created, with the City Clerk serving as Chairperson. The City Council shall appoint two (2) additional members, qualified registered electors who are not currently running for office and who

are not currently city office holders. Such appointed persons shall serve at the pleasure of the council. The Election Commission shall have charge of all activities and duties required of it by state law and this charter relating to the conduct of elections in the city. The Election Commission shall appoint the inspectors of the election, whose compensation shall be determined in advance by the Council.

Section 3.5 Regular Elections. A non-partisan city election shall be held on the first Tuesday after the first Monday of November of each odd-numbered year.

Section 3.6 Special Elections. Special elections shall be held when called by resolution of the council, at least 60 days before such election or when required by the charter or state law. Such resolution shall set forth the purpose of the election. No more than two (2) special elections shall be called in any one year.

Section 3.7 No City Primary Election. There shall be no city primary election. Candidate nominating petitions shall be filed directly for the general (November) election (Public Act 239 of 1970; MSA 6.1644(5), MCL 168.644e). The candidate(s) for the elective position(s) receiving the highest number(s) of votes at the general election shall be declared the winner(s), even though possibly not receiving a majority of all votes cast, as in the case of more than two candidates for an elective position.

Section 3.8 Nominations Procedure. Candidates for the elective offices of mayor, clerk and treasurer shall be nominated from the city at large; candidates for councilmember seats shall be nominated from the city at large; nominating petition blanks will be furnished by the clerk, upon request.

Candidates may use their own petition blanks, provided the blanks conform substantially with state statutes. Each such petition form shall be signed by not less than ten (10) nor more than twenty-five (25) registered electors of the city, and shall be filed at the clerk's office before four o'clock (4:00) p.m., local time, on or before the seventh (7<sup>th</sup>) Tuesday prior to the date of such election. Nominating petitions for candidates to be nominated at any regular city election shall not be circulated more than forty (40) days prior to the last date for filing.

Each elector signing such petition form shall include his or her residential street and number and the date of signature. No electors shall sign petitions for more candidates for any office than the number to be elected to such office, and should electors do so, all such excess signatures bearing the most recent date(s) shall be invalidated. If petition signatures by an elector bear the same date, and are for more candidates than they number to be elected to such office, all petition signatures by such elector shall be invalidated.

No petition shall be left for signatures in any public place unless accompanied by the circulator of the petition. When a petition is filed by persons other than the person whose name appears thereon as a candidate, it may be accepted only when accompanied by the written consent of the candidate.

Section 3.9 Approval of Nominating Petitions. The clerk shall accept, for filing, only such nominating petitions as comply with requirements as previously stated,

containing the required number of signatures, for qualified candidates.

The clerk shall, within three (3) days after the final date for filing completed petition forms, determine the sufficiency of signatures on each petition filed; if the clerk finds that any petition does not contain the required number of official signatures of registered electors, the clerk shall immediately notify the candidate, in writing, of the insufficiency of such petition(s), by certified mail, unless delivered personally.

Any candidate whose petitions are found to be invalid or insufficient shall be allowed to file supplementary or replacement petitions by four o'clock (4:00) p.m. on the sixth (6<sup>th</sup>) day after the last day for filing original petitions. Petitions found by the clerk to contain the required number of signatures of registered electors for qualified candidates shall be marked "Approved" with the date thereof.

All nominating petitions shall be open to public inspection in the office of the clerk beginning five (5) days after the final date for filing of such petitions.

Withdrawal of a candidate's name from consideration on the ballot must be made in writing and in conformance with the time allowed by statute.

Section 3.10 Council as Nominating Caucus. In the event that no nominating petitions are filed for any person as a candidate for election from the city, the council shall, within ten (10) days after the last day for filing nominating petitions for such positions on the council, meet at the call of the clerk, as a nominating caucus and nominate as a candidate(s) for each such position vacancy at least one (1) qualified elector(s). Notice of such meeting shall be given by the clerk in compliance with the Open Meetings Act.

Section 3.11 Form of Ballot.

The ballots for all elections under this charter shall conform to the printing and numbering of ballots as required by statute, except that no party designation or emblem shall appear on any city ballot.

If two or more candidates or nominees for the same office have the same or similar surnames, the Election Commission shall print the residence address under the name of each of the candidates or nominees on the ballot. Except as provided in this section, there shall be no supplementary identification of candidates or nominees on the ballot.

Section 3.12 Canvass of Votes. The County Board of Canvassers shall canvass the votes of all city elections, in accordance with statute.

Section 3.13 Tie Vote. If in any city election there shall be no choice between candidates by reason of two (2) or more candidates having received an equal number of votes, the determination of the election of such candidates by lot will be provided by state statute.

Section 3.14 Recount. A recount of the votes cast at any city election for any office, or upon any proposition, may be had, in accordance with the election laws of the state.

Section 3.15 Recall. Any elective official may be removed from office by the electors of the city in the manner provided by the general laws of the state. A vacancy created by the recall of any elective official shall be filled in the manner prescribed by state law.

Section 3.16 Absentee Ballots. The electors of the city shall be entitled to vote by absentee ballots at any city election, under the circumstances and in the manner provided by law.

Section 3.17 Voting Hours. The polls of all elections shall be opened and closed at the time

prescribed by law for the opening and closing of polls at state elections.

## **CHAPTER 4**

### **MUNICIPAL POWERS**

Section 4.1 General Provisions. The City shall have power to manage and control its finances, rights, interests, buildings and property, to enter into contracts, to act to advance the interests, good government and prosperity of the City and its inhabitants, and to protect the public peace, morals, health, safety and general welfare. In the exercise of such powers, the City may enact ordinances, rules, and regulations, and take such other action as may be required, not inconsistent with law. The power of the City shall include, but shall not be limited to, the following:

Section 4.2 Nuisance. To declare as a hazard or nuisance any act or condition, upon public or private property, or both, which is or may be dangerous to the health, safety, morals, or welfare of the inhabitants of the City. To provide for the abatement thereof; and to provide that the costs of such abatement shall be charged as a special assessment against the real property on which the hazard or nuisance is located.

Section 4.3 Public Buildings, Grounds, Acquisitions. To acquire private property, including necessary lands, buildings, structures and improvements, by purchase, gift, condemnation, lease, construction or otherwise, either within or without its corporate limits, but within the corporate limits of the county in which it is located, for any public use or purpose within the scope of its powers, whether or not specifically mentioned herein.

Section 4.4 Property, Lease,

Sale, etc. To maintain, develop and operate its property, and upon the discontinuance thereof to lease, sell or dispose of the same, subject to any restrictions placed thereupon by law.

Section 4.5 Public Utilities. To acquire, own, establish, construct and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, or power to the municipality and the inhabitants thereof.

Section 4.6 Public Ways. To use, regulate, improve and control the surface of its streets, alleys and public ways, and of the space above and beneath them.

Section 4.7 Public Ways and Places, use by Public Utility. To use, by other than the owner, property located in streets, alleys and public places in the operation of a public utility, upon the payment of a reasonable compensation to the owners thereof.

Section 4.8 Street and Alley Plan. To plan streets and alleys within and for a distance of not more than three (3) miles beyond its limits.

Section 4.9 Water Courses. To use, control and regulate streams, waters and water courses within its boundaries, but not so as to conflict with the law or action thereunder where a navigable stream is bridged or dammed; or with riparian or littoral rights without their corporate limits.

Section 4.10 Parking of Vehicles; Facilities, Charges. To acquire, establish, operate, extend and maintain facilities for the storage and parking of vehicles within its corporate limits, including the fixing and collection of charges for services and use.

Section 4.11 Gasoline Stations. To regulate and restrict the locations of oil and gasoline stations.

Section 4.12 Zoning. To establish districts or zones within which the use of land and structures



may be regulated by ordinance. Such regulations in one (1) or more districts may differ from those in other districts.

Section 4.13 Zoning of Annexed Territory. To rezone, within the procedures prescribed by law, territory lawfully annexed to the City.

Section 4.14 Trades, Occupations, Amusements. To regulate trades, occupations and amusements within its boundaries, and to prohibit such trades, occupations and amusements as are detrimental to the health, morals or welfare of its inhabitants.

Section 4.15 Billboards. To license, regulate, restrict and limit the number and locations of billboards within the City.

Section 4.16 Regulations, Enforcement. To enforce all such local, police, sanitary and other regulations as are not in conflict with the general laws.

## **CHAPTER 5**

### **CITY COUNCIL**

Section 5.1 Elective Officers. The Council shall consist of the mayor and six council members.

a. Election, Mayor. The mayor shall be nominated and elected from the city at large, for a two-year term, in November of each odd-numbered year. The mayor shall be a member of the council, as defined further in this chapter.

b. Council members; Nomination and Representation; At Large Election; Overlapping Terms.

1. City Council members shall reside in the city.

2. Prospective council members shall be nominated at large and elected by the city at large for four-year terms.

3. At each regular city election in November of odd-numbered years three (3) council members shall be elected so as to provide overlapping council member terms.

4. In cases of a council member vacancy, at the regular city election, the ballot may specify which council member candidate(s) shall be voted upon for a four-year term, and which council member candidates(s) shall be voted upon for a two-year term, so as to preserve overlapping terms. If no candidate elects to run for the two-year term, as shown on the candidate's nominating petition(s), the council member candidate who receives the greatest number of votes shall be elected to a four-year term; the council member candidate who receives the second-highest number of votes shall be elected to a two-year term (see also Section 3.10, Council as Nominating Caucus).

Section 5.2 Qualifications. Each elective city official, including any person appointed to a vacant city elective position, must be a duly registered elector in the city, and shall have been a resident of the city for at least twelve (12) months immediately prior to the election at which he or she is a candidate for office.

Section 5.3 Beginning of Term of Office. All elected officials shall hold office for their elected term from

the first council meeting following each regular city election at which they were elected.

Section 5.4 Oath of Office. Each elective or appointive officer of the city, before entering upon the duties of his or her office, shall take and subscribe to the oath of office prescribed by the state constitution, which shall be filed and kept in the office of the clerk. Failure to take the oath of office shall be deemed a refusal to serve, and the office shall be declared vacant.

Section 5.5 Vacancy Defined. In addition to other provisions of this charter, a vacancy shall be deemed to exist in any elective office on the day when the officer dies, files his or her resignation with the city clerk (vacancy adjusted to effective date stated in resignation), is removed from office, moves from the city, is convicted of a felony, or of misconduct in office under this charter, is judicially declared to be mentally incompetent, or is absent from three (3) consecutive regular meetings of the council, unless excused by the council for cause to be stated in the record of council proceedings.

Section 5.6 Vacancies, Appointments. If a vacancy occurs in an elective office, except in the case of recall, the council shall fill the vacancy by appointment within 30 days thereafter, Each such appointment, except as otherwise provided in this charter or by state statute, shall be for a term ending at the first meeting following the next regular city election.

Section 5.7 Delivery of Office to Successor. Any officer or employee who leaves an office or employment for any reason shall deliver forthwith to the successor or supervisor, in the office of employment, or to the mayor, all city property which is in his or her custody, possession or control.

Section 5.8 Restrictions Concerning Officers.

a. Except where authorized by law, or where approved unanimously by the council at a duly-called council meeting, no council member shall hold any other city office or city employment during his or her elected term, and no former council member shall hold any compensated appointive city office or city employment until one (1) year after the expiration of his or her elected term. This shall not apply to appointed city boards or commissions, or volunteer firemen.

b. No council member shall become a candidate for any other elective city office, except to succeed himself or herself, without first resigning from the council seat. This restriction does not apply to a council member whose term of office will expire with the election at which he or she is to be a candidate for another elective city office.

Section 5.9 Vested Interest. No member of the council or of any city board or commission shall vote on any issue or matter in which the council member or his/her family shall have a proprietary or financial interest, or as the result of which the council member may receive or gain a financial benefit. If a question is raised under this section at any council, board or commission meeting, such specific question shall be resolved before the main question shall be voted on; the council, board or commission member concerning whom the question was raised shall not vote on such determination.

Section 5.10 Relatives, Holding Office, Disqualification.

a. Unless the council shall by unanimous vote, which vote shall be recorded as part of the official proceedings, determine that the best interests of the city shall be served, relatives of any elective or appointive

officer are disqualified from holding any appointive office or city employment during the term for which said elective or appointive officer was elected or appointed. This section shall in no way disqualify such relatives or their spouses who are appointive officers or employees of the city at the time of the election or appointment of said official, or employed by the city at the time of the adoption of this charter.

b. The provisions of this relationship, above, specifically applies to the prohibition of the employment of relatives to be directly under the supervision of another relative. Employment in another department than that of the relative's supervision is permissible, subject to prior review and approval by the council.

Section 5.11 Quorum; Ordinances, Resolutions, Appointments, Approval of Majority of Full Council Required. A majority of the council (a minimum of four (4), not including the mayor) shall constitute a quorum for purposes of conducting business. However, except in those cases where a larger majority is required by law, no ordinance or resolution shall be adopted or passed, no contract entered into, nor shall any appointment be made, nor any person removed from office as required or permitted by this charter, except by the affirmative vote of at least a majority of the full council (a minimum of four (4) affirmative votes, not including the mayor).

Section 5.12 Compensation, Elected Officials.

a. Provisions of this section shall be subject to the periodic review of a local Compensation Commission, to be established by ordinance in accordance with state statute.

b. Until elected officials' remuneration has been determined by the local Compensation Commission, and becomes effective, the amounts being paid to elected officials at the time this charter is adopted shall remain in effect.

Section 5.13 Right of Public Hearing. Any member of the council charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing, on demand; notice of such hearing shall be published in one (1) or more newspapers for general circulation in the city at least one (1) week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the courts.

Section 5.14 Council Organization. The council shall, at its first meeting following each regular city election, or within one (1) week thereafter, elect one of its members to serve as mayor pro tem, and shall set the times for holding regular meetings.

Section 5.15 Mayor, Powers.

a. The mayor shall be the executive officer of the city. The mayor shall preside at all council meetings, may speak in such meetings as any other member of the council, but shall vote only in case of a tie. The mayor shall be the official head of the city for ceremonial purposes, and for the purposes of military law and the service of legal process upon the city.

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

c. Appointments, Advisory Boards, Committees. The mayor, with the advice and consent of

the council, may from time to time appoint such committees or boards as are deemed appropriate, and may advise and consult with such committees or boards, and with appropriate departments, regarding any municipal activity. Such committees or boards shall be advisory, and shall serve temporarily and without compensation unless otherwise provided by the council.

d. The mayor shall not possess the veto power.

Section 5.16 Mayor Pro Tem. The mayor pro tem shall act when the mayor is absent or disabled. When a doubt exists concerning the ability of the mayor to perform the duties of that office, the council shall, by resolution, determine whether the mayor pro tem shall act in the place of the mayor. Such determination shall stand until the council determines that such disability or inability ceases.

Section 5.17 Regular Meetings. Regular meetings of the council will be held at least once in each calendar month, at the city hall.

Section 5.18 Special Meetings.

a. Notice. Special meetings shall be called by the clerk on the request of the mayor or any two (2) members of the council; notice shall be posted at least eighteen (18) hours in advance, in compliance with the Open Meetings Act.

b. Permissible Business. At a special meeting of the council only the item(s) stated in the meeting notice may be acted upon.

Section 5.19 Meetings Open to the Public. All regular and special council meetings shall be open to the public, and the council's rules of order shall provide that citizens shall have a reasonable opportunity to be heard.

Section 5.20 Rules of Order. The council shall determine its own rules and order of business and shall keep a legislative journal of all its proceedings in the English

language which shall be signed by the clerk. A vote upon all ordinances and resolutions shall be by roll call, an entered upon the records, except that where the vote is unanimous it shall only be necessary to so state. If a point of order is not covered by the council's regular procedures, Robert's Rules of Order shall be used as a guideline.

Section 5.21 Public Access to Records. The people shall have access to the minutes and records of all regular and special meetings of the council, at all reasonable times.

Section 5.22 Council, Powers. The powers of the council shall include, but not be limited to, the following:

a. Investigations. The council or its duly appointed representatives may inquire into the conduct of any city department, office, officer, or employee. Failure on the part of any officer or employee to produce books, papers, and other evidence as requested by the council shall constitute misconduct in office.

b. Depositories. The council shall have the power to select one or more depositories for city funds.

c. Public Health. The council shall be the city's board of health, as provided by and in accordance with law. The health functions of the council may be exercised by any county or district health department which may have health jurisdiction in the city, to the extent and manner provided by law.

d. Licenses. The council shall, by ordinance, prescribe the terms and conditions upon which licenses may be granted, suspended, or revoked and may require an exact payment of such reasonable sums for any license as the council may deem proper.

e. Cemeteries. The council shall have the power to enact all ordinances deemed necessary for the

establishment, maintenance and protection of cemeteries, together with improvements thereon and appurtenances thereto, owned or hereafter acquired by the city, either within or without its corporate limits.

f. Trusts. The council may, in its discretion, receive and hold any property in trust for cemetery, park, or other municipal purposes. Any trust now existing for the benefit of the city shall be continued to full force and in accordance with the cy pres doctrine.

g. Traffic violations bureau. The council shall have the authority to establish, by ordinance, a traffic violations bureau, as provided by law.

h. Employee Relations Committee. The council annually shall appoint two (2) of its members to serve as an employee relations committee. The committee's duties and procedures shall be established by ordinance.

i. Further Functions and Duties. The council shall determine all matters of city policy, and adopt ordinances and necessary rules and regulations to make the same effective. Further, the council shall, subject to the limitation of law, raise revenues and make appropriations for the operation of the city government, provide for the public peace, health and safety of persons and property (see also Section 3.10, Council as Nominating Caucus).

## **CHAPTER 6**

### **LEGISLATION**

Section 6.1 City Legislation Preserved. All bylaws, ordinances, resolutions, rules and regulations of the City of McBain which are consistent with the provisions of this charter, in force and effect at the time of the adoption of this charter, shall continue in force and effect until amended or repealed.

Section 6.2 Introduction, Style, Consideration, Recording of Ordinances.

a. Introduction. Each proposed ordinance shall be introduced in written form.

b. Style. The style of all ordinances adopted by the council shall be "The City of McBain ordains:"

c. Consideration. Unless declared to be emergency in nature by a vote of not less than two-thirds (2/3) of the full membership of the council, no ordinance shall be adopted except at a regular council meeting held not less than three (3) weeks following introduction of such ordinance. An emergency ordinance may be adopted at any regular meeting, or at a special meeting if the nature of the ordinance is stated in the advance notice of the special meeting. An emergency ordinance may have immediate effect.

d. Recording.

1. Each ordinance shall be recorded by the clerk in a book reserved for that purpose, and it shall be the duty of the mayor and the clerk to sign each ordinance, for authentication.

2. Each ordinance, after adoption, shall be identified by number.

Section 6.3 Certified Copy, Use. All ordinances, resolutions, and official proceedings of the city may be placed in evidence in all courts and tribunals by a copy certified by the clerk, bearing the city seal, as an alternate to other methods provided or permitted by law. The city may charge a reasonable fee for publication or reproduction cost of requested documents.

Section 6.4 Ordinance Publication.

a. Posting; Summary Publication. Each ordinance shall be published in a manner provided by the council and permitted by law. If

publication is made by posting, a notice of the place of posting and a brief statement of the purpose of the ordinance shall be published in one or more of the newspapers published in the city, within 10 days after posting.

b. Adoption by Reference. The council may adopt any detailed technical regulations as a city ordinance by reference to any recognized standard code, or if such code be written in detail for the city and adopted as an ordinance, the publication of a sufficient number of copies in booklet form, available for distribution at cost, shall be sufficient publication of such ordinance, and any amendment to or revision of such adopted code or detailed technical ordinance may be published in the same manner.

c. Ordinance codification. If the city ordinances are codified, for ready reference, the availability of printed copies in the office of the clerk, for public inspection, and for sale at cost, shall constitute publication.

d. Revision of Ordinances, Resolutions. The council shall from time to time review city ordinances and resolutions, to determine if conditions warrant revision, or repeal of obsolete provisions.

Section 6.5 Effective Date of Ordinances. Unless adopted by emergency procedures provided in this chapter, no ordinance shall take effect until 20 days after adoption.

Section 6.6 Penalties. The council shall provide, as appropriate, for the punishment of ordinance violations. No such punishment shall exceed the maximum fine, or imprisonment, or both, provided by statute, in the discretion of the court. Imprisonment for violations of ordinances may be in the county jail.

Section 6.7 Initiative, Referendum.

a. Right of Electors. The

electors of the city have the right to initiate any ordinance, or to secure a referendum on any ordinance, by petition.

b. Petitions; Affidavit; Insufficient Signatures, Procedure.

1. An initiatory or a referendary petition shall be signed by registered electors of the city equal to not less than fifteen percent (15%) of the number of registered electors of the city according to the records of the clerk on the date the petition is filed. No referendum shall be permitted respecting any ordinance required to be passed by the council by any law, except in the manner provided by such law. Such petition may be the aggregate of two or more petition papers. Each signer of a petition shall sign his or her name, date, and place of residence by street and number.

2. A sworn affidavit shall be attached to each petition, stating that each signature is the genuine signature of the person, and that it was signed in the presence of the person so affirming.

3. Such petition shall be filed with the clerk, who shall, within 10 days, canvass the signatures to determine sufficiency. Any signatures obtained more than 60 days before the filing of such petition with the clerk shall not be counted. If such petition is found to contain an insufficient number of signatures of registered electors, or to be in improper form or compliance with the requirements of this chapter, the clerk shall notify, forthwith, the person filing such petition, and 10 days from such notification shall be allowed for the filing of supplemental petition papers. When found sufficient and proper, the petition shall be presented by the clerk to the council, at its next regular meeting.

c. Petitions, Council Procedure.

1. Upon receiving an initiatory petition, the council shall, within 30 days, adopt the petitioned ordinance, or determine to submit the proposal to the electors.

2. Upon receiving a referendary petition, the council shall, within 30 days, repeal the ordinance to which the petition refers, or determine to submit the proposal to the electors.

3. Submission to electors. Should the council decide to submit the proposal to the electors, it shall be submitted at the next election held in the city for any purpose, or, in the discretion of the council, at a special election. The result shall be determined by a majority vote of the electors voting thereon, except in cases where otherwise required by law.

4. Referendary Petition, Ordinance Suspension. The certification by the clerk that a referendary petition is sufficient, if such petition is submitted within 40 days after passage of the ordinance to which such petition refers, shall automatically suspend the ordinance in question, pending repeal by the council or final determination by the electors.

5. Petition-Initiated Ordinances. An ordinance adopted by the electorate through initiatory proceedings may not be amended or repealed by the council for a period of two (2) years after the date of the election at which the ordinance was adopted.

Section 6.8 Conflicting Ordinance Provisions. Should conflicting provisions be contained in two or more ordinances adopted at the same election, the ordinance receiving the largest affirmative vote shall prevail, as to the conflicting provisions.

## CHAPTER 7

### THE ADMINISTRATIVE SERVICE

#### Section 7.1 Administrative Officers.

a. Listed. The administrative officers shall be the City Assessor, City Attorney, City Clerk, City Treasurer, and each of the department heads. The council may, by ordinance or resolution, create such additional administrative offices, or combine any administrative offices, in any manner consistent with law, and prescribe the duties thereof as the council may deem necessary for the proper operation of the city government.

b. Appointment, Terms. Except for the clerk and treasurer, who shall be elected at large for two-year terms, administrative officers shall be appointed by the city council and shall serve for indefinite terms at the pleasure of the council.

c. Residency. Residency requirements shall be at the discretion of the City Council, except that the elected clerk and treasurer must be city residents (see also Section 5.2, Qualifications).

d. Qualifications. In making appointments of administrative officers, the appointing authority shall consider only the proposed appointee's fitness and ability to discharge the duties of the office.

e. Removal. Except for the elected clerk and treasurer, the city council may, at any time, remove for just cause any administrative officers, as well as members of the city boards and commissions.

f. Responsible to Council. The administrative officers shall be responsible to and shall perform their duties under the general, collective supervision of the council (see also Section 5.33h, Employee Relations Committee).

g. Employees. All persons employed by the city who are not

Administrative officers, or members of a board created under this charter, or declared to be administrative officers by or under authority of this section, shall be deemed to be employees of the city.

h. Compensation. The compensation of all administrative officers shall be in accordance with budget appropriations therefor. Within budget appropriations, reasonable expenses may be allowed to administrative officers when actually incurred and after such expenses have been audited by the City Clerk and approved by the council.

#### Section 7.2 City Clerk.

a. Council Meetings; Journal. The City Clerk, or the Deputy Clerk, shall attend all meetings of the City Council and shall keep a permanent journal of council proceedings, in the English language.

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

c. Records. The clerk shall keep a record of all ordinances, resolutions, and actions of the council and shall keep the council informed concerning such matters.

d. Oaths. The clerk shall have power to administer all oaths required by law and by the ordinances of the city.

e. Certification. The clerk shall certify all ordinances and resolutions enacted or passed by the

council and such certification shall be prima facie evidence of the due and proper action of the council thereon.

f. Accounts. The clerk shall be the general accountant of the city, shall keep the books of account of all city assets, receipts and expenditures, and shall keep the council informed as to the city's financial affairs. The clerk shall provide the city's system of accounts, in compliance with such uniform systems required by law.

g. Inventory. The clerk shall maintain an inventory of city-owned property.

h. Financial Reports. The clerk shall balance all the city's books of account at the end of each calendar month, and shall make a report thereon to the council.

i. Inquiry Audit. The clerk shall, at any time upon direction of the council, examine and audit all books of account kept by any official or department of the city, to matters concerning misconduct in office and violations of this charter and the ordinances of the city.

j. Budget Officer. Unless the council shall delegate such duties to another officer of the city, the clerk shall be the budget officer of the city and shall prepare and submit to the council the annual budget proposal of the city, together with supporting information in explanation thereof.

k. Other duties. The clerk shall perform such other duties as the council shall direct, or which may be required by law.

#### Section 7.3 City Treasurer.

a. Custody of Moneys. The City Treasurer shall have the custody of all money of the city and all evidences of value belonging to or held in trust by the city.

b. Depositories. The treasurer shall keep and deposit all money or funds in such manner and only in such places as the council may determine, or as may be required by



law.

c. Tax Collection. The treasurer shall have such powers, duties, and prerogatives in regard to the collection and custody of state, county, school district, and city taxes and moneys as are conferred by law.

d. Other Duties. The treasurer shall perform such other duties as may be prescribed by law or by the council.

Section 7.4 Deputies of the Clerk and Treasurer. The City Clerk and City Treasurer may appoint and remove their deputies, subject to the budget allowances therefore and the approval of the council relative to appointments. Each deputy shall possess all the powers and authority of the deputy's superior officer.

#### Section 7.5 City Attorney.

a. Legal Advisor. The City Attorney shall act as the legal advisor of and be responsible to the City Council in all respects concerning the performance of the functions of its officials duties. The attorney shall advise the administrative officers concerning their statutory and charter duties, when so requested, and shall file with the clerk a copy of all written opinions given by the attorney.

b. Ordinance Violations; Court Cases. The attorney shall prosecute ordinance violations and shall represent the city in cases before courts and other tribunals.

c. Preparation of Ordinances. The attorney shall prepare or review all ordinances, regulations, contracts, bonds, and such other instruments as may be required by this charter or by the council, and shall promptly give an opinion as to the legality thereof.

d. Council meetings. The attorney shall attend council meetings, as requested.

e. Boards, Attorney For. The City Attorney shall be the attorney for the several boards of the city.

f. Other Duties. The attorney shall perform such other duties as may be prescribed for him by this charter or by the council.

g. Assistant; Special Counsel. Upon the attorney's recommendation, or upon its own initiative, the council may provide for an assistant to the City Attorney, and may retain special legal counsel to handle any matter in which the city has an interest, or to assist the attorney in connection therewith.

Section 7.6 City Assessor. The assessor shall possess all the powers vested in and shall be charged with all the duties imposed upon assessing officers by law. The assessor shall make and prepare all regular and special assessment rolls in the manner prescribed by law. The assessor shall perform such other duties as may be prescribed by law or by the council.

Section 7.7 Other Administrative Officers. The duties of administrative officers for which provision is not made herein shall be established by law and by the ordinances and resolutions of the council.

## **CHAPTER 8**

### **GENERAL FINANCE**

Section 8.1 Fiscal Year. The fiscal and budget year of the city shall be determined by the City Council; the fiscal year's beginning date may be changed, to best serve the city's financial schedules and procedures, as set forth by ordinance or council resolution.

#### Section 8.2 Annual Budget.

a. Preparation Schedule. Not less than four (4) months preceding the beginning of the fiscal year, each officer, department, and board of the city shall submit to the budget officer an itemized estimate of its expected income, if any, and

expenditures during the next fiscal year, for the department or activities under its control. The budget officer shall compile and review such budget requests, shall prepare budgetary recommendations, and submit them to the council at its meeting during the third month preceding the beginning of the fiscal year.

b. **Completeness; Uniformity.** The budget document shall present a complete financial plan for the ensuing fiscal year, and shall include those items required by the Uniform Budgeting and Accounting Act, No. 621 of the Public Acts of 1978, as amended. Such supporting schedules as the council may deem necessary or require also shall be included.

c. **Budget Hearing.** A public hearing on the budget proposal shall be held not less than one (1) week before its final adoption, at such time as the council shall direct. Notice of the public hearing shall be published by the clerk at least one (1) week in advance thereof, and the budget proposal shall be available, for public review, in the office of the clerk during such week.

d. **Adoption.** The council shall, not later than the second month preceding the beginning of the fiscal year, adopt by resolution a budget for the ensuing fiscal year, and make appropriations therefore. The council shall determine and declare the amount of money necessary to be raised by property taxation, which amount shall not be greater than permitted in this charter or by general law.

e. **Control.** Except for purposes which are to be financed by the issuance of bonds or by special assessments, no money shall be drawn from the treasury of the city, except in accordance with the budget in effect and the appropriation for such purpose. No obligation for the

expenditure of money shall be incurred without an appropriation covering all payments which will be due under such obligation during the fiscal year.

f. **Unappropriated Funds; Transfers.** The council may, upon recommendation of the budget officer and by an affirmative vote of not less than two-thirds (2/3) of its full membership, transfer from any budget item or account, department, or agency to another, unappropriated funds or unencumbered appropriation balances, or any portion thereof.

g. **Reappropriation.** The balance in any appropriation which has not been encumbered at the end of the fiscal year may be reappropriated during the next fiscal year, as determined by the council.

h. **Financial Reports.** At least quarterly the budget officer shall submit to the council financial reports showing the relationship between the estimated and actual revenues and expenditures through the end of the preceding quarter; if it appears that the revenues are less than anticipated, the council may, by resolution, reduce appropriations, except amounts required for debt and interest charges, so as to keep expenditures within revenues.

**Section 8.3 Audit.** An independent audit shall be made of all accounts of the city government not less frequently than biennially, at the close of such fiscal year(s), and shall be completed within the succeeding fiscal year. Special independent audits may be made at any time that the council may designate. All such audits shall be made to the council by a Certified Public Accountant (CPA) designated by the council. Each audit and reports supplemental thereto shall be made public in the manner that the council determines, and copies of the audit shall be placed in the office of the clerk.

**Section 8.4 Special Accounts.**

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

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

c. At the end of each fiscal year, the council may transfer any unencumbered balance or any part thereof into one or more of the accounts authorized to be created by this section.

d. Moneys which are accumulated for the purpose of public improvements, as set forth in this section, shall be used only at the direction of the council and only for the purpose provided in the original ordinance establishing such account, unless their use for some other municipal purpose be authorized by a majority vote of the electors of the city who vote on the proposition to amend such ordinance.

e. Completion; Transfer. After the purpose of any such account has been fulfilled, any balance remaining therein may be transferred by the council to any other special account or to the general fund of the city.

#### Section 8.5 Withdrawal of City Moneys.

a. Unless otherwise provided by law, ordinance, or council

resolution, all moneys shall be drawn from the treasury pursuant to the authority and appropriation of the council.

b. Signatories. Checks for the disbursement of city funds shall be signed by the clerk or treasurer; checks exceeding certain amounts or for certain purposes may require countersignature by additional city officials, as may be specified by the council.

Section 8.6 Depositories. The council shall designate depositories for city funds in accordance with law, and shall provide for the regular deposit of all city moneys.

## CHAPTER 9

### TAXATION

Section 9.1 Power to Tax; Tax Limit. The city shall have the power to assess taxes and to lay and collect rents, tolls, and excises. The annual general ad valorem tax levy for municipal purposes shall not exceed one and one-half per cent (15 mills) of the assessed value of all real and personal property in the city.

Section 9.2 Subject of Taxation; Procedure.

a. The subjects of ad valorem taxation for municipal purposes shall be the same as for state, county, and school purposes under the general laws of the State.

b. Except as otherwise provided by this chapter, city taxes shall be assessed, levied, and collected in the manner provided by state law.

Section 9.3 Exemptions. The power of taxation shall never be surrendered or suspended by any grant or contract to which the city shall be a party. No exemptions from taxation shall be allowed, except such as are expressly required or permitted by law.

Section 9.4 Assessment Roll. The assessor shall prepare and

certify an assessment roll of all property in the city, in the manner and form, and at the time required by general property tax laws of the state.

#### Section 9.5 Board of Review

a. Qualifications. A board of review is hereby created, composed of three members who have the qualifications for holding elective city office, as set forth in Chapter 5 of this charter.

b. Appointment; Removal; Terms. The members of the board of review shall be appointed annually by the council, and may be removed for reasons of nonfeasance if at least two-thirds (2/3) of the full council vote to remove any such official(s).

c. Chairperson; Secretary. The board shall annually, on the first day of its meeting, select one of the members chairperson for the ensuing year. The assessor shall be secretary of the board, and shall be entitled to be heard at its sessions, but shall have no vote on any proposition or question.

d. Duties, Functions. The board of review shall meet at the time and dates as required by township boards of review by the general property tax laws, at such place as designated by the council. The board of review shall have the same powers and shall perform the same duties as are conferred by law and required of township boards of review.

e. Meetings; Procedure. Notices of time, date, location of meetings and assessments shall conform to the requirements of the general property tax law; however, the board of review shall hold at least one (1) evening session.

Section 9. City Tax Roll. After the board of review has completed its review of the assessment roll, the assessor shall prepare a tax roll, to be known as the City Tax Roll. Upon receiving the certification of the several amounts to

be raised, assessed, and charged for city taxes, as provided in the preceding section, the assessor shall proceed forthwith (a) to spread the amounts of the general ad valorem tax according to and in proportion to the several valuations set forth in said assessment roll, and (b) to place such other assessments and charges upon the roll as are required and authorized by the council.

Section 9.7 Tax Roll Certified for Collection. After spreading the taxes and placing other assessments and charges upon the roll, the assessor shall certify the tax roll, the assessor shall certify the tax roll, and attach a warrant thereto directing and requiring the treasurer to collect the taxes levied, prior to March first of the following year.

Section 9.8 Tax Payment Date. City taxes shall be due and payable annually, at such date(s) as specified by ordinance, in accordance with state law.

Section 9.9 Taxes Due; Notification. The treasurer shall not be required to make personal demand for the payment of taxes but, upon receipt of the city tax roll, the treasurer shall forthwith mail a tax statement to each person named in the tax roll, which mailed statement shall be a sufficient demand for the payment of all taxes assessed. Neither the failure on the part of the treasurer to mail such statement, nor the failure of any person to receive the same, shall invalidate the taxes on the tax roll or release any person or property assessed from the liabilities provided in this charter, in case of non-payment.

Section 9.10 Collection of Taxes. All taxes paid on or before the specified due date(s), including any applicable administration fees, shall be collected by the Treasurer.

Section 9.11 State, County, and School Taxes. For the purpose of assessing and collecting taxes for

state, county, and school purposes, the city shall be considered the same as a township, and all provisions of law relative to the collection of, and accounting for, such taxes and the penalties and interest thereon shall apply. For the purpose of collecting state, county, and school taxes, the treasurer shall perform the same duties and have the same powers as township treasurers under state law.

**Section 9.12 Protection of City Lien.** The city shall have power, insofar as the exercise thereof shall not conflict with or contravene the provisions of law, to acquire such an interest in any premises within the city, by purchase at any tax or other public sale, or by direct purchase from or negotiation with the State of Michigan or the owner, as may be necessary to assure to the city the collection of its taxes, special assessments, charges, and any interest thereon which are levied against any lot or parcel of real property or to protect the lien of the city therefor, and may hold, lease, or sell the same. Any such procedure exercised by the city to assure the collection of its taxes or the protection of its tax or other liens shall be deemed to be for a public purpose. The council may adopt any ordinance which may be necessary to make this section effective.

**Section 9.13 Collection of Delinquent Taxes.** All taxes, assessments, and charges upon real property on the tax roll remaining uncollected by the treasurer on the first day of March following the date when the roll was received by him shall be returned to the County Treasurer in the manner provided by statute.

**Section 9.14 Disposition of Real Property Held by City.** When the city has acquired any interest in property to protect the city's tax lien thereon, the owner of any interest therein, by fee

title, as mortgagee, or as vendor or vendee under a land contract shall have the right to purchase the city's interest therein, upon payment to the city of the amount of money which the city has invested in the form of taxes, special assessments, charges, fees, penalties, interest, and costs, paid by the city to protect its title in such property. After the lapse of 90 days after the date that the city acquired title to any such property, the council may remove the same from the market by determining that such property is needed for and should be devoted to public purposes, naming such purposes, or may sell the same at a price which shall be not less than its market value, as determined and certified to the council by the assessor (see also Section 11.3, Disposal of City Property).

## **CHAPTER 10**

### **SPECIAL ASSESSMENTS**

#### **Section 10.1 Power to Assess.**

a. The council shall have power to determine, with or without a petition therefor, that the whole or any part of the expense of any public improvement or repair shall be defrayed by special assessment upon the parcels of property especially benefited, and so declare by resolution. Such resolution shall state the estimated cost of the improvement, what portion of the cost shall be paid by special assessment, what portion, if any, shall be a general obligation of the city, the number of installments in which assessment may be paid, the interest to be charged, and designate the districts or land and premises upon which special assessments shall be levied.

b. No such improvement shall be made if the owners of more than one-half (1/2) of the property to be assessed shall object thereto in

writing, provided that if the council shall determine and declare by a resolution adopted by at least two-thirds (2/3) of the full membership of the council that the proposed improvement is immediately necessary for the public health, welfare, and safety, such improvement may be made, and such special assessment may be levied thereof, notwithstanding such objections thereto. The whole amount to be levied upon the premises subject to special assessment shall not be limited by the assessed valuation of the property subject to such special assessment.

Section 10.2 Ordinance; Procedure. The council shall prescribe by general ordinance the complete special assessment procedure to be used, including the preparing of plans and specifications, estimated costs, the preparation, hearing and correction of the special assessment roll, the collection of special assessments, and the assessment of single lots or parcels. Said ordinance shall provide for a public hearing by the council on the necessity of making such public improvement and shall provide for a public hearing by the council on the apportionment of the roll, as well as any other matters concerning the making of improvements by the special assessment method. The ordinance shall authorize additional assessments if the prior assessment proves insufficient to pay for the improvement and costs incident thereto, or in the case of invalidity in whole or in part, and it shall also provide for the refund of excessive assessments (see also Section 13.2, Special Assessment Collections).

Section 10.3 Assessment Lien. From the date of confirmation of any assessment or reassessment roll the same shall constitute a lien upon the respective premises assessed and shall also be a charge against the person to

whom assessed until paid and, in case of delinquency, may be enforced by addition to any later return to the County Treasurer or regular taxes by suit against such person.

## **CHAPTER 11**

### **CONTRACTS**

Section 11.1 Authority of Council. The power to authorize the making of contracts on behalf of the city is vested in the council, and shall be exercised in accordance with the provisions of law. All contracts, except as otherwise provided by ordinance in accordance with the provisions of this charter, shall be authorized by the council, and shall be signed on behalf of the city by the mayor and the clerk.

#### Section 11.2 Limits.

a. The council shall only have power to enter into contracts which, by the terms thereof, will be fully executed within a period of 10 years, unless such contract shall first receive the approval of the majority of the qualified electors voting thereon at a regular or special election. This qualification shall not apply to any contract for services with a public utility company, or one or more governmental units, nor to contracts for debt secured by bonds or notes which are permitted to be issued by the city, by law.

b. Except as provided by ordinance authorized in this charter, each contract for construction of public improvements or for the purchase or sale of personal property shall be let after opportunity for competition.

c. All bids shall be opened and read aloud in public by the city clerk, or another city official authorized by the clerk, at the time designated in the notice or letting, and shall be reported by the clerk to the council at its next regular meeting. The council may reject any or all bids if deemed advisable. If, after ample

opportunity for competitive bidding, no bids are received, or such bids as are received are not satisfactory to the council, the council may either endeavor to obtain new competitive bids or authorize the city clerk, or other proper officials of the city, to negotiate on the open market, with proposal(s) brought back to the council, for its consideration and approval.

Section 11.3 Disposal of City Property. The city shall not have the power to sell, lease, or dispose of any real estate unless:

a. the city meets the statutory guidelines (MCL Annotated 117.5(e), MSA 5.2084.5(e)) regarding approval through a city-wide vote, if any part of the land is a park or cemetery;

b. in case of a municipal-owned utility, the city meets the requirements of Section 12.6, Disposal of Utility Property;

c. In case of sale, there shall be at least two (2) published advertisements for bids prior to adoption of a resolution for sale or disposal;

d. such action is approved, at a regular or special-called meeting, by at least two-thirds (2/3) of the full membership of the council; or, if a councilmember is ineligible to vote because of a conflict of interest, by at least two-thirds of the full membership eligible to vote on the proposed action; and

e. in the case of city-owned real estate, the resolution authorizing the sale, lease, or disposal thereof shall, in its final form, remain on file with the clerk for public inspection for 20 days before the final adoption or passage thereof.

Section 11.4 Conflict of Interest. As also provided elsewhere in this charter, no person holding any elective or appointive office of the city shall take any official action on any city

contract in which such official shall have a direct personal interest in the profits to be derived therefrom or be a bondsman or surety on any contract or bond given to the city.

## CHAPTER 12

### UTILITIES

Section 12.1 General Powers. The city shall possess and hereby reserves to itself all the powers granted to cities by law to acquire, construct, own, operate, improve, enlarge, extend, repair, maintain, encumber, convey, dispose of, or sell, either within or without its corporate limits, public utilities, including, but not limited to, public utilities for supplying water, light, heat, power, gas, sewage treatment, garbage disposal, and facilities for the parking of vehicles, and also to sell and deliver the products or service thereof, both within and without its corporate limits, subject to limitations provided by state law. The power to supply utility service shall include the power to purchase such services from others.

Section 12.2 Control. The council may enact such ordinances and adopt such resolutions as may be necessary for the care, protection, preservation, control, and operation of any public utilities which the city may in any manner acquire, own or operate, and all fixtures, appurtenances, apparatus, buildings, and machinery connected therewith or belonging thereto, and to carry into effect the powers conferred upon the city by the provisions of this charter.

Section 12.3 Rates. The council shall have power to fix such just and reasonable rates as may be deemed advisable for supplying the inhabitants of the city and others with such public utility services as the city may provide. There shall be no discrimination in such rates within

any classification of users thereof, nor shall free service be permitted, but higher rates may be charged outside the corporate limits of the city.

Section 12.4 Collections. The council shall provide by ordinance for the collection of all public utility charges made by the city and for such purpose shall have all the power granted to cities by state law. When any person or persons, or any firm or corporation shall fail or refuse to pay to the city any sums due on utility bills which are covered by deposits, the utility service or services upon which such delinquency exists may be shut off or discontinued, and suit may be instituted by the city for the collection of the same in any court of competent jurisdiction.

Section 12.5 Accounts. Separate accounts shall be kept for each public utility owned and operated by the city. Such accounts shall be classified and made in accordance with generally accepted municipal utility accounting practices. Charges for all services furnished to, or rendered by other city departments or agencies shall be recorded. An annual report shall be prepared to show fairly the financial position of the utility and the results of its operations, which report shall be on file in the office of the city clerk, for public inspection.

Section 12.6 Disposal of Utility Property.

a. Unless approved by a majority of the electors voting thereon at a regular or special election, the city shall not sell, exchange, lease, or in any way dispose of any property, easements, equipment, privilege, or asset belonging to and appertaining to any municipally owned public utility which is needed to continue operating such utility. All contracts, negotiations, licenses, grants, leases, or other forms of transfer in violation of this section shall be void and of no effect as against the city.

b. The restrictions of this section shall not apply to the sale or exchange of any articles of machinery or equipment of any city-owned public utility which are worn out or useless, or which have been or could, with advantage to the service, be replaced by new and improved machinery or equipment; or to the leasing of property not necessary for the operation of the utility; or to the exchange of property or easements for other needed property or easement.

c. The provisions of this section shall not extend to the vacation or abandonment of streets, as provided by statute.

## **CHAPTER 13**

### **BORROWING POWER**

Section 13.1 General Powers. Subject to the applicable provisions of law, the city may borrow money for any purpose within the scope of its powers and may issue bonds or other evidence of indebtedness including, but not limited to:

a. General obligation bonds pledging for their payment the full faith and credit of the city.

b. Special assessment bonds which are issued in anticipation of the payment of special assessments for public improvements in a special assessment district or combination thereof, which bonds may be either an obligation solely on the special assessment district(s), or both an obligation of such district and a general obligation of the city.

c. Revenue bonds as authorized by law.

d. Mortgage bonds for the acquiring, owning, purchasing, construction, improving, or operating of any public utility which the city is authorized by law to finance in this manner, or for such other purposes as may be authorized by law.



e. Tax anticipation notes as authorized by law.

f. Calamity bonds issued in case of fire, flood, or other calamity, as authorized by law.

g. Bonds for the city's share of the cost of local improvements, which bonds may be issued as a part of, or independently of, any issue of special assessment bonds which are issued for the same improvement(s).

h. Bonds for refunding the indebtedness of the city.

i. Time-purchase contracts authorized elsewhere herein, to the extent that the same are considered to be debts.

j. Bonds issued in anticipation of future payments from the Motor Vehicle Highway Fund or any other fund of the State which the city may be permitted by law to pledge for the payment of principal and interest thereof.

Section 13.2 Special Assessment Collections. All collections on each special assessment roll or combination of rolls, in anticipation of which bonds have been issued, shall be accounted for in a separate fund and shall be used for the purpose for which levied and for the payment of the principal and interest on such bonds. If there is any deficiency in a special assessment fund to meet the payment of the principal or interest to be paid therefrom, moneys shall be advanced from the general fund of the city to meet such deficiency and shall be replaced in the general fund when the special assessment fund shall be sufficient therefor.

Section 13.3 Use of Borrowed Funds. Each bond or other evidence of indebtedness shall contain on its face a statement of the purpose for which the same is issued, and no officer of the city shall use the proceeds thereof for any other purpose, except that whenever the proceeds of any bond issued, or part thereof, remain

unexpended and unencumbered for the purpose for which said bond was made, the council may authorize the use of such unexpended funds:

a. For an additional extension or improvement of facility or project for which the bond issue was made.

b. For the retirement of such bond issue.

c. If such bond issue has been fully retired or funds are segregated which are adequate for such purpose, then for the retirement of other bonds or obligation of the city.

d. If there is no other indebtedness, or if funds are segregated which are adequate for such purpose, then for such other purposes as may be permitted by law.

Section 13.4 Execution of Bonds and Bond Records. All bonds issued by the city shall be signed by the mayor and countersigned by the clerk, and shall bear the city's corporate seal. Said signatures may be by facsimile if permitted by law. Any attached coupons may be signed with facsimile signature of the clerk. The treasurer shall keep a detailed record of all bonds and other evidence of indebtedness. Upon payment of bonds or other evidence of indebtedness, the same shall be cancelled.

#### Section 13.5 Limits of Authority.

a. The net bonded indebtedness incurred for all public purposes shall not at any time exceed the maximum amount permitted by law, provided that in computing such bonded indebtedness there shall be excluded money borrowed on notes issued in the anticipation of collection of taxes, special assessment bonds even though they are a general obligation of the city, mortgage bonds, revenue bonds, bonds in anticipation of state-retained revenues to the extent permitted by law, and

any other bonds or indebtedness excluded by law from such limitation. The amount of funds accumulated for the retirement of any outstanding bonds shall also be deducted from the amount of bonded indebtedness.

b. No bonds shall be sold to obtain funds for any purpose other than that for which they were specifically authorized, and if such bonds are not sold within the time limited by law, such authorization shall be null and void.

c. The issuance of any bonds not requiring the approval of the electorate shall be subject to applicable requirements of law with reference to public notice in advance of authorization of such issues, filing of petitions for a referendum on such issuance holding such referendum, and other applicable procedural requirements.

## **CHAPTER 14**

### **MUNICIPAL RIGHTS AND LIABILITIES**

Section 14.1 Rights, Liabilities, Remedies. All rights and properties of any kind and description which were vested in the City of McBain at the time of the adoption of this charter shall continue, and no rights or liabilities, either in favor of or against the city at the time of the adoption of this charter, and no suit or prosecution of any kind shall be in any manner affected by the adoption of this charter, but the same shall stand or progress as if no such change had been made, and all debts and liabilities of the city and all taxes levied and uncollected at the time of the adoption of this charter shall be collected the same as if such change had not been made: provided, that when a different remedy is given in this charter, which can be made applicable to any rights existing at the time of the adoption of

this charter, the same shall be deemed cumulative to the remedies before provided, and may be used accordingly.

Section 14.2 Liability for Damages. The city shall not be liable for unliquidated damages for injuries to persons or property unless the person(s) claiming such damages, or someone acting on the behalf of such person(s), shall file a claim in writing with the clerk. Such claim shall be verified by the claimant(s), or some person having knowledge of the facts, who shall specify the time and place, the nature and extent of the injury sustained, the manner in which it occurred, the specific grounds upon which a liability on the part of the city is claimed, the names and addresses of all known witnesses, the name of the attending physician, if any, and an itemized statement of the amount claimed. Upon receiving such claim, the city shall investigate the same and may require the claimant to produce all witnesses for examination under oath. No action shall be maintained in any case unless the same is brought within the statutory period stated by the general laws of the state after such injury or damages shall have been received.

Section 14.3 Statements of City Officers. No officer of the city shall have power to make any representation or recital of fact in any franchise, contract, document, or agreement which is contrary to any public record of the city. Any such representation shall be void and of no effect as against the city.

## **CHAPTER 15**

### **SCHEDULE OF CHARTER ADOPTION**

Section 15.1 Purpose and Status. The purpose of this chapter is to provide the transition from former

fourth-class city status to Home Rule City status, and to inaugurate the government of the City of McBain under this charter revision. The transition sections of this chapter shall constitute a part of this charter only to the extent and for the time required to accomplish their purpose.

Section 15.2 Election to Adopt Charter. This charter shall be submitted to a vote of the qualified electors of the City of McBain at an election to be held on November 4, 1986, between the hours of 7:00 a.m. and 8:00 p.m. All provisions for the submission of the question of adopting this charter as revised at such election shall be made in the manner provided by law.

Section 15.3 Form of Ballot. The form of the question to be submitted to electors regarding this charter shall be as follows: "Shall the city charter proposed by the city charter commission elected November 5, 1985 be adopted?"

The proposal was adopted on November 5, 1986 with the following vote: Yes 184; No 20.

Section 15.4 Effective Date. If this charter is adopted by the electors, it shall take effect and become the charter of the City of McBain, Michigan on December 1, 1986.

Section 15.5 Continuation of Officers and Employees. Except as otherwise provided in this charter, all elective and appointive officers and employees of the City of McBain shall continue in that city office or employment that they now hold.

Section 15.6 Boards and Commissions. Except as otherwise provided in this charter, or as subsequently changed by council action, the present boards and commissions shall continue under the terms of the ordinances establishing them.

## **RESOLUTION OF ADOPTION**

At its July 17, 1986 meeting, the City of McBain Charter Revision Commission adopted the following resolution:

RESOLVED, that the proposed Home Rule City charter for the City of McBain, prepared by the Charter Revision Commission after months of careful study, discussion and deliberation, be approved by members of this Commission, and that the City Clerk of the City of McBain be hereby instructed to transmit this proposed charter to the Governor of the State of Michigan, for his approval, in accordance with provisions of Act 279 of the Public Acts of 1909, as amended.

I certify that the Charter Revision Commissioners listed above were duly elected at the regular city-wide election on November 5, 1985, and that the resolution above was duly adopted by the Charter Revision Commission at its regular meeting on July 17, 1986.

Evelyn Lucas, City Clerk, City of McBain

The vote on the adoption of the resolution was as follows:

Yes: Commissioners Richard Jenema Chairperson  
Richard Jenema  
Donna M. Lutke Vice Chairperson  
Donna M. Lutke  
Kenneth J. Stahl Treasurer  
Kenneth J. Stahl

<u>Jean Geers</u> Jean Geers	<u>Randall Heeres</u> Randall Heeres
<u>Bernard L. Mulder</u> Bernard Mulder	<u>Cathy Schepers</u> Cathy Schepers
<u>Loren Stahl</u> Loren Stahl	<u>Pearl Taylor</u> Pearl Taylor

No: None                      Absent: None