

**CHAPTER 2
ADMINISTRATION**

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ARTICLE I. IN GENERAL

Sec. 2-1. Organizational structure.

The following is the organizational structure of the city:

*Charter references-Municipal powers, Ch. II; plan of government, Ch. III. Cross references-Ordinances containing any administrative provisions of the city commission not in conflict or inconsistent with the provisions of this Code saved from repeal, § 1-5(2); ordinances prescribing the number, classification or compensation of any city officers or employees not inconsistent herewith saved from repeal, § 1-5(11); airport board, § 5-22 et seq.; animal control officers, § 9-25; civil emergencies, Ch. 13; elections, Ch. 16; administration of flood control, § 17.5-16 et seq.; housing commission, § 20-16 et seq.; licenses, Ch. 21; market advisory committee, § 22-7; market authority, § 22-19 et seq.; planning, Ch. 31; planning commission, § 31-16 et seq.; police, Ch. 32; special assessments, Ch. 36; taxation, Ch. 40; harbor master, § 47-3; zoning board of appeals, App. A, Art. XVII.

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Sec. 2-2. Bonds.

In addition to special requirements for particular bonds, all bonds running to the city shall be corporate surety or cash bonds and shall be approved by the city attorney and filed with the city clerk. (Gen. Code 1946, Ch. 1, § 204.1; Code 1972, § 1.14)

Sec. 2-3. Notice.

Notice regarding removal or trimming of shrubs, cutting of weeds, sidewalk repairs, dangerous structures, abating nuisances, removing signposts, making sewer connections, separating storm and sanitary sewers, removing cemetery monuments, cleaning outhouses, constructing or repairing docks or wharves, or any other act, the expense of which, if performed by the city, may be collected from the property owner in an action at law, shall be served:

- (1) By delivering the notice to the owner personally or by leaving the same at his residence, office or place of business with some person of suitable age and discretion; or
- (2) By mailing the notice to such owner at his last known address by certified mail return receipt requested; or
- (3) By posting in some conspicuous location on the premises a minimum of three (3) days prior to the date set therein for compliance. (Gen. Code 1946, Ch. 1, § 206.1; Code 1972, § 1.11)

Secs. 2-4-2-15. Reserved.

ARTICLE II. CITY COMMISSION*

Sec. 2-16. Presiding officer; powers and duties; appeal of decisions.

- (a) The mayor shall preside at all meetings and in the absence of the mayor, the mayor pro tem shall preside, and if both the mayor and mayor pro tem are absent, the clerk shall call the commission to order and shall preside until a presiding officer is chosen.
- (b) The mayor shall preserve order and shall decide all questions of order.
- (c) The mayor shall appoint the members of all standing committees and special committees as may be ordered by the commission. He shall determine the number of members to serve on each committee and may name the chairman of it. Standing committee membership shall be reviewed at the beginning of each calendar year or as necessary adjustments are needed. If any member of a committee refuses or is unable to perform the duties required of him, the presiding officer may replace such member.
- (d) Any member of the commission may appeal a decision or ruling of the mayor and, if such appeal be duly seconded, the mayor shall put the question of such appeal in the following form: "Shall the decision of the chair stand as the decision of the commission?" The matter shall be decided by a majority of the members present. If the mayor fails or refuses to entertain and properly put such question of appeal, any

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member of the commission shall have the right to direct the city clerk to call the roll on the question on the floor. The city clerk shall then call the roll and record the results of the vote in the record of commission minutes. Any other question or motion which the presiding officer may fail or refuse to put to a vote after it has been seconded, may be put in the same manner. (Gen. Code 1946, Ch. 1, §§ 301.4, 301.5; Code 1972, §§ 1.273, 1.274; Ord. of 10-9-72, § 302; Ord. of 12-4-78, § 1)

Sec. 2-17. Order of business.

- (a) The order of business for regular meetings of the city commission shall be as follows:
- (1) Invocation (optional);
 - (2) Pledge of allegiance;
 - (3) Call the roll;
 - (4) Reviewing and voting on the minutes of the preceding regular or special meeting;
 - (5) Warrants and requisitions;
 - (6) Citizen comments;
 - (7) Public hearing;
 - (8) Consent calendar;
 - (9) Separated resolutions;
 - (10) Communications;
 - (11) Reports of staff officials;
 - (12) Reports of standing committees which shall be established as listed below and, shall report respectively as requested by the mayor or presiding officer as follows:
 - a. Finance committee;
 - b. Public safety and public services committee;
 - c. Planning and economic development committee;
 - d. Legislative committee.
 - (13) Mayor and commission comments;
 - (14) Adjournment.
- (b) Special meetings shall consider only such matters as are specified in the notice of the meeting. The city clerk is hereby designated as the city official required to provide notice of special meetings and the notice shall comply with the requirements of the Charter, MCL 15.264-15.266, MSA 4.1800(14)-4.1800(16), as amended, and this Code.

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(c) The city clerk shall mail or present an agenda to each member of the commission on the last working day of the week preceding all regular meetings. The agenda shall include all matters submitted to the clerk by the mayor, commissioners, city officials to the mailing or presenting of the agenda to each member of the commission. (Gen. Code 1946, Ch. 1, §§ 301.1, 301.2, 301.3; Code 1972, §§ 1.272, 1.282; Ord. of 10-9-72, § 301; Ord. of 12-4-78, § 1; Ord. of 3-26-90, § 1; Ord. of 1-27-92, § 1) Charter reference-Commission shall determine its own order of business, § 3.7.

Sec. 2-18. Rules of procedure.

(a) *Motions and resolutions.* Every motion or resolution shall require a second before being put to a vote, and it shall not be debated until it shall be reduced to writing if requested by the presiding officer or any member, but it may be withdrawn at any time before decision or amendment.

(b) *Motions during a debate.* When a question is under debate, no motion shall be received except to adjourn, to lay on the table, to put the previous question, to postpone indefinitely, to postpone to a certain time or to amend. These motions shall have precedence according to the order in which they are presented.

(c) *Motion to adjourn.* A motion to adjourn is always in order, unless it is made immediately after a motion to adjourn has been defeated or when a member is addressing the body. A motion to adjourn shall be decided without debate.

(d) *Motion to table.* A motion to lay on the table takes precedence over any other except motion to adjourn, is not debatable, and shall require a two-thirds vote of the members present.

(e) *Motion to put previous question.* A motion to put the previous question is not debatable, shall require a two-thirds vote of the members present and shall be put in the following form: "I call for the previous question."

(f) *Postponement of question.* When a question is postponed indefinitely, it cannot again be acted upon during the same meeting.

(g) *Dividing of motion into separate propositions.* If a motion contains two (2) or more separate propositions, any member may move to have a question divided into its parts to be voted on separately.

(h) *Restatement of motion prior to debate.* When a motion has been made and seconded, it shall be restated by the presiding officer, or, being in writing, shall be handed to the clerk, who shall read it aloud before it is debated.

(i) *Amendment of motions.* It is in order to move to amend a motion by adding, deleting or changing a specific word, phrase, sentence or section.

(j) *Request for motion, amendment or resolution in writing prior to vote.* The presiding officer or any member may request that a motion, amendment or resolution be written down and then read by the city clerk before voting.

(k) *Passage of motion.* A majority vote of the members present is required to pass any motion except as otherwise specified by Charter, state statute, Robert's Rules of Order (Revised), or

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herein.

(l) *Call for vote.* The clerk shall utilize a system to call for members' votes in such an order that the same commissioner does not vote first at each meeting of the commission, except for the mayor whose name shall be called last.

(m) *Robert's Rules of Order.* Robert's Rules of Order (Revised) shall be the official authority for the parliamentary practice and procedure of the commission. However, any conflict in authority shall be resolved by giving priority to the following authorities in the order listed:

- (1) State and federal law;
- (2) Charter of the city;
- (3) Code of Ordinances;
- (4) Robert's Rules of Order (Revised).

(n) *Matters requiring study.* All matters requiring study will be referred to the appropriate standing committee, city staff or the commission as a whole.

(o) *Report of committees.* The chairman or a designee of each committee shall make all reports for his committee. Committee reports shall state the opinion of the majority, but a minority opinion may be made.

(p) *Referral of petitions, resolutions and communications.* All matters such as petitions, resolutions and communications will be referred to the city clerk by the mayor and commission. (Gen. Code 1946, Ch. 1, §§ 301.6-301.9, 301.12; Code 1972, §§ 1.275, 1.276; Ord. of 10-9-72, § 303; Ord. of 12-4-78, § 1) Charter reference-Commission shall determine its own rules, § 3.7.

Sec. 2-19. Rules of conduct.

(a) The city commission, being responsible for its own conduct and that of the audience in attendance at public city commission meetings, hereby establishes these rules of conduct to assure peaceful, quiet, orderly and professional conduct of meeting proceedings.

(b) In keeping with the Michigan Open Meetings Act, a person shall not be excluded from a public meeting except for a breach of the peace actually committed at the meeting.

(c) In keeping with excerpts from the Michigan State Law, any person who shall make or excite any disturbance or contention in a public building or at any election or other public meeting where citizens are peacefully and lawfully assembled shall be guilty of a misdemeanor.

(d) *Definitions.* To ensure proper understanding, the following words are defined and mean as provided herein:

(1) *Breach of the peace* is something short of the actual threat of violence or the act of violence, which in some way actually disturbs the peace and order of the public meeting.

(2) *Contention* is an actual threat of violence or an actual act of violence, regardless of whom

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it is against, which disturbs the peace and order of the meeting.

(3) *Disturbance* is an interruption of the peace and quiet, a violation of public order and decorum which interferes with or hinders the lawful body and the pursuit of its right or occupation.

(e) The use of profane or obscene language is not condoned by the commission; however, it does not constitute a disturbance or breach of the peace:

(1) When the orator rightfully has the floor and is speaking in turn; and

(2) When such words or statements do not apply to epithets or insults directed by one person against another but are used as the free expression of ideas.

The use of certain profane words in a public place, however, is illegal.

(f) When the chair determines or when it is proposed by another commissioner that an orator's comments are insulting, in- name the passions of another individual or disrupt the good order of the meeting, the chair may declare that the orator is "out of order" and that the speaker has forfeited the right to the floor. Once properly ruled out of order, the right to speak has been relinquished. If the speaker apologizes and amends his comments, the chair may then return the speaker's rights to the floor. A second declaration of "out of order" means the speaker relinquishes the floor without appeal. If the speaker refuses to yield the floor by continuing to speak, a disturbance or a breach of the peace is being committed and the person is, therefore, guilty of a misdemeanor and may be forcefully removed from the meeting and, if necessary, arrested. The chair then exercises the prerogative to have the commissioner removed.

(g) Time limits of five (5) minutes per speaker are hereby established as the maximum amount of time allocated for both city commissioner comments and citizens comments. This maximum time limit may be reduced by the chair prior to the beginning of discussion as determined by the length of the agenda, the number of speakers and the lateness of the hour. Each speaker shall in an orderly fashion yield the floor at the expiration of their allocated time to speak. Prior to making comment, each citizen shall state their full name and address of their home and/or business. During calendar comments and citizens comments, each speaker shall have only one (1) opportunity per speaker per comment period to make comments.

(h) When any member is about to speak, the member shall address the chair, wait to be recognized before speaking, and then confine comments to the question under debate. Common courtesy shall be practiced, and no member shall talk or leave the meeting without permission of the presiding officer.

(i) Rebuttals will be allowed at the discretion of the chair. Rules for rebuttals to very sensitive issues will be established prior to the debate by the chair. These rules will include, but not be limited to:

(1) The total amount of time for the debate and rebuttal;

(2) Identifying all persons who propose to speak on the issue; and

(3) The amount of time allotted to each.

Subsection (h) will apply for all debates, rebuttals, questions or requests to speak on an

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issue, regardless of its sensitivity.

It is understood that whenever a decision by the chair is challenged and supported, the final decision will be made by vote of the body as a whole, except where clearly defined authority is otherwise given the chair by federal or state law, city ordinances or codes, and/or Robert's Rules of Order. (Gen. Code 1946, Ch. 1, § 301.10; Code 1972, §§ 1.277, 1.279; Ord. of 10-9-72, § 304; Ord. of 12-4-78, § 1; Ord. No. 550-86, 10-27-86; Ord. of 3-26-90, § 1)

Sec. 2-20. Waiver of rules.

Any of the rules set forth in this article may be waived by a two-thirds vote of the commission present and voting, unless otherwise provided by state law or City Charter. (Gen. Code 1946, Ch. 1, § 301.11; Code 1972, § 1.280; Ord. of 10-9-72, § 305; Ord. of 12-4-78, § 1)

Secs. 2-21-2-27. Reserved.

ARTICLE III. ADMINISTRATIVE SERVICE*

DIVISION 1. GENERALLY

Sec. 2-28. City manager.

(a) The city manager shall see that all laws, ordinances, rules, regulations adopted by the city commission, and the provisions of this Code, are properly enforced. He shall attend all meetings of the city commission, regular and special. During the absence or disability of the manager, the assistant city manager shall temporarily perform the duties of the manager.

(b) The administrative service of the city shall be under the supervision and direction of the city manager, except as otherwise provided by the Charter. (Code 1972, §§ 1.31, 1.101)

Sec. 2-29. Clerk-assessor, attorney, treasurer.

The clerk-assessor, attorney and treasurer shall have the duties and responsibilities detailed for such offices in the Charter, this Code and the statutes of the state. (Code 1972, § 1.36)

Sec. 2-30. Department heads.

All administrative officers are responsible to the city manager for the effective administration of their respective departments and offices, and all activities assigned to them. The manager shall employ or appoint all officers and employees except as otherwise provided by the Charter or this Code. The city manager may set aside any action taken by any administrative officer and may supersede him in the functions of his office but, as to officers appointed by the city commission, such action shall be subject to approval by the city commission. (Code 1972, § 1.102)

Sec. 2-31. Responsibility of departments generally.

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All departments of the city shall comply with the following:

(1) All department heads shall keep informed as to the latest practices in their particular field and shall inaugurate, with the approval of the city manager in the case of departments responsible to him or in the case of other departments, with the approval of the officer or body to whom the department head is responsible, such new practices as appear to be of benefit to the service and to the public.

(2) Reports of the activities of each department shall be made to the manager as he shall direct.

(3) Each department head shall be held responsible for the preservation of all public records under his jurisdiction and shall provide a system of filing and indexing the same. No public records, reports, correspondence or other data relative to the business of any department shall be destroyed or removed permanently from the files without the knowledge and approval of the city commission. (Code 1972, § 1.104)

Sec. 2-32. Filling of vacancies.

In case of vacancy in office or during the absence of any administrative officer, the city manager may designate an interim acting head or perform personally the functions of the office, until such vacancy is filled in accordance with the Charter. (Code 1972, § 1.103)

Sec. 2-33. Administrative manual.

The city manager is authorized to adopt such administrative regulations in addition to, but not inconsistent with, the Charter and this Code, as he shall deem necessary and proper to provide for the adequate functioning of all departments. Such regulations shall comprise the administrative manual. (Code 1972, § 1.105)

Sec. 2-34. Payment of moneys.

All moneys belonging to the city shall be paid out in accordance with section 7.3 of the Charter, by checks drawn by the director of finance, approved by the comptroller, and countersigned by the mayor. The director of finance shall also be city treasurer in accordance with the Charter. (Code 1972, § 1.106)

Sec. 2-35. Approval of legal documents.

The mayor shall sign, the city clerk shall attest to, the city manager shall approve as to substance, and the city attorney shall approve as to form, all contracts and agreements requiring the assent of the city, unless otherwise provided for by law, the Charter, ordinances or the provisions of this Code. (Code 1972, § 1.107)

Sec. 2-36. Bonds.

Surety bonds, in accordance with sections 3.52 to 3.55 of the Charter, shall be filed by the following officers of the city in not less than the amounts indicated:

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Treasurer	\$25,000.00
Deputy treasurer	\$25,000.00
Assistant treasurer	\$25,000.00
All other officers and employees (except mayor and commissioners), blanket bond; each	2,500.00

(Code 1972, § 1.108)

Secs. 2-37-2-43. Reserved

DIVISION 2. DEPARTMENT OF PUBLIC SAFETY*

Sec. 2-44. Organization of the department.

The department of public safety is hereby established and shall consist of three (3) divisions as follows:

- (1) The division of police;

*Editor's note-An Ord. of 6-20-94, § 1, amended Art. III, Div. 2 to read as herein set out. Formerly Div. 2 pertained to similar subject matter and derived from the Code of 1972, §§ 1.51-1.53, 1.61-1.63, as amended by Ord. of 1-28-80, §§ 1.51-1.53, 1.61-1.63; Ord. No. 629-89, § 1, 4-24-89; Ord. of 4-29-91, § 1; Ord. of 12-20-93; § 1. Cross references-Fire prevention and control generally, Ch. 17; establishment of duties of bureau of fire prevention, § 17-17; fire chief certificate for issuance of licenses, § 21-9; police chief certificate for issuance of licenses, § 21-10; police generally, Ch. 32.

- (2) The division of fire;
- (3) The division of building inspections.

Sec. 2-45. General functions and duties.

The functions and duties of the department of public safety shall consist of the enforcement of the laws and ordinances for the protection of life and property, the keeping of the peace and good order, the prevention and extinguishment of fires and the management of equipment necessary therefore, the operation of motor and foot patrols for routine investigations and the general maintenance of law and order, the preparation of evidence for the prosecution of criminal cases and offenses in violation of state and/or local law, the prevention and control of juvenile delinquency and the coordination of community agencies interested in crime and fire prevention, the control of traffic, traffic education programs, school patrols and traffic prosecutions, the enforcement and regulation of all technical building codes and refuse ordinances, and any other duties and activities related thereto. (Ord. of 6-20-94, § 1)

Sec. 2-46. Director of public safety.

The department of public safety shall be headed by a director who may serve as either division chief or police chief or both. The operation, administration, and control of the department of public safety and all matters pertaining thereto, shall be under the control and direction of the director of public safety, who shall be appointed by and serve at the pleasure of and be

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immediately responsible to the city manager. (Ord. of 6-20-94, § 1)

Sec. 2-47. General powers and duties of director of public safety.

(a) The director of public safety shall be operating head and commanding officer of the department of public safety. He shall have control of the department, under the supervision and direction of the city manager. He shall perform such duties as may be prescribed by the Charter, and ordinances of the city, laws of the State of Michigan, and such further and other duties as shall be prescribed by the city manager.

(b) The director of public safety shall have the power to issue such verbal or written orders, rules and regulations to police officers, fire fighters, and other employees of the department of public safety as the director may deem proper, and it shall be the duty of the police officers, fire fighters, and employees of said department to fully and completely obey the director's orders, rules and regulations, but such orders, rules and regulations shall be in conformity with the law.

(c) The director of public safety shall promulgate, subject to the approval of the city manager, employment standards for police officers, firefighters, and other employees of the public safety department.

(d) The director of public safety, police officers, or firefighters, designated by the director, shall be in command and control of any fire scene and shall have the authority to issue such verbal orders to any person at the scene as may be reasonably necessary to protect life and property and to conduct fire suppression activities.

(e) The director of public safety or any police officer or fire-fighter designated by the director, upon complaint of any person having an interest in any building or the premises or property adjacent thereto, or at the director's own instance, without such complaint and without restraint or liability for trespass, may at any hour that shall be reasonable under the circumstances involved, enter into and upon any building or premises within the city, for the purpose of inspection and examination thereof, together with their occupancies and contents for the discovery of the existence of a fire hazard. Whenever it is found that any building or premises, either public or private, which for want of repairs, lack of or insufficient fire escapes, automatic or other fire alarms apparatus, or fire extinguishing equipment, or by reason of age or dilapidated condition, defective chimneys, defective gas connections, defective heating apparatus, accumulation of rubbish, waste materials or inflammable substances or decorations, or from any other condition or for any reason whatsoever, may cause an otherwise preventable fire or explosion or endanger other property or premises or be dangerous to the public's peace, security or safety, a report shall be filed with findings with the director of public safety or the director's designee.

(f) The director of the department of public safety or the director's designee shall determine to what extent such dangerous conditions or materials shall be remedied or changed and shall serve written notice to that effect on the owner or occupant. The service of such notice may be made upon the occupant of the premises to whom it is directed either by delivering the same to and leaving it with any person in charge of premises. Whenever it may be necessary to serve such notice upon the owner of the premises, it may be served either by delivering to and leaving with such owner a copy of the notice or if such owner is absent from the City by mailing such copy to the owner's last known post office address by registered mail. (Ord. of 6-20-

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94, § 1)

Sec. 2-48. Division of police.

(a) *Police chief.* The police division shall be headed by the chief of police, who shall be the commanding officer of the police force. He shall direct the police work of the city and be responsible for the enforcement law and order.

(b) *Functions.* The police work of the city shall consist of the following functions.

(1) The operation of motor and foot patrols for routine investigations and the general maintenance of law and order.

(2) The maintenance of the central complaint desk at central police headquarters, the maintaining and supervising of police records, criminal and noncriminal identification, property identification, custody of property and the operation of detention quarters.

(3) The investigations of crimes, elimination of illegal liquor traffic and vice, and the preparation of evidence for the prosecution of criminal cases and offenses in violations of this Code.

(4) The prevention and control of juvenile delinquency, the handling of cases in which women are involved, the removal of crime hazards and the coordination of community agencies interested in crime prevention.

(5) The control of traffic, traffic educational programs, school patrols, coordination of traffic prosecutions.

(c) *Rules.* The police chief may prescribe rules for the government of police officers of the city, subject to the approval of the director of public safety, which shall be entered in a book of police rules and orders and may be amended or revoked by the police chief upon written notice to the director of public safety. Such rules may establish one or more subdivisions within the division of police, each of which divisions may be charged with performing one or more of the functions of the division enumerated in subsection (b). Any such subdivisions shall be supervised by an officer of the police division, who shall be responsible for the particular subdivision supervised by him. It shall be the duty of all members of the police force to comply with such rules and orders while effective. (Ord. of 6-20-94, § 1)

Sec. 2-49. Division of fire.

(a) *Fire chief.* The division of fire shall be headed by the fire chief, who shall be charged with the prevention and extinguishment of fires, the protection of life and property against fire, the removal of fire hazards, the enforcement and regulation of all technical building codes and refuse ordinances of the city, the performance of other public safety services of an emergency nature assigned to him, and the conduct of an educational fire prevention program.

(b) *Rules.* The fire chief shall adopt rules and regulations for the government of the division, subject to the approval of the director of public safety, which shall be entered in a book of fire rules and which may be changed and repealed by the fire chief upon notice to and approval by the director of public safety. It shall be the duty of all members of the fire division to comply with such rules and orders while effective. Such rules and regulations shall designate the chain of

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command for the division in the absence of disability of the fire chief.

(c) *Equipment.* The fire chief shall be responsible for the maintenance and care of all property and equipment used by the fire division. (Ord. of 6-20-94, § 1)

Sec. 2-50. Powers and duties of police officers and firefighters.

(a) *Police officers.* All police officers are hereby authorized to enforce the laws of the State of Michigan and the ordinances of the City of Benton Harbor and all said officers shall have the following powers and duties: To suppress all riots, disturbances and breaches of the peace and to pursue and arrest any person fleeing from justice in any part of the state and to apprehend any and all persons in the act of committing any offense against the laws of the State or ordinances of the city and to take the offender forthwith before the proper court or magistrate to be dealt with for the offense, to arrest without warrant any and all persons whom then have probable cause to believe to have committed a felony, to make complaints to the proper officers and magistrates of any person known or believed by them to be guilty of a violation of the ordinances of the city or the penal laws of the state and at all times diligently and faithfully to enforce all such laws, ordinances, rules and regulations for the preservation of good order and public welfare as the city commission may ordain, and to serve all processes lawfully directed or delivered to them for services, and for such purposes the said officers shall have all the powers of sheriffs and other peace officers and may arrest upon view and without process any person in the act of violating any ordinance of the city of committing any offense against the laws of the state, and to have any other power or authority given to them by state law. The said officers may serve and execute all process in criminal proceedings for the violation of state law and the ordinances of the city. Said officers shall have the same rights to pursue, arrest and detain such person outside of city limits as the sheriff of the county.

(b) *Firefighters.* All firefighters, unless designated otherwise by the director of the department of public safety, are hereby authorized to extinguish fires and the said firefighters, in conformity with the ordinances of the city and the laws of the state, shall have the following powers and duties: To prevent and extinguish fires and in so doing may cause the removal of structures of materials, the razing of walls of burning buildings, the cutting or openings in buildings, breaking and entering, breaking down of partitions, and removal of wiring, whenever, in their opinion, public safety requires that it shall be done in order to retard the fire, the enforcement and regulations of all technical building codes and refuse ordinances in the city, the performing of other public safety services of an emergency nature assigned to him/her and the conducting of an educational fire prevention program. (Ord. of 6-20-94, § 1)

Sec. 2-51. Creation of the offices of deputy director.

The offices of deputy directors of the department of public safety are hereby created. The fire chief and police chief shall serve as deputy directors in the department of public safety. Each deputy director shall be appointed by and serve at the pleasure of the director of public safety and shall be immediately responsible to the director of public safety.

The duties of each deputy director shall be as prescribed and assigned to each deputy by the director of public safety. The director of public safety shall designate in writing which deputy director shall act in the director's place and shall have the powers and duties of the director of public safety in case of absences or disability of the director of public safety. (Ord. of 6-20-94, §

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1).

Sec. 2-52. Division of building inspections.

(a) *Division chief* The division of building inspections shall be headed by the division chief, who shall be responsible for the supervision of all personnel in the division of building inspections and the enforcement of all laws and ordinances including, but not limited to, those relating to the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, use, height, inspections, maintenance of all buildings, structures and properties in the city under technical building codes and as authorized by city ordinances. The division chief shall report directly to the director of public safety. The division chief shall perform such other duties as assigned by the director of public safety.

(b) *Functions.* The functions of the division of building inspections shall be as follows:

(1) The enforcement of all laws regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, use, height, area and/or maintenance of all buildings, structures or properties in the city under technical building codes and as authorized by city ordinance.

(2) The inspection of buildings, structures and properties for violations of the laws of the city.

(3) The processing of, granting and administering of licenses, permits and bonds as required by local and/or state law.

(4) All other functions as assigned by the director of public safety. (Ord. of 6-20-94, § 1)

Cross references-Code enforcement, § 2-94; buildings and building regulations, § 11-1 et seq.

Secs. 2-53-2-63. Reserved.

DIVISION 3. DEPARTMENT OF WATER*

Sec. 2-64. Director.

The department of water shall be headed by the director of the water department and shall have the duties specified in section 3.38 of the City Charter or such other duties as assigned by the

•Editor's note-Former Div. 3, which pertained to the department of public services and consisted of §§ 2-64-2-68, has been deleted as having been superseded by Ord. No. 500-83, adopted March 28, 1983, which provided for the severance of the department of water from the department of public services and the abolition of the department of public services. Provisions pertaining to the water department have been included as a new Div. 3, § 2-64, at the editor's discretion city manager or by city ordinance. Where superintendent of water is referred to in this Code, the term shall mean director of the water department. (Ord. of 3-28-83)

Secs. 2-65-2-78. Reserved.

DIVISION 4. DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Sec. 2-79. Reorganization of department.

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The department of community development is hereby restructured and shall be known as the department of planning and community development. (Code 1972, §§ 1.85, 1.90; Ord. of 4-23-73; Ord. of 10-29-74; Ord. of 3-7-77; Ord. of 1-28-80; Ord. No. 501-83, 3-28-83; Ord. No. 528-84, 4-23-84; Ord. No. 601-88, § 1, 11-28-88; Ord. of 8-16-93, § 1)

Sec. 2-80. Director.

The department of planning and community development shall be headed by a director, who shall be responsible for the direct supervision, control, management and administration of the city's planning and community development. (Code 1972, §§ 1.85, 1.90; Ord. of 4-23-73; Ord. of 10-29-74; Ord. of 3-7-77; Ord. of 1-28-80; Ord. No. 501-83, 3-28-83; Ord. No. 528-84, 4-23-84; Ord. No. 601-88, § 1, 11-28-88; Ord. of 8-16-93, § 1)

Sec. 2-81. Functions.

The functions of the department of planning and community development shall include, but not be limited to the following:

- (1) The preparation and implementation of general plans for the development of the city;
- (2) The administration of programs for the conservation of city neighborhoods;
- (3) The preparation of budgets, statistical reports and forecasts for planning and community development;
- (4) The administration of citizen relocation programs necessitated by city condemnation proceedings;
- (5) The development and coordination of community development programs offered through other governmental units;
- (6) The administration of housing and site improvement programs, including eminent domain and housing rehabilitation programs, and
- (7) The direct supervision and control of all technical inspectors. Said technical inspectors are to include but not be limited to heating, plumbing, electrical, housing, building and mechanical.
- (8) All other functions are assigned by the city manager. (Code 1972, §§ 1.85, 1.90; Ord. of 4-23-73; Ord. of 10-29-74; Ord. of 3-7-77; Ord. of 1-28-80; Ord. No. 501-83, 3-28-83; Ord. No. 528-84, 4-23-84; Ord. No. 601-88, § 1, 11-28-88; Ord. of 8-16-93, § 1)

Sec. 2-82. Reserved.

Editor's note-Ord. No. 628-89, § 1, adopted Apr. 24, 1989, repealed § 2-82, which pertained to the division of building inspections and functions thereof, which provisions derived from Ord. No. 601-88, § 1, adopted Nov. 28, 1988. See also § 2-48 and the editor's note to § 2-80.

Secs. 2-83-2-90. Reserved.

DIVISION 5. DEPARTMENT OF PUBLIC WORKS

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Sec. 2-91. Created.

There is hereby created a department of public works which shall be separate and apart from the department of recreation and leisure services. (Ord. No. 503-83, 3-28-83; Ord. No. 613-89, § 1, 2-21-89; Ord. of 8-23-93, § 1)

Sec. 2-92. Department head.

The department of public works shall be headed by a department head who may create divisions of the department of public works. (Ord. No. 503-83, 3-28-83; Ord. No. 613-89, § 1, 2-21-89; Ord. of 8-23-93, § 1).

Sec. 2-93. Duties.

(a) The department of public works shall have the duties prescribed in sections 3.29 and 3.30 of the City Charter relating to public works.

(b) The department of public works shall also have the duties and responsibilities for administration and implementation of all city property including but not limited to streets and alleys and all other maintenance provided by Charter, city ordinance, or which may hereafter be provided for by ordinance or at the direction of the city manager. (Ord. No. 503-83, 3-28-83; Ord. No. 613-89, § 1, 2-21-89; Ord. of 8-23-93, § 1)

Sec. 2-94. Code enforcement.

Pursuant to Section 764.9c of the Michigan Compiled Laws (Section 28.868(3) of Michigan Statutes Annotated), employees serving in the department of public and recreational services who are designated to do so by the director of that department, may issue and serve appearance tickets if such employees have reasonable cause to believe that the recipient of any such ticket has committed an offense. Employees of this department shall issue tickets only with respect to particular classes of offense and types of offenses as designated by the director of the department of public and recreational services. (Ord. of 4-13-92, § 1)

Editor's note-Subsequent to the adoption of an ordinance of April 13, 1992, the department of public and recreational services was reorganized into the department of public works and the department of recreation and leisure services.

Cross reference-Division of building inspections, § 2-52.

DIVISION 6. DEPARTMENT OF CITY MAINTENANCE*

Sec. 2-95. Creation.

There is hereby created a department of building maintenance which shall be headed by the director of building maintenance, who shall provide the necessary leadership for the department personnel to carry out the functions assigned to the department. The director shall supervise and participate in custodial and maintenance activities and report directly to the city manager. (Ord. No. 612-89, § 1, 2-21-89)

Sec. 2-96. Duties and functions.

The duties and functions of the department of city maintenance shall include, but not be limited to, the following:

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- (1) The administration of buildings and grounds custodial maintenance operations;
- (2) Responsibility for monitoring the conditions of facilities;
- (3) Responsibility for the inspection of maintenance projects on both buildings and grounds;
- (4) Responsibility for the security of civic center facilities;
- (5) Responsibility for maintaining inventories for maintenance and cleaning activities;
- (6) The development and coordination of maintenance and custodial programs and functions;
- (7) The operation and administration of budgets related to building maintenance;
- (8) All other duties and functions as may be from time to time assigned by the city manager. (Ord. No. 612.89, § 1, 2-21-89)

DIVISION 7. DEPARTMENT OF CITY CLERK

Sec. 2-97. Creation and duties.

There is hereby created a department of the city clerk which shall be under the direction of the city clerk. The functions and duties of the department shall be those of the city clerk as required by the state constitution and laws, by the City Charter and by this code and such other duties as may be assigned from time to time by the city commission. (Ord. of 3-30-92, § 1).

Secs. 2-97.1, 2-97.2. Reserved.

DIVISION 8. DEPARTMENT OF RECREATION AND LEISURE SERVICES*

Sec. 2-97.3. Creation.

There is hereby created a department of recreation and leisure services which shall be separate and apart from the department of public works. (Ord. of 8-16-93, § 1)

Sec. 2-97.4. Department head.

The department of recreation and leisure services shall be headed by a department head who may create divisions of the department of recreation and leisure services. (Ord. of 8-16-93, § 1)

Sec. 2-97.5. Duties.

(a) The department of recreation and leisure services shall have the duty to administer, implement and maintain all city recreational and leisure programs and facilities. This shall include, but not be limited to all softball and baseball parks and facilities, all tennis and basketball courts and facilities, all beaches and facilities and the city recreation center. This shall further include, but not be limited to, establishing, maintaining and promoting sports teams, leagues and competitive and recreational activities for the youth of the city.

(b) The department of recreation and leisure services shall also have the duty to establish, promote and implement revenue producing recreational activities. Revenue from such activities shall provide for additional financing of department of recreation and leisure services activities. (Ord. of 8-16-93, § 1)

ARTICLE IV. PURCHASES, CONTRACTS AND SALES*

Sec. 2-98. Purchasing agent.

The manager shall act as purchasing agent of the city, unless he shall designate another officer or employee of the city to act as purchasing agent. Any such designation shall be in writing filed with the clerk. In the event of such designation every purchase order in excess of one hundred dollars (\$100.00) shall be approved by the manager before being issued. The manager shall adopt any necessary rules respecting requisitions and purchase orders. (Code 1972, § 1.250)

Sec. 2-99. Purchases or contracts under \$3,500.

Purchases of supplies, materials or equipment, the cost of which is less than three thousand five hundred dollars (\$3,500), may be made in the open market but such purchases shall, where practicable, be based on at least three (3) competitive bids and shall be awarded to the lowest qualified bidder. The purchasing agent may solicit bids verbally or by telephone, or may contact prospective bidders by written communication. Where bids are solicited by written communication, a request for such bids shall also be posted in the city hall. A record shall be kept for six (6) months of all open market orders and the bids submitted thereon, which records shall be available for public inspection. Any or all bids may be rejected. (Code 1972, § 1.251)

Sec. 2-100. Purchases or contracts over \$3,500.00.

Any expenditure for supplies, materials, equipment, construction project or contract obligating the city, where the amount of the city's obligation is in excess of three thousand five hundred dollars (\$3,500), shall be approved by the city commission and shall be governed by the provisions of this section.

(1) Such expenditure shall be made the subject of a written contract when a public work or improvement is involved, in accordance with section 7.16 of the Charter. A purchase order shall be a sufficient written contract in cases where the expenditure is in the usual and ordinary course of the city's affairs.

(2) The purchasing agent shall solicit bids from a reasonable number of such qualified prospective bidders as are known to him by sending each a copy of the notice requesting bids and notice thereof shall be posted in the city hall. Bids shall also be solicited by newspaper advertisement when required by section 7.16 of the Charter.

(3) Unless prescribed by the commission, the manager shall prescribe the amount of any security to be deposited with any bid which deposit shall be in the form of cash, certified or cashier's check or bond written by a surety company authorized to do business in the state. The amount of such security shall be expressed in terms of

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percentage of the bid submitted. Unless fixed by the commission, the manager shall fix the amount of the performance bond and in the case of construction contracts, the amount of the labor and materials bond to be required of the successful bidder. '

(4) Bids shall be opened in public at the time and place designated in the notice requesting bids in the presence of the purchasing agent, the city clerk and at least one other city official, preferably the head of the department most closely concerned with the subject of the contract. The bids shall thereupon be carefully examined and tabulated and reported to the commission with the recommendation of the purchasing agent (as approved by the manager if the manager is not acting as purchasing agent) at the next commission meeting. After tabulation all bids may be inspected by the competing bidders. In lieu of the procedure for opening bids herein specified, the commission may direct that bids be opened at a commission meeting.

(5) When such bids are submitted to the commission, if the commission shall find any of the bids to be satisfactory, it shall accept the same. Such award may be by resolution or ordinance. The commission shall have the right to reject any or all bids and to waive irregularities in bidding and to accept bids which do not conform in every respect to the bidding requirements.

(6) At the time the contract is executed by him, the contractor shall file a bond executed by a surety company authorized to do business in the state, to the city, conditioned to pay all laborers, mechanics, subcontractors and material men as well as all just debts, dues and demands incurred in the performance of such work and shall file a performance bond when one is required. Such contractor shall also file evidence of public liability insurance in an amount satisfactory to the city manager, and agree to save the city harmless from loss or damage caused to any person or property by reason of the contractor's negligence.

(7) All bids and deposits of certified or cashier's checks may be retained until the contract is awarded and signed. If any successful bidder fails or refuses to enter into the contract awarded to him within five (5) days after the same has been awarded, or file any bond required within the same time, the deposit accompanying his bid shall be forfeited to the city, and the commission may, in its discretion, award the contract to the next lower qualified bidder or said contract may be re-advertised. (Code 1972, § 1.252)

Sec. 2-101. Exceptions to competitive bidding. Competitive bidding shall not be required in the following cases:

(1) Where the subject of the contract is other than a public work or improvement and the product or material contracted for is not competitive in nature and no advantage to the city would result from requiring competitive bidding, and the commission, upon written recommendation of the manager, authorizes execution of a contract without competitive bidding;

(2) In the employment of professional services;

(3) Where the commission shall determine that the public interest will be best served by purchase from or joint purchase with, another unit of government;

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(4) Where the city elects to undertake the work itself as provided by the Charter. (Code 1972, § 1.253)

Sec. 2-102. Emergency purchases.

In case of emergency, any department head, with the approval of the manager, may purchase directly any supplies, materials or equipment, the immediate procurement of which is necessary to the continuation of the work of the department. Such purchases and the emergency causing them shall be reported in detail to the purchasing agent within a week from the time when made and such reports shall be preserved by the purchasing agent for a period of two (2) years. (Code 1972, § 1.254)

Sec. 2-103. Inspection of materials.

The responsibility for the inspection and acceptance of all materials, supplies and equipment shall rest with the ordering department. (Code 1972, § 1.255)

Sec. 2-104. Sale of property.

Whenever any city property, real or personal, is no longer needed for corporate or public purposes, the same may be offered for sale. Real and personal property not exceeding one thousand dollars (\$1,000.00) in value may be sold for cash by the purchasing agent, upon approval of the city manager, after receiving quotations or competitive bids therefor on the best price obtainable. Real and personal property with a value in excess of one thousand dollars (\$1,000.00) may be sold after advertising and receiving competitive bids, as provided in section 2-100, and after approval of the sale has been given by the commission; provided, however, real property with a value in excess of one thousand dollars (\$1,000.00) may be sold by negotiated sale without competitive bids if the following conditions are met:

- (1) The property is not used or needed by the city in the discharge of its governmental functions;
- (2) The sale of the property will contribute to the economic development and growth of the city, help preserve existing jobs, create new jobs or help diversify the economy of the city;
- (3) The terms of the sale are approved by two-thirds of the members of the commission then serving; and
- (4) The sale is not otherwise prohibited by law.

The city may give conditioned options, acquire property for assembly and resale, negotiate terms, and do any and all things necessary and proper to achieve these economic development and growth objectives in the handling and disposition of property. (Code 1972, § 1.256; Ord. No. 591-88, § 1, 1-25-88)

Secs. 2-105-2-115. Reserved.

ARTICLE V. PERSONNEL MERIT SYSTEM*

Sec. 2-116. General purpose.

The general purpose of this article is to establish for the city a system of personnel administration based on merit, principles and scientific methods governing the appointment, promotion, transfer, -layoff, removal and discipline of all employees in the classified service of the city, except those specifically exempted herein. All appointments and promotions to positions in the city classified service shall be made on the basis of merit and fitness, to be ascertained by competitive examinations. (Gen. Code 1946, Ch. 10, § 101.1; Code 1972, § 1.171)

Sec. 2-117. Department of personnel.

There is hereby established a department of personnel for the purpose of administering certain personnel matters as prescribed in this article. The department of personnel shall be composed of the civil service board and the director of personnel. (Gen. Code 1946, Ch. 10, § 102.1; Code 1972, § 1.172)

Sec. 2-118. Director of personnel-Designation. .

The city manager shall be director of personnel. (Gen. Code 1946, Ch. 10, § 102.6; Code 1972, § 1.177)

Sec. 2-119. Same-Functions.

The director of personnel shall be the executive officer of the department of personnel and shall initiate and direct administrative work. It shall be his duty:

- (1) To attend all regular and special meetings of the civil service board;
- (2) To prepare and recommend proposed rules and regulations to the civil service board for its approval and adoption, for carrying out the provisions of this article, which rules shall become effective after public hearing by the board after approval by the city commission; provided, however, that such rules shall not be inconsistent with or in contravention of the provisions of this article or provisions of the Charter. The rules may from time to time, after a public hearing by the board and subject to the approval of the city commission, be added to, amended or rescinded;
- (3) To administer such rules and regulations, and to propose amendments thereto as the needs of the service may require;
- (4) To recommend to the civil service board the employment of technical personnel services of an agency or person of recognized professional standing in the field of personnel, when needed;
- (5) After consultation with the department heads and their principal assistants to prepare or cause to be prepared a salary and classification plan, including provisions for leaves of absence and other benefits, for the positions in the city service, together with regulations for the administration of such plan. This suggested plan shall be submitted by the director of personnel to the city commission for approval, and shall, when adopted, constitute the official salary and classification plan for positions in the city service. (Gen. Code 1946, Ch. 10, § 103.3; Code 1972, § 1.178)

Sec. 2-120. Civil service organization. board-Establishment;

(a) A civil service board consisting of three (3) electors of the city, who shall be appointed by the mayor and confirmed by the commission, to serve for three (3) years and until their successors have been appointed and qualified. One member shall be appointed from a list (not to exceed three (3)) of electors nominated by the members of the department of public safety; one member shall be appointed from a list (not to exceed three (3)) of electors nominated by all departments of classified employees (other than public safety); and one member shall be appointed by the mayor at his own discretion, all of whom shall be confirmed by the city commission. Members of the board shall serve without compensation and shall not hold any public office or serve on any political committee or take part in the management of any political campaign and shall not be an employee of the city or be an immediate relative of any member of the city commission or of an employee of the city. The city commission may remove any member of the board upon stating, in writing, the reasons for removal and allowing the member an opportunity to be heard in his own defense. Any vacancy created by resignation, expiration of term or any other reason shall be filled for the unexpired term in the same manner as the person who left the board to create such vacancy was chosen.

(b) The members of the civil service board shall qualify by taking the oath of office as required by the Charter.

(c) The city clerk shall act as secretary for the board. He shall be custodian for all civil service board records and shall be the official upon or with whom all notices, requests for hearing, complaints or other official documents shall be served or filed. He shall keep the minutes of meetings and records of all proceedings of the board.

(d) The civil service board shall at its organization meeting elect a chairman who shall serve for a one year term. Two (2) members of the board shall constitute a quorum for the transaction of business. The civil service board shall determine its order of business for the conduct of its meetings. (Gen. Code 1946, Ch. 10, §§ 102.2-102.5; Code 1972, § 1.173)

Sec. 2-121. Same-Functions.

The civil service board shall have general supervision over the broad problems of administrative policy involved in the personnel matters prescribed in this article, and except for the purpose of inquiry, the civil service board and its members shall deal with the specific technical problems of administration solely through the director of personnel. The members of the civil service board shall meet on call of the chairman or the director of personnel. It shall be the duty of the civil service board:

(1) To represent the public and employee interest in the improvement of personnel administration in the city service;

(2) To make annual or special reports to the city commission on the quality and status of personnel administration in the city government and to make recommendations for improvements;

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- (3) To do any lawful act necessary to effect the purpose of this article and the rules promulgated in accordance therewith;
- (4) To sit as a body in investigating and hearing personnel appeals of appointing authorities and employees;
- (5) To recommend to the city commission through the director of personnel such rules and regulations as it may deem necessary for the administration of this article. (No rule or any amendment or repeal thereof shall be effective until approved by the city commission and only after a public hearing has been held);
- (6) To consider such other matters as may be referred to the board by the director of personnel or the city commission. (Gen. Code 1946, Ch. 10, § 103.2; Code 1972, § 1.178)

Sec. 2-122. Exemptions from jurisdiction.

- (a) The following officers and employees are exempt from jurisdiction of the civil service board and from the provisions of this article:
 - (1) Administrative officers of the city;
 - (2) All officials elected by the people;
 - (3) The directors of departments, members of appointive boards and unclassified employees thereof;
 - (4) Part-time employees receiving credit for working less than two hundred (200) days in any calendar year;
 - (5) Technical consultants employed under contract;
 - (6) Employees who cannot qualify for pension by retirement age of sixty-five (65).
- (b) The classified service shall include all other positions now existing or hereafter created or as provided in the Charter, and the provisions of this article shall apply thereto.
- (c) Jurisdiction of civil service for purposes of appeals, grievances, hearings or any other purpose shall be assumed or imputed over any employee of the city who is not clearly civil service by reason of having filled a classified position following proper passage of a competitive civil service examination and selection from a certified eligibility listing and of having met any and all other civil service hiring and/or promotional requirements. (Gen. Code 1946, Ch. 10, § 104; Code 1972, § 1.179; Ord. No. 586-87, 9-21-87)

Sec. 2-123. Status of present employees.

Any person holding a position in the city classified service, who shall have served in such position for a period

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of at least six (6) months when the ordinance from which this section was derived took effect, shall be retained without preliminary or performance tests and shall thereafter be subject in all other respects to the provisions of this article. Any other persons in the classified service at the time the ordinance from which this section was derived took effect shall be considered as having been given probationary appointment as defined in the rule relating to the subject. When and if any privately operated enterprise is taken over and operated by the city, employees holding positions which fall into the classified civil service therein, as defined in section 2-122 shall be considered as having been given probationary appointment as defined in the rule relating to the subject. (Gen. Code 1946, Ch. 10, § 105; Code 1972, § 1.180)

Sec. 2-124. Application for employment; qualifications; appeals; physical examination; residency; exemptions.

(a) *Application.* The civil service board shall require persons applying for admission to any examination provided for under this article or under the rules and regulations of the board to file with the director of personnel, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

- (1) His full name, residence and post office address;
- (2) His citizenship, age and the place and date of his birth;
- (3) His health, and his physical capacity for public service;
- (4) His business and employments and residence for at least three (3) years previous; he must be a resident of the city at the time of his application and during his employment. The board shall establish educational requirements but in no case shall the requirements call for less than an eighth grade education;
- (5) Such other information as may reasonably be required, touching the applicant's qualifications and fitness for the public service.

(b) *Qualifications.* Blank forms for such applications shall be furnished by the board, without charge to all persons requesting same. The board may require in connection with such application such certificate of citizens, physicians or others, having knowledge of the applicant as the good of the service may require. The board may refuse to examine an applicant, or after examination, to certify as eligible, one who is found to lack any of the established preliminary requirements for the examination of position or employment for which he applied; or who is physically so disabled as to be rendered unfit for the performance of the duties of the position to which he seeks appointment; or who is addicted to the habitual use of intoxicating liquors or drugs; or who may have been guilty of any crime, or infamous or notoriously disgraceful conduct; or who has been dismissed from the public service for delinquency or misconduct; or who has made a false statement of any material fact, or practiced or attempted to practice any deception or fraud in his application, in his examination, or in securing his eligibility; or who refuses to comply with the rules and regulations of the board.

(c) *Appeals.* If any applicant feels himself aggrieved by the action of the board in refusing to examine him, or after an examination, to certify him as an eligible, as provided in this

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section, the board shall, at the written request of such applicant, appoint a time and a place for a public hearing; at which time such applicant may appear, by himself or counsel, or both, and the board shall then review its refusal to make such examination or certifications, and testimony shall be taken. The board shall subpoena at the expense of the applicant, any competent witnesses requested by him. After such review, the board shall again make a decision which decision shall be in writing and filed in its records, and which decision shall be final.

(d) *Physical examination.* All applicants for any position in the classified service shall undergo a physical examination by a doctor of medicine. The doctor of medicine shall certify that an applicant is free from any bodily or mental defects, deformity or diseases that might incapacitate him from the performance of the duties of the position desired before the applicant shall be permitted to take further examinations. No applications will be received if the persons applying are not at least eighteen (18) years old at the time of application. Provided, however, that if any applicant has formerly served in the classified service of the city for a period of more than five (5) years, and has resigned from the service of the city at a time when there were no charges of misconduct or other misfeasance pending against such applicant, within a period of two (2) years next preceding the date of his resignation and he is still a resident of the city, then such person shall be eligible for reinstatement in the discretion of the civil service board, even though such applicant shall be over the maximum ages shown above. Such applicant, providing his former term of service so justifies, may be reappointed to the classified service without examination other than physical; if such person shall be reinstated to the classified service of the city, he shall be the lowest in rank in the department to which he is reinstated next above the probationers of the department.

(e) *Residency generally;* Any employee of the classified service or appointive office employed on or after June 1, 1973 shall be a resident of the city. Residence shall be construed to mean the actual domicile of the employee where he normally eats and sleeps and maintains his normal personal and household effects. The city manager, for employees under his supervision, may waive this residence requirement for employment for any period of time not longer than six (6) months upon a determination that such waiver would be in the best interest of the city. Waiver of residence requirements for any period of time in excess of six (6) months must be approved by the city commission upon a determination that such waiver would be in the best interest of the city. city residents shall be given preference for all city employment as a matter of policy.

(f) *Residency of promoted department heads.* All employees of the classified service or appointive office promoted to department head status after the effective date of the ordinance from which this paragraph was derived shall be or shall within six (6) months become bona fide residents of the city and shall remain so during the term of their employment; and all persons currently employed by the city and residing therein shall remain bona fide residents during the term of their employment.

(g) *Residency of newly hired department heads.* The following department heads who are hired on or after October 8, 1984 shall, within six (6) months of their hiring date, become a resident of the City of Benton Harbor: City clerk, finance director, city assessor, city attorney. These department heads shall remain residents of the city throughout their term of employment. The city commission may waive this residency requirement for additional periods upon a determination that such waiver is in the best interest of the city. (Gen. Code 1946, Ch. 10, § 106; Ord. of 10-26-71; Code 1972, §§ 1.181-1.183; Ord. of 5-21-73, § 1.183(1); Ord. of 12-18-74, § 1.183(1), (2); Ord. of 4-18-77, § 1; Ord. No. 533-84, 9-4-84; Ord. No. 536-84, 10-8-84; Ord. of 6-29-90, § 1)

Sec. 2-125. Civil service examinations; probationary appointments; filling positions by new employees; temporary emergency appointments; promotions.

(a) *Examinations.* The civil service board shall make rules and regulations providing for examination of positions in the classified service, for appointments, and for such other matters as are necessary to carry out the purposes of this article. The minimum passing grade for any examination shall be at least seventy (70) per cent. Due notice of the contents of such rules and regulations and of any modifications thereof shall be given, by mail, in due season, to appointing officers affected thereby, and said rules and regulations and modifications thereof shall also be printed for public distribution.

(b) *Probationary appointments.* All original appointments to any positions in the classified service, within the terms of this article, shall be for a probationary period of one year; provided, however, that at any time during the probationary period the appointee may be dismissed for just cause, in the manner provided in this article. If at the close of this probationary term, the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified, in writing, that he will not receive permanent appointment whereupon his employment shall cease; otherwise his retention in the service shall be equivalent to his final appointment; provided, however, that the probationer shall be entitled to a hearing before the board, as provided in section 2-127(a).

(c) *Filling positions by new employees.* Every position, unless filled by reinstatement, shall be filled only in the following manner: The appointing officer shall notify the civil service board of any vacancy in the service which he desires to fill, and shall request the certification of eligible. The board shall forthwith certify the eligible list. The appointing officer shall, thereupon, with sole reference to the relative merit and fitness of the candidate, make the appointment from the eligible list so certified, at his discretion. As each subsequent vacancy occurs, precisely the same procedure shall be followed. When an appointment is made under the provisions of this section, it shall be, in the first instance, for the probationary period of one year.

(d) *Temporary emergency appointments.* Whenever there are urgent reasons for filling a vacancy in any position in the classified service and there is no list of persons eligible for appointment the appointing officer may nominate a person to the civil service board for a noncompetitive examination; and if such nominee shall be certified by the board as qualified, after such noncompetitive examination, he may be appointed temporarily to fill such vacancy until a selection and appointment can be made after a competitive examination, and in the manner prescribed in this article; but such temporary appointment shall not continue for a longer period than six (6) months, nor shall successive temporary appointments be made to the same position, under this provision. In the event of an emergency due to a war in which our country is involved, the civil service board may make temporary appointments to fill vacancies, when appointments cannot be made under the provisions of this article, such appointments to be temporary, and only during hostilities and six (6) months thereafter.

(e) *Promotions.* Vacancies in positions in the classified service and filling of newly created positions in the classified service shall be competitive and shall wherever possible be filled by promotions from among persons holding positions in the next lower ranks in the departments, who have completed two (2) years in such rank and at least five (5) years in the department, and who can meet the requirements of the

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job description of the position to be filled; provided, however, if no person has completed two (2) years in the next lower rank, the board may hold examinations among persons in such person. Promotions shall be based upon merit to be ascertained by tests to be provided by the civil service board and upon the superior qualifications of the person promoted as shown by their previous service and experience. If there is only one person in the next lower rank, a person or persons in the second lower rank may compete for the vacancy, if such person or persons have completed at least five (5) years in the department. Whenever a position becomes vacant for which examinations are held, the appointing officer shall make requisition upon the board for the name of the person or persons eligible for appointment thereto. The board shall certify the names of persons on the eligible list at preceding examinations held under the provisions of this article within a period of two (2) years next preceding the date of such appointment for the class to which the vacant position has been allocated, who are willing to accept employment. The appointing officer shall forthwith appoint such person or persons to such position or positions, from said eligibility list, at his discretion. No promotion shall be deemed as complete until after the expiration of a period of one year probationary service, and if at the end of a probationary period, the appointing officer finds that the conduct or capacity of the probationer has not been satisfactory, the appointing officer shall notify the probationer and the board, in writing, that he will not receive regular appointment to the higher position, otherwise his retention in the higher position shall be equivalent to receiving full status and regular employment in the higher position. If the probationer shall not receive such full status and regular employment in the higher position he shall resume the duties of his former position, and the appointing officer shall be entitled to another certification of eligibles, in accordance with the provisions of this article. (Gen. Code 1946, Ch. 10, § 107; Code 1972, §§ 1.184-1.187; Ord. of 4-8-74, §§ 1.184, 1.187)

Sec. 2-126. Contents, notice and procedure of examination.

All examinations for positions shall be practical in their character and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the persons examined to discharge the duties of the employment sought by them. All examinations shall be open to all applicants who have fulfilled the preliminary requirements, as stated herein. Notice of the time and place and purpose of every examination shall be given by the board by publication for two (2) weeks preceding such examination in the official paper of the city, and such notice shall be posted by the board in a conspicuous place in the city hall for two (2) weeks before such examination. Such further notice of examinations may be given as the board shall prescribe; provided, that in an examination for a promotion, no newspaper advertisement shall be required. The board shall adopt reasonable regulations for permitting the presence of representatives of the press at the examination. The board shall post, in a public place at city hall, the eligible list, containing the names of those who have passed examinations for positions or promotions in the classified service and the appointing authority shall appoint or make promotions from such list only, at his discretion. No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant nor shall inquiries be made concerning such opinions or affiliations; and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened or promised by any person against, or in favor of, an eligible applicant or employee in the classified service under this article. (Gen. Code 1946, Ch. 10, § 108; Code 1972, § 1.188)

Sec. 2-127. Tenure of employment; layoffs; suspensions; reductions or dismissals.

(a) *Tenure of employment.* The tenure of every one holding an office, place, position or employment under the provisions of this article shall be only during good behavior and efficient service; and any such person may be laid off, suspended, reduced in rank or pay, removed or discharged, deprived of vacation privileges or other special privileges by the appointing officer for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, violation of the provisions of this article or the rules of the board, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office; provided, however, no member of the classified service within the terms of this article shall be laid off, suspended, reduced in rank or pay, removed or discharged or otherwise punished except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions. In every case of charges having been made a copy of the statement of reasons therefor and answer thereto, if the person sought to be laid off, suspended, reduced in rank or pay, removed or discharged, or otherwise punished desires to file such written answer, shall be furnished to the civil service board and entered upon its records. Such answer shall be filed by the member within ten (10) days after service of the charges upon him. If the person sought to be laid off, suspended, reduced in rank or pay, removed or discharged, or otherwise punished shall demand it in writing within ten (10) days the civil service board shall grant him a public hearing, which hearing shall be held within a period of twenty (20) days from the date of the employee's request for hearing. At no time ever is a layoff due to short- age of funds stoppage to be considered punitive, nor shall such action of itself be appealed or aggrieved. Pending the period between the making of the charges as a basis for removal and the decision thereon by the board, the member shall be suspended without pay. At such hearing, the burden shall be upon the appointing officer who has taken the punitive action to justify his action. In the event that the civil service board fails to justify the action of the officer taking the punitive action, then the person sought to be punished shall be reinstated with full pay for the entire period during which he was penalized, and no charges shall be officially recorded against his record. In the event that the civil service board shall sustain the action of the appointing officer making the charges, the person's employment shall terminate or other punitive measures as taken shall be sustained as of the original date of official notification from the appointing officer.

(b) *Layoffs.* An appointing officer may lay off a classified employee whenever he deems it necessary because of a material change in duties or organization, or a shortage or stoppage of work or funds. The appointing officer shall, before the effective date thereof, follow the procedure as described in subsection (a). If investigation of layoff is requested by the laid off employee, and the board finds, upon investigation, that such layoff was made for political reasons, or for reasons other than a material change in duties, organization, shortage or stoppage of work or funds, or was not made in accordance with the rules as outlined in this article for determining persons to be laid off, it shall so report to the appointing officer, and the person so laid off shall thereupon be entitled to resume his position. The names of all persons whose layoffs have become final and binding shall be placed on an appropriate reemployment list in the manner provided in this article. Such removals shall be accomplished by suspending in numerical order [as follows:] commencing with the last person appointed to the department or classification involved, except that where no more than one employee is employed per funding source in a department in the same or different job titles or classifications performing different although similar functions, the determination of what person

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is removed shall be in the sole discretion of the appointing authority; [and thereafter,] all recent appointees to the department until such reductions shall have been accomplished; provided further, however, that in event the department shall again be increased in numbers to the strength existing prior to such reductions of members, the persons suspended last under the terms of this section shall be first reinstated before any new appointments to the department shall be made.

(c) *Suspensions.* An appointing officer may, for disciplinary purposes, suspend a classified employee without pay for a period of not to exceed fifteen (15) days at any one time, in the manner provided in subsection (a). Any suspension which would have the effect of making the total time during which the affected employee is suspended without pay during any one year greater than thirty (30) days shall be deemed a dismissal.

(d) *Reductions or dismissals.* An appointing officer may dismiss or demote a classified employee whenever he considers the good of the service to be served thereby, subject to the provisions of subsection (a). Any removal or involuntary separation of an employee from the classified service shall be deemed to be a dismissal except as in this article otherwise provided on suspensions and layoffs. (Gen. Code 1946, Ch. 10, § 109; Code 1972, §§ 1.189– 1.192; Ord. No. 586-87, 9-21-87)

Sec. 2-128. Political and religious considerations.

No person in the city classified service, or seeking admission thereto, shall be appointed, promoted, laid off, reduced in rank or pay, suspended, dismissed or in any way favored or discriminated against, because of his political or religious opinions or affiliations. No person shall willfully or corruptly make any false statement, certification mark, rating or report in regard to any test certification, or appointment held or made under the provisions of this article, or in any manner, commit or attempt to commit any fraud preventing the impartial execution of such personnel provisions or of the rules and regulations made thereunder. No person seeking appointment to or promotion in the classified service of the city shall either directly or indirectly give, render or pay any money, service or other valuable thing to any person for, or on account of, or in connection with his test, appointment, proposed appointment, promotion or proposed promotion. No person elected to the city commission shall, during the term for which he is elected, be appointed to any office or position in the city classified service. No member or officer of the civil service board shall continue in such office after becoming an officer of any political party. No employee in the city classified service shall continue in such position after becoming a candidate for nomination or election to any public office. No person holding a position in the city classified service shall solicit for or make any contribution to the campaign funds of any candidate for municipal office in the city. No person shall be prohibited hereby from exercising his right as a citizen to express his opinion and to cast his vote, nor shall this section abridge any of the rights guaranteed to any of the persons named herein by the Constitution of the United States or of the State of Michigan. Any person in the classified service violating any of the provisions of this section shall be subject to disciplinary action as provided in this article or the rules and regulations authorized herein, in addition to any other penalties provided in this article. (Gen. Code 1946, Ch. 10, § 110; Code 1972, § 1.193)

Sec. 2-129. Facilities and cooperation to be furnished by city.

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The city commission shall annually make adequate appropriations to enable the civil service board to carry out fully and effectively the provisions of this article. The civil service board shall be provided with suitable quarters. All department heads of the city, during the usual business hours, shall grant to the members of the board, the director of personnel and any employee of the civil service board designated by it or by the director of personnel, free access to premises and records under their control, and shall furnish them or such facilities, assistance and information as they or he may require in carrying out their or his function. (Gen. Code 1946, Ch. 10, § 111; Code 1972, § 1.194)

Sec. 2-130. Examination of payrolls.

Payment of salary or wages of persons in the classified service shall be made only after their names and positions have been certified as being employed in accordance with the provisions of the Charter, this article and the personnel rules and position classification and compensation plan. Checks or orders shall not be issued by any fiscal officer in payment of salaries or wages to any persons after receiving notice from the director of personnel or the civil service board that employment of such persons is in violation of the Charter, this article, or the personnel rules or position classification and compensation plan. The director of personnel shall designate the manner in which payrolls shall be certified. (Gen. Code 1946, Ch. 10, § 112; Code 1972, § 1.195)

Sec. 2-131. Oaths.

For the purpose of administering the provisions of this article, any member of the civil service board or the director of personnel shall have the power to administer oaths. (Gen. Code 1946, Ch. 10, § 113; Code 1972, § 1.196)

Sec. 2-132. Appointing officer.

The term "appointing officer" as used in this article shall mean and include every person, officer, board or commission with power and authority to select, appoint or employ any person to hold any place, position or employment in the classified service. (Gen. Code 1946, Ch. 10, § 114; Code 1972, § 1.197)

Secs. 2-133-2-143. Reserved.

ARTICLE VI. EMPLOYEE'S RETIREMENT SYSTEM*

DIVISION 1. GENERALLY

Sec. 2-144. Name and establishment.

The City of Benton Harbor Employees Retirement System, hereinafter referred to as the "Retirement System," is hereby established for the purpose of providing retirement allowances and death benefits for the employees of the city under the provisions of this article adopted pursuant to Section 2.20 of the Charter. (Gen. Code 1946, Ch. 10, § 201; Code 1972, § 1.121)

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Sec. 2-145. Definitions.

The following words and phrases, when used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

Accumulated contributions shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account, together with regular interest thereon.

Beneficiary shall mean any person in receipt of an annuity, pension, retirement allowance or other benefit provided by this article.

Board shall mean the board of trustees provided for in section 2-183.

Final compensation shall mean the annual rate of pay earned or earnable by a member at the time of termination of his employment with the city.

Member shall mean any person included in the membership of the retirement system.
Membership service shall mean service rendered as an officer or employee of the city since last becoming a member of the retirement system.

New member shall mean any member without prior service credited to his service account.

Original member shall mean any member with prior service credited to his service account.

Pension reserve shall mean the present value of all payments to be made on account of any pension, or benefits in lieu of any pension, computed upon the basis of such mortality tables, regular interest and other tables as the board shall adopt.

Prior service shall mean service rendered as an officer or employee of the city prior to the effective date of this retirement system.

Regular interest, for a period of three (3) years following the effective date of the retirement system, shall be three (3) per cent per annum, compounded annually.

Thereafter, for each subsequent three (3) year period, regular interest shall be such rate of interest as the board may determine.

Retirement allowance shall mean the amount of monthly retirement benefit.

Retirement and termination benefits shall be determined on the three (3) highest consecutive fiscal years of salary of the employee prior to his termination or retirement. In calculating creditable years, any fractional part of a year equal to six (6) months or more will be considered a year, and any fractional part of a year less than six (6) months will be disregarded.

Retirement system shall mean the provisions of this article.

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Service shall mean service rendered as an officer or employee of the city. (Gen. Code 1946, Ch. 10, § 202; Code 1972, § 1.122)

Cross reference-Definitions and rules of construction generally, § 1-2.

Sec. 2-146. Membership.

(a) The membership of the retirement system shall consist of the following individuals:

(1) All appointed officers and employees of the city who are employed by the city on the day preceding the effective date of the retirement system and who continue in the employ of the city on and after the effective date of the retirement system, except as provided in subsection (b) of this section; and

(2) All persons who become appointed officers or employees of the city on and after the effective date of the retirement system shall thereupon become members of the retirement system, except as provided in subsection (b) of this section; and

(3) All persons who become appointed officers or employees of the Twin Cities Airport and the Joint Sewage Disposal Plant on and after the effective date of the retirement system shall thereupon become members of the retirement system, except as provided in subsection (b) of this section; provided that the Twin Cities Airport Board and the Board of the Joint Sewage Disposal Plant shall deduct from the wages of each of its employees who have come under this article the percentage provided for herein and shall forward each month, such sum with the percentage to be paid by such board, to the city treasurer who shall deposit such sums in the pension fund provided for in this article.

(b) The membership of the retirement system, except for social security, shall not include:

(1) Individuals whose services are compensated for on a contractual or fee basis; nor

(2) Employees whose average yearly compensation in a period of three (3) consecutive years is less than four hundred dollars (\$400.00); nor

(3) The medical director of the retirement system; nor Sec. 2-146. Membership.

(a) The membership of the retirement system shall consist of the following individuals:

(1) All appointed officers and employees of the city who are employed by the city on the day preceding the effective date of the retirement system and who continue in the employ of the city on and after the effective date of the retirement system, except as provided in subsection (b) of this section; and

(2) All persons who become appointed officers or employees of the city on and after the effective date of the retirement system shall thereupon become members of the retirement system, except as provided in subsection (b) of this section; and

(3) All persons who become appointed officers or employees of the Twin Cities Airport

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and the Joint Sewage Disposal Plant on and after the effective date of the retirement system shall thereupon become members of the retirement system, except as provided in subsection (b) of this section; provided that the Twin Cities Airport Board and the Board of the Joint Sewage Disposal Plant shall deduct from the wages of each of its employees who have come under this article the percentage provided for herein and shall forward each month, such sum with the percentage to be paid by such board, to the city treasurer who shall deposit such sums in the pension fund provided for in this article.

(b) The membership of the retirement system, except for social security, shall not include:

(1) Individuals whose services are compensated for on a contractual or fee basis; nor

(2) Employees whose average yearly compensation in a period of three (3) consecutive years is less than four hundred dollars (\$400.00); nor

(3) The medical director of the retirement system; nor

(4) Temporary employees working less than ten (10) months per year and employees who cannot complete ten (10) years' service before the retirement age of sixty-five (65) years; nor

(5) Policemen and firemen who are included in the membership of the pension system provided by Chapter II, Sections 2.4 through 2.19 of the Charter.

(c) In all cases of doubt, the board shall decide who is a member of the retirement system within the meaning of the provisions of this article. (Gen. Code 1946, Ch. 10, § 212; Code 1972, § 1.131)

Sec. 2-147. Termination of membership.

Except as provided in section 2-154, should any person be absent from service more than three (3) years in a period of four (4) consecutive years after last becoming a member, or should he become a beneficiary or die, he shall thereupon cease to be a member. (Gen. Code 1946, Ch. 10, § 213; Code 1972, § 1.132)

Sec. 2-148. Service creditable.

The board shall fix and determine by appropriate rules and regulations as to what constitutes a year of service, but in no event shall it be less than that provided for in section 2-145 for "retirement and termination benefits," nor in any case shall less than ten (10) days' service in a calendar month constitute one month of service nor shall more than one year of service be creditable for all service rendered in one calendar year. (Gen. Code 1946, Ch. 10, § 214; Code 1972, § 1.133)

Sec. 2-149. War service credit.

Should an appointed officer or employee, who while employed by the city, be called or enlists, or was called or enlisted, in the military, naval, marine, or other armed service of the United States Government during time of war, or other national emergency

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recognized by the board and should such individual be reemployed by the city within six (6) months after the date of termination of his required enlistment, then such service shall be credited to him as city service. During the period of a member's service in such armed service of the United States Government, his contributions shall be suspended and his balance standing to his credit at the last payroll date preceding his leave of absence from city service shall be accumulated at regular interest. (Gen. Code 1946, Ch. 10, § 215; Code 1972, § 1.134)

Sec. 2-150. Members' service accounts.

Subject to the provisions of sections 2-148 and 2-149, and to such other rules and regulations as the board may adopt, the board shall credit each member's service account with the number of years and months of prior service and membership service to which he may be entitled. (Gen. Code 1946, Ch. 10, § 216; Code 1972, § 1.135)

Sec. 2-151. Optional retirement from service.

Any member who has attained age sixty (60) years may retire from service upon his written application to the board setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired. In order that there will be no reduction in benefits, contribution requirements of members retiring prior to age sixty-five (65) will be determined when the member retires. (Gen. Code 1946, Ch. 10, § 217; Code 1972, § 1.136)

Sec. 2-152. Compulsory retirement from service.

(a) On and after July 1, 1950, any member who has attained age sixty-five (65) years shall be retired forthwith provided an extension is not granted as provided in subsection (b) of this section.

(b) *Extensions of service.* On and after July 1, 1950, any member who has attained age sixty-five (65) may be continued in service for periods of time not to extend beyond his attainment of age seventy (70) years, with the exception of present employees seventy (70) or over, who may be retained until their successors are appointed and qualified, but not to exceed a period of one year; provided, that no extension shall be granted for more than one year at one time and that such extension is requested in writing by the member, and approved by his department head, and approved by the board. (Gen. Code 1946, Ch. 10, § 218; Code 1972, § 1.137)

Sec. 2-153. Service retirement allowance.

(a) Upon retirement from service, a member shall receive a monthly retirement income which retirement income will be payable as long as he lives, and no longer, unless such member, at retirement, shall have selected in writing a joint annuitant. If such member has selected a joint annuitant, the retirement benefits will be payable to either the member or his joint annuitant as long as either shall live; provided, that if the member and his joint annuitant shall both die prior to the time that annuity payments have been made to the member or the joint annuitant in an amount equal to the contributions paid into the fund by the member, together with two and one-half (2 V2)

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per cent interest, the difference between the annuity payments and the amount contributed by the member, together with two and one-half (2½) per cent interest, shall be paid to the member's estate.

(b) If a joint annuitant is selected and the joint annuitant's age is under sixty (60) years, or if the member retires before age sixty (60), the retirement benefit earned to date of retirement will be adjusted in accordance with the following table:

Age	Percent of benefit earned to date	Age	Percent of benefit earned to date
48	74	43	64
47	72	42	62
46	70	41	60
45	68	40	58
44	66	-	-

(c) Retirement credit for each year of service up to twenty-five (25) years will be one and one-half (1½) per cent of the highest paid three (3) consecutive years average salary prior to retirement multiplied by the number of years of service. If an employee has completed twenty-five (25) years, he shall be entitled to two (2) per cent instead of one and one-half (1½) per cent for each year. After twenty-five (25) years, the credit for each year will be one per cent; provided, however, that no retirement credit will be taken into consideration for any years of service past age seventy (70).

(d) If a member should die prior to retirement, it will be assumed he terminated the day prior to his death; and his named beneficiary shall be entitled to the benefits earned to date of death. (Gen. Code 1946, Ch. 10, § 219.1; Code 1972, § 1.138)

Sec. 2-154. Deferred service retirement allowance.

Should any member who has fifteen (15) years of service credited to his service account, and who has attained the age of fifty (50) years separate from the service of the city for reasons other than becoming a beneficiary or dying, he shall remain a member during the period of his absence from city service for the exclusive purpose only of receiving a service retirement allowance provided for in section 2-153; such service retirement allowance to begin at his attainment of age sixty (60) years; provided, that if such a member should withdraw all or part of his accumulated contributions standing to his credit he shall thereupon cease to be a member. (Gen. Code 1946, Ch. 10, § 220; Code 1972, § 1.140)

Sec. 2-155. Duty disability incurred

Upon the application of a member, or his department head, a member who becomes totally incapacitated for duty as the natural and proximate result of the actual performance of duty to the city, without willful negligence on his part, shall be retired by the board; provided, the medical director after medical examination of such member shall certify that such member is mentally or physically totally incapacitated for further performance of duty to the city and that such member should be retired. (Gen. Code 1946, Ch. 10, § 221; Code 1972, § 1.141)

Sec. 2-156. Benefits for duty disability occurring after age sixty.

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Upon retirement for disability as provided in section 2-155, a disability beneficiary who has attained age sixty (60) years and has ten (10) or more years of service credited to his service account, shall receive a service retirement allowance according to the provisions of section 2-153. (Gen. Code 1946, Ch. 10, § 222; Code 1972, § 1.142)

Sec. 2-157. Benefits for duty disability occurring before age sixty.

Upon retirement for disability as provided in section 2-155, a disability beneficiary, who has not attained age sixty (60) years, shall receive the following benefits:

(1) *Duty disability retirement pension.* Such disability beneficiary shall receive a disability retirement pension equal to one-half his average final compensation; such disability retirement pension to continue from the date of his disability, but not to extend prior to six (6) months before the date his application for disability retirement was filed with the board, or the date his name last appeared on a city payroll, whichever date is the later, to his attainment of age sixty (60) years; provided, that such disability retirement pension shall be subject to the provisions of section 2-162.

(2) *Duty disability retirement allowance after age sixty.*

Upon attaining age sixty (60) years, such disability beneficiary, who has ten (10) or more years of service credited to his service account, shall receive a pension according to the provisions of section 2-153; provided, that in computing the amount of the pension, membership service credit shall be given such disability beneficiary for the period he was receiving a disability retirement pension provided for in (1) of this section.

(3) *Duty disability beneficiary's accumulated contributions.* During the period a disability beneficiary is receiving a disability retirement pension, as provided for in (1) of this section, his contributions shall be suspended and his balance in the fund, at the time of his retirement, shall remain in the fund and shall be accumulated at regular interest until his attainment of age sixty (60) years, or prior death. (Gen. Code 1946, Ch. 10, § 223; Code 1972, § 1.143)

Sec. 2-158. Non duty disability incurred.

Upon the application of a member, or his department head, a member who has ten (10) or more years of service credited to his service account becomes totally and permanently incapacitated for duty to the city as the result of causes occurring not in the actual performance of duty to the city may be retired by the board; provided, the medical director after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty to the city and such incapacity is likely to be permanent and that such member should be retired. (Gen. Code 1946, Ch. 10, § 224; Code 1972, § 1.144)

Sec. 2-159. Benefits for non duty disability occurring after age sixty.

Upon retirement for disability, as provided in section 2-158, a member who has attained age sixty (60) years shall receive a service retirement allowance according to the provisions of section 2.153. (Gen. Code 1946, Ch. 10, § 225; Code 1972, § 1.145)

Sec. 2-160. Benefits for non duty disability occurring before age sixty.

Upon retirement for disability as provided in section 2-158, a disability beneficiary who has not attained age sixty (60) years shall receive a disability retirement allowance which shall consist of:

Cash refund annuity. A cash refund annuity which shall be the actuarial equivalent of his accumulated contributions standing to his credit in the fund at the time of his retirement; or as provided for in sections 2-153 and 2-163. (Gen. Code 1946, Ch. 10, § 226; Code 1972, § 1.146)

Sec. 2-161. Death occurring in line of duty.

If a member is killed in the performance of his duty to the city, or dies as a result of illness contracted or injuries received while in the actual performance of his duty to the city, and such death, illness or injuries resulting in death be found by the board to have resulted from the actual performance of his duty to the city, there shall be paid:

(1) *Accumulated contributions.* The amount of such deceased member's accumulated contributions standing to his credit at the time of his death.

(2) *Widow's pensions.* A pension of one-third the final compensation of such deceased member shall be paid to his widow, if he leaves a widow, to continue during her widowhood, or as provided for in sections 2-153 and 2-163, whichever is the greater benefit.

(3) *Children's pensions while widow is living.* If, in addition to a widow, a child or children under age eighteen (18) years also survive the deceased member, each child under age eighteen (18) years shall receive a pension equal to a proportionate share of one-fourth the deceased member's final compensation. If any child marries, dies or attains age eighteen (18) years, there shall be a redistribution by the board of trustees to the surviving children under age eighteen (18) years, but in no event shall any child receive a pension of more than one-fourth the deceased member's final compensation.

(4) *Children's pensions if widow dies or remarries.* If there be no widow, or if the widow dies or remarries before the youngest surviving child of such deceased member shall have attained age eighteen (18) years, then his child or children under age eighteen (18) years, if he leaves children, shall each receive a pension equal to one-fourth the final compensation of such deceased member; provided, that if there be more than two (2) surviving children under age eighteen (18) years, each child shall receive a pension equal to a proportionate share of one-half the final compensation of such deceased member. If any child marries, dies or attains age eighteen (18) years, there shall be a redistribution by the board of trustees to the surviving children under age eighteen (18) years, but in no event shall any child receive in any one year more than one-fourth the final compensation of such deceased member.

(5) *Dependent parent's pensions.* If there be neither widow nor children under age eighteen (18) years surviving such deceased member, then there shall be paid to his dependent father and dependent mother, or either of them, as the board of trustees after investigation shall find to have been actually dependent upon such deceased member through absence of earning power due to physical or mental disability, a pension

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of one-sixth the deceased member's final compensation for each such dependent father and dependent mother.

(6) *Widow defined.* Whenever the word "widow" is used in this section in connection with a deceased member whose retirement under sections 2-155, 2-156 and 2-157 preceded his death, it shall mean the person to whom the deceased member was married at the time of his retirement. (Gen. Code 1946, Ch. 10, § 227; Code 1972, § 1.147).

Sec. 2-162. Reexamination of disability beneficiaries.

(a) *Generally.* Once each year during the first five (5) years following retirement of a member with a disability retirement pension, or allowance, and at least once in every three-year period thereafter, the board may, and upon the member's application shall require any disability beneficiary who has not attained age sixty (60) years to undergo a medical examination to be made by or under the direction of the medical director at the place of residence of the disability beneficiary, or other place mutually agreed upon, the examination to be paid for out of expense funds of the retirement system. Should any disability beneficiary who has not attained age sixty (60) years, refuse to submit to such medical examination in any such period, his disability retirement pension may be discontinued by the board until his withdrawal of such refusal and should such refusal continue for one year all his rights in and to his pension shall be revoked by the board. If upon such medical examination of a disability beneficiary, the medical director reports that such beneficiary is physically able and capable of resuming employment, he shall be restored to active service with the city and his disability retirement allowance shall cease; provided, that the report by the medical director is concurred in by the board.

(b) *Status of disability beneficiary restored to service.* A disability beneficiary who has been or shall be restored to active service with the city, as provided for in subsection (a) of this section, shall from the date of such restoration again become a member of the retirement system, and he shall contribute to the retirement system thereafter in the same manner as he paid prior to his disability retirement. Any prior service and membership service credited to him at the time of his disability retirement shall be restored to full force and effect. He shall be given membership service credit for the period he was receiving a disability retirement pension provided for in section 2-157(1); he shall not be given service credit for the period he was receiving a disability allowance provided for in section 2-160.

(c) *Adjustment of disability pension.* Should the secretary of the retirement system report and certify to the board that such disability beneficiary is engaged in a gainful occupation, business or employment paying more than the difference between his disability retirement pension and his final compensation, and should the board concur in such report, then the amount of his disability retirement pension shall be reduced to an amount which together with the amount earned by him shall equal the amount of his final compensation. Should such disability beneficiary's earnings be later changed, the amount of his disability retirement pension may be correspondingly modified. (Gen. Code 1946, Ch. 10, § 228; Code 1972, § 1.148)

Sec. 2-163. Termination benefits.

(a) Should a member terminate his services for any reason, he, if living, or his named beneficiary, if he be deceased, shall be entitled to the following benefits:

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Years of Service	Retirement Benefits Accruing to Date of Termination
Prior to 15 years	None
15 years to 18 years	60%
18 years to 20 years	70%
20 years to 23 years	80%
23 years to 25 years	90%
25 years or more	100%

(b) Any employee leaving the service of the city prior to fifteen (15) years of creditable service will be entitled to receive the re- turn of his contributions, together with two and one-half (2 1/2) per cent interest. After fifteen (15) years of service, he may, in lieu of subsection (a), receive the return of his contributions, together with two and one-half (2 1/2) per cent interest.

(c) If an employee's service be terminated for any reason and such employee reenters the service of the city, he shall be considered as a new employee for creditable service under the retirement plan. If such terminated employee be receiving monthly benefits, such monthly benefits shall cease when he reenters the service of the city; then, when he again terminates his services or retires, the former monthly benefit shall again be paid, but such payments will be in addition to the ones earned under the last employment.
(Gen. Code 1946, Ch. 10, § 229; Code 1972, § 1.149)

Sec. 2-164. Contribution of members.

(a) The contribution of members of this retirement plan shall be three (3) per cent of their salary (contributions to the social security provision shall be in addition to the above three (3) per cent. Officer or officers responsible for making up the payroll shall certify to the city treasurer, on each and every payroll, the amount of contribution to be deducted from the compensation of each member, and each of said amounts shall be deducted by the city treasurer, and when deducted, that part payable to social security for social security benefits shall be paid in accordance with the social security law, and three (3) per cent payable to the retirement fund shall be credited to the individual member's retirement plan account.

(b) *Reserved.* (Gen. Code 1946, Ch. 10, § 230; Code 1972, § 1.150; Ord. of 12-4-89)

Sec. 2-165. Pension.

(a) *Pension reserve fund.* The pension reserve fund is hereby created. The pension reserve fund shall be the fund in which shall be accumulated reserves for the payment of all pensions and other benefits payable from the contributions made by the city and members and any instrumentalities of the city, and from which shall be paid all pensions, and all benefits in lieu of pensions, to members and beneficiaries of the retirement system. Contributions by the city and any instrumentalities of the city to the pension reserve fund shall be made according to the provisions of subsections (b), (c), and (d) of this section.

(b) *Contributions for new members.* Upon the basis of such mortality tables, regular interest, and other tables as the board shall adopt, the actuary shall compute the amount of contribution which if paid annually by the city during the entire prospective

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service of new members will be sufficient to provide the pension reserves required at the time of their discontinuance from city service to cover the pensions to which they might be entitled or which might be payable on account of their services as new members. The board shall have appropriated annually the amount of contributions so ascertained and the city shall pay such amount into the pension reserve fund in the ensuing fiscal year.

(c) *Contributions for original members.* Upon the basis of such mortality tables, regular interest, and other tables as the board shall adopt, the actuary shall annually compute the pension reserve liabilities covering pensions payable or which might be payable on account of service rendered and to be rendered by original members, and pensions payable to beneficiaries who were original members or the dependents of original members. The amount of the pension reserve liabilities so computed shall be amortized in such manner as the board shall determine, subject to the approval of the commission; provided, however, until the amount accumulated in the pension reserve fund becomes equal to or more than the present value of all pensions and other benefits thereafter payable from the pension reserve fund on account of service rendered by members, the amount of the contribution so determined shall not be less than the total of the amounts payable from the pension reserve fund in the ensuing fiscal year. The board shall have appropriated annually the amount of contribution so ascertained and the city shall pay such amount into the pension reserve fund in the ensuing fiscal year.

(d) *Deficiency appropriations.* If the amounts appropriated in the budget for any year, as hereinbefore provided, be insufficient to pay in full the amounts due in the year to all beneficiaries of the retirement system, the amount of such insufficiency shall thereupon be provided by the appropriating authorities of the city. (Gen. Code 1946, Ch. 10, § 231; Code 1972, § 1.151)

Sec. 2-166. Expense fund.

The expense fund shall be the fund to which shall be credited all money provided by the city to pay the administration expense of the retirement system, and from which shall be paid all expenses necessary in connection with the administration of the retirement system. The board shall annually certify to the appropriating authorities of the city, according to legal budget procedure, the amount of appropriation necessary to administer the retirement system during the ensuing fiscal year, and the city shall appropriate such amount to the credit of the expense fund. (Gen. Code 1946, Ch. 10, § 232; Code 1972, § 1.152)

Sec. 2-167. Handling of funds.

(a) *Management of funds.* The board shall be the trustees of the funds of the retirement system and shall have full power to invest and reinvest such funds subject to all terms, conditions, limitations and restrictions imposed by the law of the state upon life insurance companies in the making and disposing of their investments, except that notes, bonds or obligations of any county, city, village or district in the state shall not be subject to the restrictions or limitations. The board shall have the power to purchase notes, bonds or other obligations of the city before or after the same are offered to the public and with or without advertising for bids.

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(b) *Powers of board.* The board shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds of the retirement system have been invested, as well as the proceeds of the investments and any moneys belonging to the retirement system. There shall be kept on deposit available cash not exceeding ten (10) per centum of the total assets of the retirement system. All funds of the retirement system shall be held for the sole purpose of meeting disbursements for pensions, annuities and other payments authorized by the provisions of this retirement system, and shall be used for no other purpose.

(c) *Accounting.* The description of the various funds of the retirement system shall be interpreted to refer to the accounting records of the retirement system and not to the segregation of moneys in the funds of the retirement system. (Gen. Code 1946, Ch. 10, § 233; Code 1972, § 1.153)

Sec. 2-168. Allowance of regular interest.

The board annually shall allow regular interest on the mean amount of assets credited to the pension reserve fund; provided, however, that interest on contributions from members within any one fiscal year shall begin on the first day of the fiscal year next following, and shall be computed at the end of the fiscal year. The amounts of interest so allowed shall be due and payable to the funds of the retirement system and shall be annually credited thereto by the board from interest and other earnings on moneys of the retirement system. Any additional amount necessary to allow regular interest on the funds of the retirement system shall be paid from the pension reserve fund, and all interest and other earnings from deposits and investments of the funds of the retirement system, not required for the allowance of regular interest, shall be credited to the pension reserve fund. (Gen. Code 1946, Ch. 10, § 234; Code 1972, § 1.154)

Sec. 2-169. Assignments prohibited.

The right of a person to an annuity, a pension, a retirement allowance, to the return of accumulated contributions, the annuity, the pension, or the retirement allowance itself, any optional benefit, any other right accrued or accruing to any member or beneficiary under the provisions of this retirement system, and the moneys belonging to the retirement system shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy, or insolvency law, or any other process of law whatsoever, and shall be unassignable except as is specifically provided by the provisions of this retirement system. (Gen. Code 1946, Ch. 10, § 235; Code 1972, § 1.155)

Sec. 2-170. Errors in payments.

Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board shall correct such error and as far as practicable shall adjust the payment of the benefit in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (Gen. Code 1946, Ch. 10, § 236; Code 1972, § 1.156)

Sec. 2-171. Method of making payments.

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All payments from the funds of the retirement system shall be made according to Charter provisions only upon evidence of a resolution adopted by the board authorizing such payment or payments. (Gen. Code 1946, Ch. 10, § 237; Code 1972, § 1.157)

Secs. 2-172-2-182. Reserved.

DIVISION 2. BOARD OF TRUSTEES

Sec. 2-183. Creation; composition.

There is hereby created a board of trustees in whom is vested the general administration, management and responsibility for the proper operation of the retirement system and for making effective the provisions of this article. The board shall be organized immediately after four (4) trustees have qualified. The board shall consist of seven (7) trustees as follows:

- (1) The mayor;
- (2) Two (2) city commissioners to be selected by the commission;
- (3) The city manager;
- (4) A citizen, who is an elector and a freeholder of the city and who is not eligible to receive benefits under this retirement system, to be appointed by the mayor subject to the approval of the commission;
- (5) Two (2) members of the retirement system to be elected from the members of the retirement system under such rules and regulations as the board shall adopt to govern such elections; provided that no more than one (1) member trustee, provided for in this subsection, shall be from any one (1) city department. (Gen. Code 1946, Ch. 10, § 203; Code 1972, § 1.123)

Sec. 2-184. Oath of office.

Each trustee of the board shall, within ten (10) days after his election or appointment, take an oath of office to be administered by the city clerk. (Gen. Code 1946, Ch. 10, § 207; Code 1972, § 1.126)

Sec. 2-185. Term of office.

The regular term of office of a member trustee and the citizen trustee shall be a period of four (4) years. (Gen. Code 1946, Ch. 10, § 205; Code 1972, § 1.124)

Sec. 2-186. Filling of vacancies.

Should any trustee, except the appointed citizen trustee, separate from the service of the city, his position as trustee shall be declared by the board to be vacated. If a vacancy occurs in the position of trustee, the vacancy shall be filled, within ninety (90) days after the date of the vacancy, for the unexpired term, in the same manner as the position was

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originally filed. (Gen. Code 1946, Ch. 10, § 206; Code 1972, § 1.125)

Sec. 2-187. Compensation.

The members of the board shall serve without compensation for their services as trustees. (Gen. Code 1946, Ch. 10, § 205; Code 1972, § 1.124)

Sec. 2-188. Meetings.

Each trustee shall be entitled to one vote in the meetings of the board. Four (4) trustees shall constitute a quorum at any meeting of the board and at least four (4) concurring votes shall be necessary for a decision by the trustees. The board shall hold meetings regularly, on the third Tuesday, in March and September of each year, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public. The chairman and administrative officer may call special meetings as often as may be necessary. (Gen. Code 1946, Ch. 10, § 208; Code 1972, § 1.127)

Sec. 2-189. Officers.

(a) *Chairman.* The board shall elect from its members a chairman, a vice-chairman and secretary.

(b) *Administrative officer.* The city manager shall be administrative officer of the retirement system.

(c) *Treasurer.* The city treasurer shall be the treasurer of the retirement system and the custodian of its funds.

(d) *Legal advisor.* The city attorney may serve as legal advisor to the board, or the board may hire other counsel to handle its legal matters.

(e) *Actuary.* The board shall appoint an actuary who shall be the technical advisor to the board on matters regarding the operation of the retirement system on an actuarial basis and who shall perform such other duties as are required in connection therewith.

(f) *Medical director.* The board shall appoint as medical director a physician who is not eligible to receive benefits under the provisions of this article. The medical director shall be directly responsible to and shall hold office at the pleasure of the board. He shall:

(1) Arrange for and pass upon all medical examinations required under the provisions of this article;

(2) Investigate all essential statements and certificates of a medical nature, by or on behalf of a member or beneficiary in connection with an application for disability retirement or accidental death benefits;

(3) Report in writing to the board his conclusions on matters referred to him.

(g) *Professional and clerical services.* The board may, subject to the approval of the commission, employ such persons as are required for the proper operation of the retirement system. The

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compensation for such services shall be fixed by the board, subject to the approval of the commission. (Gen. Code 1946, Ch. 10, § 209; Code 1972, § 1.128; Ord. of 12-4-89)

Sec. 2-190. Records; annual report.

The secretary shall keep, or cause to be kept, in convenient form such data as shall be necessary for an actuarial valuation of the various funds of the retirement system. The board shall render a report to the mayor and the commission on or before the fifteenth day of November of each year showing the fiscal transactions of the retirement system for the year ending the preceding thirtieth day of June, and the last balance sheet showing the financial condition of the retirement system by means of an actuarial valuation of the assets and liabilities of the retirement system. (Gen. Code 1946, Ch. 10, § 210; Code 1972, § 1.129)

Sec. 2-191. Adoption of experience tables.

The board shall adopt such mortality, service, compensation, and other tables of experience as are necessary in the operation of the retirement system on an actuarial basis. (Gen. Code 1946, Ch. 10, § 211; Code 1972, § 1.130)

Secs. 2-192-2-202. Reserved.

ARTICLE VII. OLD-AGE AND SURVIVORS INSURANCE*

Sec. 2-203. Adoption.

Social security is hereby made available to all city employees. The employees contribution for social security benefits shall be in addition to the contribution paid by the employee to the regular pension plan. (Gen. Code 1946, Ch. 10, § 219.2; Code 1972, § 1.139)

*State law reference – Social security for governmental employees, MCL § 38.851 et. seq., MSA § 17.801 et seq.