

## CHARTER\*

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Editor's note--The city's Home Rule Charter was adopted at an election held November 7, 1944, and is included herein for the convenience of the users of this Code. The original arrangement and numbering system has been maintained. Any charter amendments are indicated by appropriate notes. Explanatory words added by the editor are indicated by brackets.

Constitution reference--Power of municipality to frame, adopt and amend charter, Art. VII, § 22.

State law reference(s)--Home Rule cities generally, M.S.A., § 5.2071 et seq.

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### Preamble

To the end that the inhabitants of the City of Midland may live well through the effectual maintenance of public peace, health, and morals and the efficient achievement of those public services, activities, and enterprises which reflect intelligent opinion as to the needs of the public welfare, the electors of the City of Midland, in the County of Midland and the State of Michigan, pursuant to the authority granted them by the constitution and general laws of said State, hereby establish the Charter of the City of Midland, to read as follows:

### **Chapter 1. Boundaries and Subdivisions of the City**

#### **Sec. 1.1. Boundaries.**

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

Editor's note--The description of the boundaries has been omitted from this publication by the editors since it is subject to change by annexation ordinances. A description of the boundaries of the city may be found in the office of the city clerk.

State law reference(s)--Annexation of territory, M.S.A., § 5.2085 et seq.

#### **Sec. 1.2. Alteration of boundaries.**

Territory may be added to or detached from the city in the manner provided in Act 279 of the Public Acts of 1909, as amended. In addition to the procedures for the annexation and detachment of territory provided by said act and under the authority granted by the provisions of Section 18 thereof, as amended by Act No. 86 of the Public Acts of 1941, permitting any city

which revises its charter to include in such revised charter any power, limitation, or provision granted or passed by the legislature for the government of such city and contained in the charter to be revised and providing further, that when any such power, limitation, or provision is contained in any such revised charter the same shall continue with the same force and effect as when granted or passed by the legislature in the first instance; the Charter Commission of the City of Midland which was elected to frame this charter, and the people of said city in adopting the same as the charter of the City of Midland, do expressly include and continue in said charter Section 1 of Chapter II of Act 215 of the Public Acts of 1895, which constitutes a part of the charter of Midland which was granted or passed by the legislature for the government of said city, which charter is hereby revised and superseded, and which section hereby continued in this charter reads as follows:

"Whenever the Council of any city shall determine by resolution to alter the boundaries of such city, either by taking in lands and premises adjoining thereto, or by taking out any lands and premises included in such city, or both, they shall petition the Board of Supervisors of the county in which such lands and premises affected thereby are situated to make such change. Such petition shall contain a description by metes and bounds of the lands and premises proposed to be added to or taken out of such city and be accompanied by a map of said lands, and set forth the reasons for the proposed change, and shall contain a copy of the resolution of the Council in relation thereto, and shall be certified to by the Clerk under the official seal of such city. Before such petition shall be presented to the Board of Supervisors, notice shall be given by the Clerk of the time and place when the same will be presented for consideration, by publishing the same in one or more newspapers published in such city for at least three weeks immediately preceding the presentation of the same. Such notice shall also contain a description of the premises proposed to be taken in or out of the boundaries of such city. At the time of presenting such petition, all parties interested may appear before such Board of Supervisors and be heard touching the proposed boundaries of such city, and after such hearing and due consideration of such petition, it shall be the duty of the Board of Supervisors to order and determine as to whether the prayer contained in the petition or any part thereof shall be granted, and they shall make an order of such determination, which order shall be entered upon their records, and thereupon, if a change of boundaries shall be ordered, then such boundaries of the city shall be fixed and shall exist as provided in such order, and a certified copy thereof shall be transmitted to the Clerk of such city and to the Secretary of State, and such order shall be prima facie evidence of such change of boundaries of such city and of the regularity of such proceedings in all courts and places: Provided, That the Board of Supervisors shall not change the boundaries of any city in such a manner as to affect the boundaries of a representative district at a time when changes in the boundaries of representative districts are prohibited."

### **Sec. 1.3. Wards.**

Editor's note--The description of the boundaries of the wards of the city have been omitted, due to frequent changes. Documents setting forth the boundaries of the city wards are on file in the office of the city clerk.

State law reference(s)--Charter to provide for establishment of wards, M.S.A., § 5.2073(e).

**Sec. 1.4. Alteration of ward boundaries.**

In the event that the population of any ward or wards shall be shown to exceed that of any other ward by 50% according to the last preceding regular or special Federal census, the Council shall, at the next regular city election, submit to the electorate of the city an amendment to this charter proposing to redefine the boundaries of the wards of the city in such a manner as to reasonably equalize the populations thereof.

**Sec. 1.5. Election precincts.**

The Council shall, by ordinance, establish convenient election precincts which shall comply with the provisions of state law. Until the Council shall otherwise ordain, the wards of the city, as herein designated, shall constitute the precincts.

**Chapter 2.  
General Municipal Powers\***

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State law reference(s)--Charter to provide for preservation of public peace, health and safety, M.S.A., § 5.2073(j); charter provisions relative to ordinances, M.S.A., §§ 5.2073, 5.2082.

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**Sec. 2.1. Powers of the city.**

All powers, privileges, and immunities, not inconsistent with the provisions of this charter, possessed by the City of Midland by virtue of its incorporation as such and enumerated in Act No. 215 of the Public Acts of 1895, the former charter of the city which is hereby superseded, are hereby expressly retained by the city and shall constitute a part of the police power of the city even though not expressly enumerated herein. Further, unless otherwise provided or limited in this charter the City of Midland and its officers shall be vested with any and all powers, privileges, and immunities, expressed and implied, which cities and their officers are, or hereafter may be, permitted to exercise or to provide for in their charters under the constitution and laws of the State of Michigan, and of the United States of America, including all the powers, privileges, and immunities which cities are permitted to, or may, provide in their charters by Act No. 279 of the Public Acts of 1909, as amended, as fully and completely as though those powers, privileges, and immunities were specifically enumerated in and provided for in this charter, and in no case shall any enumeration of particular powers, privileges, or immunities in this charter be held to be exclusive. The city and its officers shall have power to exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; to do any act to advance the interests of the city; the good government and prosperity of the municipality and its inhabitants, and through its regularly constituted authority, to pass and enforce all laws, ordinances, and resolutions relating to its municipal concerns, subject to the constitution and general laws of the state and the provisions of this charter.

## **Sec. 2.2. Waters and watercourses.**

For the purpose of promoting and preserving the public morals, peace, health, safety, and welfare, and within the limits not preempted by the powers and statutes of the United States of America and the State of Michigan, the city shall have and possesses the power to use and to control and regulate the use of all streams, waters, and watercourses within its limits.

## **Sec. 2.3. Aircraft.**

The city shall have the power to establish, own, and operate airports, either within or without its corporate limits, and may regulate all airports located within its boundaries. Insofar as such regulation does not contravene any applicable statute or legally established and valid regulation of the United States of America or the State of Michigan, for the purpose of promoting and preserving the public peace, safety, and welfare, the city shall have and possesses the power to control and regulate the use of the air above the city by aircraft of all types.

## **Sec. 2.4. Exercise of powers.**

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

## **Sec. 2.5. Continuation of rights and liabilities.**

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

All licenses, contracts, and franchises granted by the City of Midland and in force when this charter becomes law, shall remain in full force and effect until the time for which they were respectively granted has expired, or until any such licenses or franchises may have been taken over by the city by purchase, condemnation, grant, or otherwise.

## **Chapter 3. General Provisions Affecting Officers of the City**

### **Sec. 3.1. Officers to be elected.**

The elective officers of the city shall be five (5) Councilmen, one (1) to be elected by and from each ward of the city; also one (1) Municipal Judge, and one (1) Constable, each of whom shall be elected from the city at large. In the event that the state law is changed so as to permit the appointment of Constables, thereafter the Constable herein required to be elected shall be

appointed in the manner provided by Section 9.15 of this charter for the appointment of additional Constables, and the requirement that such officer be elected shall not apply.

Editor's note--The office of constable was abolished with the adoption of Ord. No. 995, enacted Dec. 22, 1980. The provisions of § 1 of said ordinance are codified as Ch. 2, Art. XV, § 2-280, of this Code. The ordinance did not provide for amendment of this Charter.

### **Sec. 3.2. The administrative officers.**

The administrative officers of the city shall be the City Manager, City Attorney, Clerk, Treasurer and Assessor. The Council may, by resolution upon the recommendation of the City Manager, create such additional administrative offices, or may combine any administrative offices in any manner not inconsistent with state law, and prescribe the duties thereof as it may deem necessary for the proper operation of the city government. No creation of any administrative office, or combination of any administrative office or offices, one with another, shall abolish the office of City Manager nor diminish any of the duties or responsibilities of that office as set forth in this charter.

State law reference(s)--Charter to provide for clerk, treasurer, and assessor, M.S.A. § 5.2073.

### **Sec. 3.3. Terms of elective officers.**

The terms of office of Councilmen and of the Constable shall be for two (2) years and shall commence on and date from the Monday following the regular city election at which they are elected. The term of office of the Municipal Judge shall be for four (4) years and shall commence on and date from the 1st of January next following his election.

Editor's note--The office of constable was abolished with the adoption of Ord. No. 995, enacted Dec. 22, 1980. The provisions of § 1 of said ordinance are codified as Ch. 2, Art. XV, § 2-280, of this Code. The ordinance did not provide for amendment of this Charter.

### **Sec. 3.4. Administrative officers--appointment, terms and remuneration.**

(a) The City Manager and the City Attorney shall hold office by virtue of appointment by the Council, which body shall also set their salaries. They shall hold office at the pleasure of the Council; Provided, however, that the City Manager shall not be removed from office during a period of ninety (90) days following any regular city election, except by four-fifths (4/5) vote of the Council.

(b) All administrative officers of the city except the City Manager and City Attorney, shall be appointed or selected by and shall serve at the pleasure of the City Manager who shall set their salaries in accordance with budget appropriations.

State law reference(s)--Charter to provide for qualifications, duties and compensations of officers, M.S.A., § 5.2073(d).

### **Sec. 3.5. City employees.**

All personnel employed by the city who are not elected officers or members of a board or commission created or authorized by this charter or declared to be administrative officers by or under authority of this chapter shall be deemed to be employees of the city.

### **Sec. 3.6. Eligibility for office in city.**

No person shall be elected or appointed to any office who is in default to the city. No person shall be eligible for any elective office of the city, unless he shall be an elector in and a taxpayer to the city, and shall have been a resident of the city for at least one year immediately prior to the date of the primary election at which he seeks nomination as a candidate for office. Further, no person shall be eligible for election to the office of Councilman unless he shall be a resident of the ward from which he seeks to be elected.

(Amd. of 11-8-77)

State law reference(s)--Charter to provide for qualifications of officers, M.S.A., § 5.2073.

### **Sec. 3.7. Vacancies in offices.**

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

- (a) For any reason specified by state law as grounds for creating a vacancy;
- (b) If the officer of the city shall absent himself continuously from the city for more than sixty (60) days without permission of the Council, or, in any case, for more than ninety (90) days;
- (c) In the case of the members of the Council, where such officer shall cease to be a resident of the ward from which he was elected or shall miss four (4) consecutive regular meetings of the Council, or twenty-five (25) per cent of such meetings in any fiscal year of the city, unless such absences shall be excused by the Council and the reason therefor entered in the proceedings of the Council;
- (d) If the officer shall be convicted of any act constituting misconduct in office under the provisions of this charter.

### **Sec. 3.8. Resignations.**

Resignations of elected officers and officers appointed by the Council shall be made in writing to the Council, be filed with the Clerk, and acted upon by the Council at its next regular meeting following receipt thereof by the Clerk. Resignation of officers appointed by the City Manager shall be made in writing to the City Manager, and shall be acted upon by him within two (2) weeks following receipt of such resignation by him.

### **Sec. 3.9. Filling vacancies.**

If a vacancy occurs in the office of councilman leaving more than six (6) months of the unexpired term thereof, the Council shall, at its next regular meeting, order a special election in the ward affected to be held within sixty (60) days from such meeting for the purpose of filling said vacancy. At such election the names of all persons who possess the qualifications required of holders of the office of councilman, who have filed a nominating petition in accordance with the requirements of Section 10.9 of this Charter not later than 12:00 noon on the fourth Saturday before the date set for said election, shall be placed upon the ballot. The person receiving the greatest number of votes at such election shall be the councilman to fill the unexpired portion of the term in which the vacancy occurred effective at the next regular Council meeting. If the unexpired term of said vacated office is less than six (6) months, the Council shall, within thirty (30) days, appoint a person who possesses the qualifications required of holders of the office of councilman.

If a vacancy occurs in any appointive office, other than that of City Manager, the proper appointing authority shall, within thirty (30) days thereafter, appoint a qualified person to fill such vacancy. (Amd. of 8-5-75)

### **Sec. 3.10. Term of office cannot be shortened or extended.**

Except by procedures provided in this charter, the terms of the elected officials of the city and of officers of the city appointed for a definite term shall not be shortened. The term of any city officer may not be extended beyond the period for which he was elected or appointed except that after his term has expired, he shall continue to hold office until his successor is elected or appointed, and has qualified.

### **Sec. 3.11. Increase or decrease of compensation.**

The Council shall not grant or authorize extra compensation to any city officer, elected or appointed, or to any employee, agent, or contractor, after the service has been rendered or the contract entered into: nor shall the salary of any city officer, elected or appointed, be increased or decreased after his election or appointment during any fixed term of office for which he was elected or appointed.

### **Sec. 3.12. Oath and bond of office.**

Every officer, whether elected or appointed, before entering upon the duties of his office, shall take the oath of office prescribed by Section 1 of Article XI of the Constitution of the State and shall file the same with the Clerk, together with any bond which may be required by this charter or by the Council. The oath and bond of the Clerk shall be filed with and kept by the Treasurer. In case of failure to comply with the provisions of this section within ten (10) days from the date of his election or appointment, such officer shall be deemed to have declined the office and such office shall thereupon become vacant unless the Council shall, by resolution, extend the time in which such officer may qualify as above set forth.

### **Sec. 3.13. Surety bonds.**

Except as otherwise provided in this charter, the Council may require any officer or employee to give a bond, to be approved by the Council, conditioned upon the faithful and proper performance of the duties of his office or employment, in such sum as the Council shall determine. All such officers or employees receiving, disbursing, or responsible for the city funds shall be bonded. The resignation or removal of any bonded officer or employee shall not, nor shall the appointment of another to the office or employment, exonerate such officer or employee or his sureties from any liability incurred by him or them. All official bonds shall be corporate surety bonds and the premiums thereon shall be paid by the city, except as otherwise provided in this charter. No bond required by this section shall be renewed upon its expiration or in the event of the reappointment of any officer or employee to a position for which a bond is required, but a new bond shall be furnished. No bond, except that of the Municipal Judge, shall be issued for a term exceeding two (2) years.

### **Sec. 3.14. Delivery of office and effects by officer to his successor.**

Whenever any officer or employee shall resign, or be removed from office, or the term for which any officer has been elected or appointed has expired, he shall, on demand, deliver to his successor in office or to his superior all the books, papers, moneys, and effects in his custody as such officer or employee, and which in any way appertain to his office or employment. Every person violating this provision shall be deemed guilty of a misdemeanor, and may be proceeded against in the same manner as public officers generally for the like offense under the general laws of the state, now or hereafter in force and applicable thereto. Every officer and employee of the city shall be deemed an officer within the meaning and provisions of such general laws of the state for the purposes of this section.

### **Sec. 3.15. Pecuniary interests prohibited.**

No officer of the city shall be benefited directly or indirectly by or receive any share or part of the profits of any contract, job, or service performed or to be performed for the city, but this prohibition shall not extend to any such contract, job, or service for the city's general interest which is made with or performed by any corporation, unless majority interest therein is owned or controlled by an officer or officers of the city or by any such officer or officers and persons immediately related to him or them by blood or marriage. No officer of the city shall stand as surety or give any bail or sign any bail or appearance bond required by this charter or the ordinances of the city, nor personally, or as an agent, provide any bond which is subject to approval by the Council. Any officer of the city who violates the provisions of this section shall be guilty of misconduct in office.

### **Sec. 3.16. Restrictions concerning other offices.**

No city officer or employee shall hold or seek any partisan elective public office of the Federal or state governments or any political subdivision thereof, unless he resigns from his position with the city.

Editor's note--The city has advised that Public Act 169 of 1976, MCLA 15.401, et seq. has apparently nullified § 3.16.

## **Chapter 4. The City Council**

### **Sec. 4.1. City governing body.**

All powers of the city shall be vested in and all matters of policy of the city shall be exercised and determined by a Council of five (5) members. In all cases where the word "Council" is used in this charter, the same shall mean and shall be synonymous with the terms "commission," "common council," "board of aldermen," "governing body," or "legislative body," or any other synonymous term, as the same may be used in any state or Federal law in referring to legislative or governing bodies of cities.

State law reference(s)--City council to be established in charter, M.S.A., § 5.2073.

### **Sec. 4.2. Judge of qualification of members.**

The Council shall be the judge of the eligibility and qualification of its own members, subject only to review by the courts.

### **Sec. 4.3. Salaries of members of the council.**

Each Councilman shall receive as remuneration for his service to the city, the sum of two hundred dollars (\$200.00) per year. The Mayor shall receive one hundred dollars (\$100.00) per year in addition to the remuneration received by him as a member of the Council. Such salaries shall be payable quarterly, and, except as otherwise provided in this charter, shall constitute the only salary or remuneration which may be paid for services performed by the Mayor or any Councilman for the discharge of any official duty for or on behalf of the city during his term of office. Upon authorization of the Council, reasonable expenses may be allowed when incurred on behalf of the city.

### **Sec. 4.4. Selection of mayor and mayor pro tem.**

The Council shall at its first regular meeting following each regular biennial city election, select one (1) of its members to serve as Mayor and one (1) to serve as Mayor pro tem. The Mayor pro tem shall perform the duties of the Mayor when, on account of absence from the city, disability, or otherwise, the Mayor is temporarily unable to perform the duties of his office, and in case of vacancy in the office of Mayor, until such vacancy is filled by the Council. The Mayor pro tem shall preside over the meetings of the Council at the call of the Mayor. In the event of a vacancy occurring in the office of Mayor or Mayor pro tem, the Council shall appoint one of its elected members to fill such vacancy.

State law reference(s)--Charter to include provision for election of mayor, M.S.A., § 5.2073(a).

#### **Sec. 4.5. Duties of mayor.**

(a) Insofar as required by law, and for all ceremonial purposes, the Mayor shall be recognized as the executive head of the city. He shall have an equal voice and vote in the proceedings of the Council, but shall have no veto power.

(b) He shall be a conservator of the peace, and may exercise within the city the powers conferred upon sheriffs to suppress disorder, and shall have the power to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the city, and to suppress riot and disorderly conduct.

(c) He shall authenticate by his signature such instruments as the Council, this charter, or the laws of the State of Michigan or of the United States shall require.

#### **Sec. 4.6. Meetings of the council.**

(a) The Council shall provide by resolution for the time and place of its regular meetings and shall hold at least two (2) regular meetings each month. If any time set for the holding of a regular meeting of the Council shall be a holiday, then such regular meeting shall be held at the same time and place on the next secular day which is not a holiday.

(b) Special meetings of the Council may be called by the Clerk on the written request of the Mayor, the City Manager, or of any two (2) members of the Council, on at least twenty-four (24) hours written notice to each member of the Council, designating the time, place, and purpose of any such meeting and served personally or left at his usual place of residence by the Clerk or someone designated by him. Notwithstanding the foregoing requirements for the calling of special meetings, any special meeting of the Council at which all members of the Council are present or have, in writing, waived the requirement that notice be given at least twenty-four (24) hours prior to the time specified for the holding of such meeting and at which a quorum of the Council is present, shall be a legal meeting.

(c) No business shall be transacted at any special meeting of the Council unless the same has been stated in the notice of such meeting. However, if all the members of the Council are present at any special meeting of the Council, then any business which might lawfully come before a regular meeting of the Council may be transacted at such special meeting.

(d) All regular and special meetings of the Council shall be open to the public and the rules of order of the Council shall provide that citizens shall have a reasonable opportunity to be heard.

(e) Three (3) members of the Council shall be a quorum for the transaction of business at all meetings of the Council, but, in the absence of a quorum, two (2) members may adjourn any regular or special meetings to a later date.

(f) The Council shall determine its own rules and order of business and shall keep a journal of all of its proceedings in the English language which shall be signed by the Mayor and the Clerk. The vote upon the passage of all ordinances, and upon the adoption of all resolutions shall be taken

by "Yea" and "Nay" votes and entered upon the record, except that where the vote is unanimous, it shall only be necessary to so state. Each member of the Council who shall be recorded as present shall vote on all questions decided by the Council unless excused by the unanimous consent of the other members present. Any citizen or taxpayer of the city shall have access to the minutes and records of all regular and special meetings of the Council at all reasonable times.

(g) The Council may, by vote of not less than two (2) of its members, compel the attendance of its members and other officers of the city at its regular and special meetings and enforce orderly conduct therein, and any member of the Council or other officer of the city who refuses to attend such meetings or conduct himself in an orderly manner thereat shall be deemed of misconduct in office. The chief police officer of the city shall serve as the Sergeant-at-arms of the Council in the enforcement of the provisions of this section.

#### **Sec. 4.7. Restriction on powers of the council.**

(a) Neither the Council, nor any of its committees or members, shall direct or request the appointment of any person to, or his removal from, any city office or employment by the City Manager or any of his subordinates. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager either publicly or privately. Any violation of the provisions of this section by a Councilman shall constitute misconduct in office.

(b) There shall be no standing committees of the Council.

(c) The Council shall not have the power to make any contract with or give any official position to any person who is in default to the city. Further, the Council shall not have the power to sell real or personal property of a value in excess of eighteen (18) dollars per capita, said dollar amount to be adjusted annually according to the Consumer Price Index (CPI-U, all items), or any park, cemetery, or any part thereof, or any property bordering on a waterfront, or vacate any street or public place leading to a waterfront, or engage in any business enterprise requiring an investment of money in excess of ten cents per capita, unless approved by three-fifths (3/5) of the electors voting thereon at any general or special election. The per capita rate shall be as reported in the last preceding Federal census.

(d) Except as otherwise provided in this charter, no ordinance or resolution shall be adopted or passed except by the affirmative vote of at least three (3) members of the Council.

(Amd. of 8-11-97(1))

#### **Sec. 4.8. Investigations.**

Notwithstanding any other provisions of this charter, the Council, or any person or committee authorized by it for the purpose, shall have power to inquire into the conduct of any department, office, or officer of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers,

and other evidence. Failure on the part of any officer of the city to obey such subpoena or to produce books, papers, or other evidence as ordered under the provisions of this section shall constitute misconduct in office. If such failure shall be on the part of any employee of the city, the same shall constitute a misdemeanor.

#### **Sec. 4.9. Publication of council proceedings.**

The proceedings of the Council shall be published at least one within seven (7) days after each meeting of the Council.

The publication of a synopsis of such proceedings, prepared by the Clerk and approved by the Mayor, showing the substance of each separate proceeding of the Council shall be a sufficient compliance with the requirements of this section.

### **Chapter 5. Police Powers of the Council**

#### **Sec. 5.1. Public health and safety.**

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

#### **Sec. 5.2. Intergovernmental contracts.**

The city may join with any governmental unit or agency, or with any number or combination thereof, by contract, or otherwise as may be permitted by law, to perform jointly, or by one or more for or on behalf of the other or others, any power or duty which is permitted to be so performed by law or which is possessed or imposed upon each such governmental unit or agency.

Constitution reference--Authority of city to enter into joint contractual or administrative functions or powers with other governmental units, Art. VII, § 28.

#### **Sec. 5.3. Licenses.**

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

#### **Sec. 5.4. Streets and alleys.**

The Council shall have power to establish and vacate, to use, and to control and regulate the use of the streets, alleys, bridges, and public places, whether such public places be located within or without the limits of the city, and the space above and beneath them. Such power shall include, but not be limited to, the proper policing and supervision thereof and to the licensing and

regulation, or the prohibition of the placing of signs, awnings, awning posts, and other things which are of such nature as to impede or make dangerous the use of sidewalks or streets, upon or over the sidewalks or streets of the city, and the licensing and regulation of the construction and use of openings in the sidewalks or streets, and of all vaults, structures, and excavations under the same.

**Sec. 5.5. City contracts and purchases.**

The Council shall be responsible for the control of the letting and making of contracts and shall provide by ordinance the necessary procedures governing purchasing and the making of contracts. Such ordinance shall specify an amount below which and purposes for which purchases may be made by the city administration either without specific authorization or without the necessity of formal competitive bidding, or both. The Council, in its discretion, shall have the right to reject any and all bids.

**Sec. 5.6. Rights as to property.**

The Council shall have the power to acquire for the city by purchase, gift, condemnation, lease, construction or otherwise, either within or without its corporate limits, and either within or without the County of Midland, property of every type and nature which may be required for or incidental to the present or future exercise of the purpose, powers, and duties of the city government established by this charter.

**Sec. 5.7. Parks and recreational facilities.**

The Council shall have power to enact all ordinances deemed necessary for the establishment, maintenance, and protection of all parks and recreational facilities, together with the improvements thereon and appurtenances thereto, owned or hereafter acquired by the city either within or without its corporate limits. Once established, no park shall be discontinued or used for purposes other than public recreation, natural preserve or as a greenbelt unless such discontinuance or other use shall be approved by a majority of the electors of the city voting at a general election.

(Amd. of 8-5-75)

**Sec. 5.8. Cemetery regulations.**

The Council shall have power to enact all ordinances deemed necessary for the establishment, maintenance, and protection of cemeteries, together with the improvements thereon and appurtenances thereto, owned or hereafter acquired by the city either within or without its corporate limits. All ordinances pertaining to public health and welfare in the regulation and protection of public cemeteries shall apply equally to all cemeteries within the city belonging to, or under the control of, any church or religious society, or any corporation, company, or association. The city may cause any bodies buried within the city, in violation of any rule or ordinance made in respect to such burials, to be taken up and reburied in such a manner as shall conform to the ordinances of the city, or to be buried elsewhere. In any cemetery established by

the city, a plan for the platting, sale, and perpetual care of all lots, plots, and lands therein shall be provided.

#### **Sec. 5.9. Trusts.**

The Council may, in its discretion, receive and hold any property in trust for park, cemetery, or other municipal purposes and shall apply the same to the execution of such trusts and for no other purposes whatsoever. All trusts established for cemetery, park, or other municipal purposes shall be used and continued in accordance with the terms of such trusts, subject to the common law cy pres doctrine.

#### **Sec. 5.10. House trailers.**

The Council may, by ordinance, provide for the prohibition or regulation of the use, occupancy, sanitation, and parking of house trailers within the city. The right of the Council to so regulate any house trailer shall not be abrogated because of any detachment thereof from its wheels or because of placing it on, or attaching it to, the ground by means of any temporary or permanent foundation, or in any manner whatsoever.

#### **Sec. 5.11. Publication.**

The Council shall determine the method of publication of all notices, ordinances, and proceedings for which a mode of publication is not prescribed by this charter or by law. The Council shall determine that such publication shall be made in a newspaper, as defined by state law, which is published and circulated in the city, or that such publication shall be made by posting in the office of the Clerk and in five (5) other public places in the city. In case publication is made by posting, a notice of such posting, setting forth by a descriptive phrase, the purpose or nature of the notice, ordinance, or proceeding posted, and location of the places where posted, shall be published at least once in a newspaper, as defined by state law, published and circulated in the city within seven (7) days after such posting was done.

#### **Sec. 5.12. Planning and zoning.**

The Council shall maintain a City Planning Commission in accordance with and having the powers and duties granted by the provisions of state law relating to such commissions. The Council shall also maintain a zoning ordinance in accordance with the provisions of state law relating to such ordinances. Insofar as may be, the provisions of such ordinance shall be coordinated with the work of the City Planning Commission herein required to be maintained by the Council.

State law reference(s)--Municipal planning commissions, M.S.A., § 5.2991 et seq.

#### **Sec. 5.13. Advisory commissions.**

The Council may establish such Advisory Commissions as it shall deem necessary. All of said commissions shall be appointed by the Council, subject to applicable provisions of state law, and

shall act solely in an advisory capacity to the Council. The function of each commission, its membership and its method of operation, shall be established by ordinance, and all such ordinances shall be consistent with state law and this charter. All such commissions shall be established in such a manner that their functions or duties shall not detract from, replace, or interfere with the administrative functions or duties of the City Manager or any other administrative officer of the city. Appointments to such commissions shall be for terms of three years, one (1) term expiring in each year, unless any such commission shall be established under authority of state law, in which case, appointments shall be for the terms specified in the enabling legislation.

## **Chapter 6. City Legislation**

### **Sec. 6.1. Prior city ordinances and regulations.**

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

### **Sec. 6.2. Ordinance enactment.**

All legislation of the City of Midland shall be by ordinance or by resolution. The word "resolution" as used in this charter shall be the official action of the Council in the form of a motion, and such action shall be limited to matters required or permitted to be done by resolution by this charter or by state or Federal law and to matters pertaining to the internal affairs or concerns of the city government. All other acts of the Council, and all acts carrying a penalty for the violation thereof, shall be by ordinance. Each ordinance shall be identified by a number and a short title. Each proposed ordinance shall be introduced in written or printed form. The style of all ordinances passed by the Council shall be, "The City of Midland Ordains:". Except in the case of ordinances which are declared to be emergency ordinances, no ordinance shall be finally passed by the Council at the same meeting at which it is introduced. No ordinance shall be revised, altered, or amended by reference to its title only, but the section or sections of the ordinance revised, altered, or amended, shall be re-enacted and published at length, and all ordinances, when enacted, shall be immediately recorded by the Clerk in a book to be called "The Ordinance Book"; and it shall be the duty of the Mayor and Clerk to authenticate such record by their official signatures thereon.

Constitution reference--Power of city to adopt resolutions and ordinances relative to municipal concerns, Art. VII, § 22.

State law reference(s)--Charter to provide for adopting, amending and repealing ordinances, and publication thereof, M.S.A., § 5.2073(k).

### **Sec. 6.3. Penalties.**

All offenses in this charter declared to constitute misdemeanors or misconduct in office, and all violations of city ordinances shall be punishable by a fine not exceeding five hundred dollars (\$500.00) or imprisonment for ninety (90) days, or both in the discretion of the court, except that any officer of the city found guilty of any act declared by this charter to constitute misconduct in office shall, in addition to such fine or imprisonment, or both, forfeit his office.

**Sec. 6.4. Publication of ordinances.**

Each ordinance passed by the Council shall be published at least once within fifteen (15) days after its adoption. The publication of any ordinance in full after its final passage as a part of the published proceedings of the Council shall constitute publication of such ordinance as required herein.

**Sec. 6.5. Effective date of ordinances.**

Ordinances of the city shall become effective immediately upon the publication thereof, unless a date upon which an ordinance shall become effective, which is subsequent to the date of the publication thereof, is specifically provided in the ordinance itself.

**Sec. 6.6. Technical codes.**

The Council may adopt any provision of state law or any detailed technical regulations as a city ordinance or code by citation of such provision of state law or by reference to any recognized standard code, official or unofficial, provided that any such provision of state law or recognized official or unofficial standard code shall be clearly identified in the ordinance adopting the same as an ordinance of the city. Where any recognized official or unofficial standard code is so adopted, it may be published by providing and maintaining available to the public not less than fifty (50) copies in book or booklet form at a reasonable charge, and any amendment to or revision of such adopted code or detailed technical ordinance may be published in the same manner.

State law reference(s)--Adoption of technical ordinances, M.S.A., § 5.2073 (k).

**Sec. 6.7. Ordinances pertaining to certain public interests.**

Every ordinance or resolution granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose for a period longer than thirty (30) days shall be complete in the form in which it is finally passed, and remain on file with the Clerk for public inspection for at least one (1) week before the final passage or adoption thereof.

**Sec. 6.8. Compilation.**

(a) Copies of all ordinances, enacted after the effective date of this charter, and all amendments to this charter shall be prepared and kept on hand in the office of the Clerk available for public distribution.

(b) Within one (1) year after the first Council elected under this charter takes office, and at least once in every ten (10) years thereafter, the Council shall direct the compilation or codification and publication of not less than fifty (50) copies of the charter and of all ordinances of the city, then in force, in looseleaf or pamphlet form, and may provide for a reasonable charge for copies thereof. No further publication of any such compilation or codification shall be required for the validity thereof. In case the compilation or codification of the ordinances of the city shall have been maintained current and up-to-date during any ten (10) year period, no re-compilation or re-codification of the ordinances of the city shall be required during or at the end of such period.

(c) The copies of ordinances and of any compilation, code, or codes referred to in this chapter may be certified by the Clerk and, when so certified, shall be competent evidence in all courts and legally established tribunals as to the matters contained therein.

### **Sec. 6.9. Initiative and referendum.**

An ordinance may be initiated by petition, or a referendum on an ordinance enacted by the Council may be had, by a petition, as hereinafter provided.

State law reference(s)--Charter may provide for initiative, referendum, M.S.A., § 5.2082.

### **Sec. 6.10. Petitions.**

An initiatory or referendary petition shall be signed by not less than fifteen (15) per cent of the registered electors of the city, who have signed said petition within six (6) months before date of filing the petition with the Clerk. Before being circulated for signatures, all such petitions shall be approved as to form by the Clerk. No such petition need be on one paper, but may be the aggregate of two (2) or more petition papers. Each signer of a petition shall sign his name in ink or indelible pencil, and shall place thereon, after his name, the date and his place of residence by street and number, or by other customary designation. To each petition paper there shall be attached a sworn affidavit by the circulator thereof, stating the number of signers thereto and that each signature thereon is the genuine signature of the person whose name it purports to be, and that it was made in the presence of the affiant. Such petition shall be filed with the Clerk who shall, within ten (10) days, canvass the signatures thereon to determine the sufficiency thereof. Any signatures obtained more than six (6) months before the filing of such petition with the Clerk shall not be counted. If found to contain an insufficient number of signatures of registered electors of the city, or to be improper as to form or compliance with the provisions of this section, the Clerk shall notify forthwith the person filing such petition, and ten (10) days from such notification shall be allowed for the filing of supplemental petition papers. When found sufficient and proper, the Clerk shall present the petition to the Council at its next regular meeting.

### **Sec. 6.11. Council procedure.**

Upon receiving an initiatory or referendary petition from the Clerk, the Council shall, within thirty (30) days, either:

- (a) If it be an initiatory petition, adopt the ordinance as submitted in the petition;
- (b) If it be a referendary petition, repeal the ordinance to which the petition refers; or
- (c) In either case, determine to submit the proposal to the electors.

**Sec. 6.12. Submission to electors.**

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

**Sec. 6.13. Ordinance suspended.**

The certification by the Clerk of the sufficiency of a referendary petition within thirty (30) days after the effective date of the ordinance to which such petition refers shall automatically suspend the operation of the ordinance in question pending repeal by the Council or final determination by the electors as the case may be. An ordinance adopted by the electorate through initiatory proceedings may not be amended or repealed by the Council for a period of two (2) years after the date of the election at which it was adopted. Should two (2) or more ordinances, adopted at the same election, have conflicting provisions, the one receiving the highest vote shall prevail as to those provisions.

**Chapter 7.  
Supervisors**

**Sec. 7.1. Appointment of supervisors.**

On and after the 1st day of October, 1950, and until such time as the City of Midland shall be entitled to an additional number of representatives upon the Board of Supervisors of the County of Midland, by reason of an increase of population, or otherwise, under the laws of the state, the six (6) representatives upon such board to which the city is now entitled shall be comprised of the City Attorney and five (5) other persons appointed by the Council in the following manner: Two (2) Supervisors shall be appointed by the Council to serve until April 1, 1951, and three (3) Supervisors shall be appointed by the Council to serve until April 1, 1952. Thereafter, Supervisors shall be appointed by the Council for two-year terms, two (2) appointments to be made for terms commencing April 1 in odd-numbered years and three (3) appointments for terms commencing April 1 in even-numbered years. Any qualified elector of the City of Midland (including any member of the City Council or any administrative officer or employee of the city) shall be eligible for appointment as a city member of the Board of Supervisors. In case of the necessary absence or temporary inability of any city member of the Board of Supervisors to serve or perform the duties of his office at any given session of the Board or part thereof, the Mayor shall appoint one of the administrative officers of the city or any other qualified person to serve during such absence or inability and shall certify such appointment to the County Clerk.

Vacancies occurring among the city members of the Board of Supervisors shall be filled by the Council within thirty (30) days after such vacancy shall occur.

**Sec. 7.2. Additional supervisors.**

In the event that the city may be entitled to additional representatives upon such Board of Supervisors by reason of a population increase, or otherwise, as provided by state law, the Council shall take proper action to initiate the amendment of this charter to provide for the selection of such additional representative or representatives. Until such amendment shall become effective, the Council shall, at its earliest convenience in the first instance, and thereafter at its first regular meeting following each regular biennial city election, appoint the supervisor or supervisors to which the city is so entitled. Any such appointed supervisor shall assume office immediately and shall serve in such capacity at the pleasure of the Council. Vacancies occurring among the number of such appointed representatives shall be filled by the Council within thirty (30) days after such vacancy shall occur. No person shall be appointed to serve as a supervisor except he possesses the same qualifications as are required of city officers under this charter.

**Sec. 7.3. Duties of city supervisors.**

The supervisors of the city shall perform the duties required to be performed by supervisors under the general laws of the state, except as otherwise provided in this charter. Each supervisor shall, in the performance of his duties, to the best of his ability, represent the city, its inhabitants, and its government as a whole.

**Sec. 7.4. Compensation of supervisors.**

All supervisors of the city shall be entitled to retain any compensation and mileage paid to them by the county as members of the Board of Supervisors of the County of Midland.

**Chapter 8.  
The Administrative Service**

**Sec. 8.1. City manager.**

The City Manager shall be the chief administrative officer of the city government and, in conformity with the provisions of this charter, shall succeed to and exercise all the administrative powers possessed by the Mayor and other officers of the city under the provisions of Act No. 215 of the Public Acts of 1895. He shall be selected by the Council on the basis of training and ability alone, without regard to his political or religious preferences and need not be a resident of the city at the time of his appointment but shall become a resident of the city within ninety (90) days after his appointment and shall so remain throughout his tenure of office. The Council shall designate a qualified person to perform the duties of City Manager during a vacancy in the office. No person who holds or has held any elective city office shall be eligible for appointment as City Manager or acting City Manager, nor shall any such person perform the duties of the City Manager during a vacancy in that office, until two (2) years have elapsed following the expiration of the term for which he was elected.

## **Sec. 8.2. Functions of the city manager.**

The functions of the City Manager shall be:

- (a) To see that all laws and ordinances are enforced;
- (b) To manage and supervise all public improvements, works, and undertakings of the city;
- (c) To have charge of the construction, repair, maintenance, lighting, and cleaning of streets, sidewalks, bridges, pavements, sewers, and all public buildings or other property belonging to the city;
- (d) To manage and supervise all city utilities;
- (e) To be responsible for the preservation of property, tools, and appliances of the city;
- (f) To see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed;
- (g) To attend all meetings of the Council, with the right to take part in discussions, but without the right to vote;
- (h) To prepare and administer the annual budget under policies formulated by the Council and keep the Council fully advised at all times as to the financial condition and needs of the city;
- (i) To recommend to the Council for adoption such measures as he may deem necessary or expedient;
- (j) To be responsible to the Council for the efficient administration of all departments of the city government;
- (k) To act as the Purchasing Agent for the city or delegate such duties to some other officer or employee of the city; Provided, that such delegation shall not relieve him of any responsibility for the proper conduct of such duties;
- (l) To prepare an annual report of the city's business and make the same available to the public in such form as will disclose pertinent facts concerning the activities and finances of the city government;
- (m) To conduct all sales of personal property which the Council may authorize to be sold;
- (n) To assume all duties and responsibilities as personnel director of all city employees or delegate such duties to some other officer or employee of the city; Provided, that such delegation shall not relieve him of any responsibility for the proper conduct of such duties;

(o) To perform such other duties as may be prescribed by this charter or required of him by ordinance or by direction of the Council, or which are not assigned to some other official in conformity with the provisions of this charter.

### **Sec. 8.3. City clerk.**

(a) The Clerk shall be clerk of the Council. He shall attend all meetings of the Council and shall keep a permanent journal of its proceedings in the English language. He shall keep a record of all ordinances, resolutions, and actions of the Council.

(b) He shall have power to administer all oaths required by state law, this charter and the ordinances of the city.

(c) He shall be custodian of the city seal, and shall affix it to all documents and instruments requiring the seal, and shall attest the same. He shall also be custodian of all papers, documents, and records pertaining to the City of Midland, the custody of which is not otherwise provided for by this charter. All records of the city shall be public and the Clerk and other officers entrusted with such records shall so maintain and keep the same that they may be available to the public at all reasonable times. He shall give to the proper officials of the city ample notice of the expiration or termination of any official bonds, franchises, contracts, or agreements.

(d) He shall certify by his signature all ordinances and resolutions enacted or passed by the Council and perform any other duties required of him by state or Federal law, this charter, or by the Council and ordinances of the city.

(e) He shall be the general accountant of the city and shall keep the books of account of the assets, receipts, and expenditures of the city. The system of accounts of the city shall conform to such uniform system as may be required by law.

(f) He shall examine and audit all accounts and claims against the city. No withdrawal shall be made from the city fund which, after deducting all prior withdrawals therefrom, has not a sufficient amount therein to pay such proposed withdrawal.

(g) He shall, at least quarterly, and at any time upon direction of the City Manager, examine and audit all books of account kept by any official, board, or department of the city. He shall examine and audit all books of account of the Treasurer and Municipal Court at least once each month.

(h) He shall balance all the books of account of the city at the end of each calendar month, and shall make a report thereon to the City Manager.

(i) He shall perform such other duties in connection with his office as may be required of him by state or Federal law, this charter, the resolutions or ordinances of the Council, or by the City Manager.

State law reference(s)--Municipal records to be public, M.S.A., § 5.2073(l); uniform system of accounts to be kept, M.S.A., § 5.2073(n).

#### **Sec. 8.4. City attorney.**

(a) The City Attorney shall act as legal advisor to, and attorney and counsel for, the Council in matters relating to their official duties. He shall give legal opinions concerning the affairs of the City of Midland only to the Council and to the City Manager. All such opinions shall be in writing and a copy thereof shall be filed with the City Clerk.

(b) He shall conduct for the city all cases in all courts and before all legally constituted tribunals whenever the city is a party thereto.

(c) He shall prepare, or officially pass upon, all contracts, bonds, and other instruments in writing, in which the city is concerned, and shall certify before execution as to their legality and correctness of form.

(d) He shall file in the office of the City Clerk the original copy of all franchises granted by the city, of all contracts and agreements entered into by or in behalf of the city, and of all papers constituting a part of the proceedings in all courts or legally constituted tribunals to which the city is a party, together with the proper data and information concerning the same.

(e) He shall be charged with the responsibility of calling to the attention of the Council and the City Manager all matters of law and changes or developments therein affecting the city.

(f) He shall perform such other duties as may be prescribed by this charter or by the Council.

(g) Upon the recommendation of the City Attorney, approved by the City Manager, or upon its own motion, the Council may retain special legal counsel to handle any matter to which the city is a party or in which the city has an interest, or to assist and co-counsel with the City Attorney therein.

The remuneration set by the Council for the City Attorney as required in this charter shall be in contemplation of the normal duties of that office. Special compensation may be provided at the discretion of the Council in cases of appeals to, or litigation commenced in, higher courts than the circuit court, work requiring extensive hearings before administrative or quasi-judicial tribunals, and for legal work in connection with the issuance of bonds of the city. No such special compensation shall be given by the Council, except in accordance with an agreement between itself and the City Attorney, made before the service for which such special compensation is to be paid has been rendered.

#### **Sec. 8.5. City treasurer.**

(a) The Treasurer shall have the custody of all moneys of the city, the Clerk's bond, and all evidences of value belonging to the city, or held in trust by the city.

(b) He shall receive all moneys belonging to and receivable by the city, including license fees, taxes, assessments, and all other charges belonging to and payable to the city and shall in all cases give a receipt therefor.

(c) He shall keep and deposit all moneys or funds in such manner and only in such places as the Council may determine. He shall report the same in detail to the Clerk.

(d) He shall have such powers, duties, and prerogatives in regard to the collection and custody of state, county, school district, and city taxes and moneys as are conferred by law to enforce the collection of state, county, township, and school district taxes upon real and personal property.

(e) He shall perform such other duties as may be prescribed for him by state or Federal law, this charter, or by the City Manager.

#### **Sec. 8.6. Deputy clerk or treasurer.**

The Clerk and the Treasurer may appoint their own deputies, subject to the written confirmation of the City Manager and the provisions of any ordinance passed under the authority of Section 8.9 of this charter. The Clerk and the Treasurer may terminate the status of their respective deputies at pleasure, upon written notice to the City Manager. Each deputy shall possess all the powers and authorities of his superior officer except as the same may be from time to time limited by his superior or by the City Manager.

#### **Sec. 8.7. Assessor.**

(a) The Assessor shall possess all the powers vested in and shall be charged with all the duties imposed upon assessing officers by the general laws of the state.

(b) He shall make and prepare all regular and special assessment rolls in the manner prescribed by this charter and the general laws of the state.

(c) He shall perform such other duties as may be prescribed for him by state law, this charter, or by the City Manager.

#### **Sec. 8.8. Other administrative officers.**

The duties of all administrative officers, not otherwise provided for herein, shall be those established by law or ordinance for such officers or prescribed by the City Manager.

#### **Sec. 8.9. Merit system of personnel management.**

The Council shall, within one (1) year after the date that the first Council elected under this charter shall assume office, provide by ordinance for a merit system of personnel management for the city. Such ordinance shall provide a professional and impartial approach to municipal personnel problems based solely upon the fitness, training, and experience of the individual with no discrimination on account of political or religious opinion. It is the intent of this section to secure the establishment of a merit system program as an integral part of the administrative service, to the end that the handling of the personnel activities will be done in a manner equitable to the employee, satisfying for the administrative officials to use, and by increased efficiency and improved administration, economical to the citizens.

**Sec. 8.10. Pension plan.**

The Council shall, on or before January 1, 1947, present to the people of the city at any regular or special election, an ordinance, which, if approved by a majority of those voting thereon, will make available to the regular administrative officers, and employees of the city and its departments or boards, a sound pension and retirement plan. Participation by the city, either before or after the adoption of such pension ordinance, in any state-wide pension plan for municipal employees, which is established by state law, shall constitute compliance with the provisions of this section.

**Sec. 8.11. Employee welfare benefits.**

The Council shall have power to make available to the administrative officers and employees of the city and its departments and boards, any recognized standard plan of group life, hospital, health, or accident insurance, either independently of, or as a supplement to, any pension plan provided by the city for its employees.

**Chapter 9.  
Municipal Court\***

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Editor's note--Municipal courts were abolished by Public Acts 1908, Act No. 154 (M.S.A., § 27A.9921), effective January 1, 1969.

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**Sec. 9.1. Justice courts--Present law.**

After this charter shall become law, no justice of the peace shall be elected; and no justice of the peace shall be appointed to fill a vacancy beyond January 1, 1947. No suit, cause, or prosecution of any kind before or pending before the Justice Courts of the City of Midland on January 1, 1947, shall be in any manner affected by the adoption or taking effect of this charter, and as to such suits, causes, or prosecutions, all of the provisions of the present law, whether general or special, applying to the Justice Courts of the City of Midland and to appeals therefrom, shall remain in full force and effect and as to such suits, causes, or prosecutions, shall be followed by and be applicable to the Municipal Court herein created and the Municipal Judge who qualifies hereunder.

**Sec. 9.2. Municipal court.**

On January 1, 1947, the justice courts of the City of Midland shall cease to exist and the powers, jurisdictions, and duties of said courts shall be consolidated into one (1) court, to be known as the Municipal Court of the City of Midland, to be presided over by one (1) judge to be known as a Municipal Judge, who shall have been a resident of the City of Midland for five (5) years and

who shall be an attorney admitted to practice law in this state for a period of not less than three (3) years prior to his election or appointment under the provisions of this charter.

### **Sec. 9.3. Salary; fees.**

Such Municipal Judge shall tax costs as provided by statute but shall receive no fees to his own use, except as hereafter provided. Commencing January 1, 1967, he shall be paid a salary by the city of not less than \$7,500.00 per annum, and not to exceed \$16,000.00 per annum, which salary shall be set by the Council not later than thirty (30) days before the final date and time for filing nominating petitions for the office of Municipal Judge prior to each regular election at which a Municipal Judge is to be elected for a full term. Such salary shall be in lieu of all fees both in civil and criminal cases to which said Judge might be entitled, but for the provisions of this section, such fees in civil cases shall be collected by said Municipal Judge and turned over by him to the Treasurer on the first and fifteenth of each month. Such fees in criminal cases shall be charged and presented to, and audited by Board of Supervisors of Midland County in the same manner and amounts as provided by law in the case of Justices of the Peace in townships. Upon the allowance by said Board of Supervisors, such criminal fees shall be paid monthly by said County of Midland to the Treasurer of the City of Midland for the use and benefit of the said City of Midland. The Municipal Judge shall turn over to the Treasurer of the County of Midland, all costs and fines in state criminal cases, and shall turn over to the City Treasurer all costs and fines in city ordinance or charter cases and shall account to both the City and County for such costs and fines on the first of each month. The provisions of this section shall in no manner affect the fees or compensation to which said Judge may be entitled for the performance of marriage ceremonies, taking acknowledgments, and administering oaths in matters not connected with any litigation begun or pending before him. The Municipal Judge shall not practice law in any manner nor engage in the business of collecting bills while in office.

### **Sec. 9.4. Jurisdiction.**

The Municipal Court shall have jurisdiction in all causes arising in the County of Midland up to the amount of \$1500.00, and shall have the same jurisdiction in criminal matters as is conferred upon justices of the peace by the general laws of the state, and further, shall have authority to hear, try, and determine all suits and prosecutions for the recovery and enforcing of fines, penalties, and forfeitures imposed by this charter and the ordinances of the city, and to punish offenders as prescribed and directed therein.

### **Sec. 9.5. Powers of municipal judge.**

The Municipal Judge shall have the same powers and authority to set aside a verdict or judgment and grant a new trial therein upon legal cause therefor as the Circuit Courts of the state possess, in accordance with the rules and practice as provided by Section 2264 of the Compiled Laws of 1929, as amended.

### **Sec. 9.6. Shall keep docket of suits and prosecutions: Accounts of all moneys received and paid out.**

The Municipal Judge shall enter or cause to be entered in the docket or dockets kept by him the title of all suits and prosecutions commenced or prosecuted before him for violation of the charter and ordinances of the city and all the proceedings and the judgment rendered in such cause and shall itemize all costs taxed or allowed therein. He shall also enter or cause to be entered the amounts and dates of payment of all fines, penalties and forfeitures, moneys and costs received by him or the Clerk of the Court, on account of any such suit or proceeding. Such docket or dockets shall be submitted by the Municipal Judge at all reasonable times to the examination of any person desiring to examine the same, and shall be produced by the Municipal Judge to the Council and the auditors of the city whenever required.

#### **Sec. 9.7. Court clerk.**

The Municipal Judge, may, with the consent of the Council relative to the creation and salary of such office, appoint a court clerk or clerks. Such clerk or clerks, if appointed, shall, by virtue of his or their office, be empowered to administer oaths to persons making affidavits for writs in civil causes and to issue all processes and attest the same in the name of the Municipal Judge, and shall be required to collect all fees in civil causes and all costs and fines in criminal causes and all moneys paid into court for security for costs, bail or otherwise and to enter a record of the same in books kept by him for that purpose and to pay over the same to the authorities of the city or county or other persons entitled to the same, and such books of such clerk shall be audited at least once each year to ascertain that such books are correctly kept and that all moneys received have been properly accounted for. Such clerk or clerks shall, before entering upon the duties of his or their office, give such bond as may be required by the Council and shall perform such other duties as may be from time to time prescribed by the Council.

#### **Sec. 9.8. Transfer of causes.**

Whenever the Municipal Judge is unable to act in any cause pending before him, such cause, at the time the matter comes before him, may be transferred, upon his order, or in case of his absence, by the court clerk to one of the justices of the peace of Midland County or to any other person permitted by law to hear and determine such causes, without any notice to the parties in such cause, but a note of such transfer shall be entered upon the docket of the case, and when two or more judges or justices, or other proper persons, shall have acted in any one cause or proceedings, the docket shall be signed in the manner and within the time provided by law by the judge or justice who shall have given the final judgment in such cause. Any such justice of the peace or other person acting for the Municipal Judge during his absence or because of his disqualification to act shall be compensated by the city at such rate as the Council shall fix.

#### **Sec. 9.9. Court officers.**

The City Manager may assign a police officer of the City of Midland to the Municipal Court who shall have all the duties and powers of court officers in the Circuit Courts of the state and shall serve in such capacity during the pleasure of the City Manager. Such officer shall receive no compensation except such as he may be entitled to as a police officer. All fees, except mileage allowances, received by such officer in the performance of the duties imposed upon him in accordance with the provisions of this charter shall be paid into the city treasury.

### **Sec. 9.10. Jury trials.**

Each period of three months throughout the year, beginning on the first day of February. May, August, and November respectively, is hereby designated and established as a term for the trial of jury cases and during each such term such cases may be set for trial upon one or more certain days of each month, or as soon thereafter as such trial can be reached. A panel of jurors shall be drawn from the citizens of the city having qualifications of electors of the city for each panel to serve at each term of such court. Such selection of jurors to serve in each case shall be made, as nearly as may be, in the manner as provided by law in circuit courts, but the trial of such cause by jury shall be otherwise conducted as provided by law for trials by jury before justices of the peace in townships, except that it shall be the duty of the Municipal Judge to instruct the jury as to the law applicable to the case, which instructions shall be received by the jury as the law in the case. As soon as all jury cases set for any term, and ready for trial, shall have been disposed of, the panel of jurors called for said term shall be discharged; Provided, however, that when there is no jury in attendance in the court, the Municipal Judge, in order to avoid hardship from delay, may, in his discretion, order a jury impaneled in accordance with the method provided by law to secure a jury in trials before justices of the peace in townships. The Council may, in its discretion, pass an ordinance embodying the provisions of Act No. 288 of the Public Acts of 1929 governing the selection of jurors from among the qualified electors of the city and for the conduct of trials by jury, insofar as such act provides therefor. In the event that the Council shall pass such ordinance, the provisions thereof shall prevail over the provisions of this section insofar as they may be inconsistent therewith.

### **Sec. 9.11. Court room supplies.**

The Council shall provide a place which shall be suitable for holding court and shall furnish the necessary furniture, fixtures, dockets, books, stationery for use in the business of the court and shall provide for the heating, lighting, and maintenance of said court room. The Municipal Court shall have a seal of office and copies of all records thereof, duly certified by the Municipal Judge or Clerk, under seal to be correct, shall be received in evidence in all of the courts of the state. The seal shall bear the words, "Municipal Court of the City of Midland, Michigan."

### **Sec. 9.12. Rules of court.**

The Council shall have power and authority by ordinance to regulate the office hours of the Municipal Judge and to make all other necessary and proper rules for the regulation and conduct of the Municipal Court, which rules shall not be inconsistent with the provisions of this charter and the general laws of the state. Such rules shall provide for a vacation period for the personnel of the court of two (2) weeks in each year without loss of salary.

### **Sec. 9.13. Vacancies.**

If the Municipal Judge shall be disbarred, or if, for any cause provided in this charter, a vacancy shall occur in the office of Municipal Judge, the Council shall, except in case of recall, select a qualified and suitable person to serve in such office until the successor of the Municipal Judge whose office has become vacant, shall be elected at the next biennial city election and shall have

qualified and assumed his office. Any person elected to fill a vacancy in the office of Municipal Judge shall assume office on the first day of January following his election and shall hold office under such election only for the residue of the term in which such vacancy occurs.

**Sec. 9.14. Traffic violations bureau.**

The Council shall have power and authority to establish, by ordinance, a Traffic Violations Bureau within the Municipal Court under the charge of the court clerk for the handling of vehicular traffic cases, other than driving while under the influence of intoxicating liquors or narcotics, failure to stop in the event of an accident, or reckless driving. In such bureau, any person who has received any notice to appear in answer to a traffic charge under the ordinances of the city may, within the time specified in the notice, answer at the Traffic Violations Bureau to the charges set forth in such notice by paying a prescribed fine which cannot be waived by the bureau, and, in writing, pleading guilty to the charge, waiving a hearing in court and giving power of attorney to the court clerk to make such a plea and pay such fine in court. Acceptance of the prescribed fine and the power of attorney by the bureau shall be deemed to be complete satisfaction for the violation, and the violator shall be given a receipt which so states. The creation of such a bureau by the Council shall not operate so as to deprive any person of a full and impartial hearing in court, should such person so choose.

**Sec. 9.15. Constable.\***

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Editor's note--The office of constable was abolished with the adoption of Ord. No. 995, enacted Dec. 22, 1980. The provisions of § 1 of said ordinance are codified as Ch. 2. Art. XV. § 2-280. of this Code. The ordinance did not provide for amendment of this Charter.

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The Constable shall have like powers and authorities in matters of civil and criminal nature and in relation to the service of process, civil and criminal, as are conferred by law on constables in townships. He shall have power also to serve all processes issued for breaches of ordinances of the city. The only compensation of the Constable shall be the statutory fees of that office, and an accounting of such fees shall be made to the city in the manner prescribed by state law or in any rules which may be established for the regulation of the conduct of the Municipal Court by the Council. The bond of the Constable shall be that required of constables in townships and the cost thereof shall be paid by the Constable.

The City Manager may from time to time appoint any police officer or officers approved by the Municipal Judge as additional constables or to fill any vacancy which may occur in the office of Constable. The cost of the bond of any Constable so appointed shall be paid by the city. Whenever a police officer shall serve as Constable, the statutory fees which he shall receive in such capacity shall be paid into the city treasury as provided in Section 9.9 of this charter.

## **Chapter 10. Elections\***

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State law reference(s)--Charter to provide for registration of electors, elections, M.S.A., § 5.2073(c); Michigan election law, § 6.1001 et seq.  
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### **Sec. 10.1. Qualifications of electors.**

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

### **Sec. 10.2. Election procedure.**

The general election laws of the state shall apply to and control, as near as may be, all procedures relating to registration and city elections, except as such general laws relate to political parties or partisan procedure, or require more than one (1) publication of notice, and except as otherwise provided by this charter.

### **Sec. 10.3. Primary election.**

A nonpartisan city primary election shall be held on the date prescribed by state law for the holding of general fall primary elections. If, upon the expiration of the time for filing nomination petitions for any elective city office, petitions have been filed for no more than two (2) persons seeking nomination as candidates for any city office to be elected from the city at large or from any ward of the city at the next regular city election, then no primary election shall be held in respect to such office and the Clerk shall publish notice of such fact. The two (2) persons seeking nomination for each city office to be filled at the next city election receiving the highest number of votes at any such city primary election shall be declared the nominees for election to the respective offices for which they are candidates and their names, together with the names of persons filing petitions, or in whose behalf petitions have been filed, for offices with respect to which no primary election was held, shall be certified to the election commission to be placed upon the ballot for the next subsequent regular city election.

### **Sec. 10.4. Regular city elections.**

Except as otherwise provided in this charter, a nonpartisan regular city election shall be held on the Tuesday following the first Monday in November in each even numbered year. At each such election there shall be elected five (5) Councilmen, one (1) by and from each ward of the city, and a Constable who shall be elected from the city at large. At the regular city election held in 1946 and every fourth year thereafter there shall be elected a Municipal Judge who shall be elected from the city at large.

Editor's note--The office of municipal judge was abolished by Act No. 154, Public Acts 1968, § 9921 et seq. (M.S.A., § 27A.9921).

**Sec. 10.5. Special elections.**

Special city elections shall be held when called by resolution of the Council at least twenty-one (21) days in advance of such election, or when required by this charter or the general laws of the state. Any resolution calling a special election shall set forth the purpose of such election. No more than two (2) special city elections shall be held in any one calendar year.

Editor's note--Amended by Act No. 188, Public Acts 1967.

**Sec. 10.6. Election commission.**

An Election Commission is hereby created, consisting of the Clerk, the Mayor, and the City Attorney. The Clerk shall be chairman. The commission shall have charge of all activities and duties required of it by state law and this charter relating to the conduct of elections in the city. The compensation of election personnel shall be determined in advance by the Council. In any case where election procedure is in doubt, the Election Commission shall prescribe the procedure to be followed.

**Sec. 10.7. Notice of election.**

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

**Sec. 10.8. Voting hours.**

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

**Sec. 10.9. Nomination petition.\***

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Editor's note--The city has advised that with regard to the filing deadline for nominating petitions for office of councilman, section 644f of Public Act 116 of the Public Acts of the State of Michigan 1954, as amended, [MCLA 168.644f; MSA 6.1644(6)], would govern over the differing deadline set forth in section 10.9 of the Charter. Accordingly, the filing deadline would be 4:00 p.m. on the seventh Tuesday prior to the primary election date.

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Persons desiring to qualify as candidates for any elective office under this charter shall file an official petition therefor with the Clerk signed by not less than fifty (50) nor more than seventy-five (75) registered electors of the city in the case of officers to be elected from the city at large, or not less than twenty (20) nor more than forty (40) registered electors of the ward from which such person seeks election in the case of Councilmen, not later than 12 o'clock noon on the fourth Saturday prior to the date of the regular city primary. Official blank petitions in substantially the same form as required by state law for state and county officers, except for references to party, shall be prepared and furnished by the Clerk. Before the Clerk shall furnish nomination petitions to any person, he shall enter thereon in ink the name of the person desiring to become a candidate for office in the city, or the person in whose behalf the petition is to be circulated, and the name of the office for which he is to be a candidate. Nomination petitions for the purpose of filling a vacancy shall so state in connection with the name of the office for which the petition is to be circulated. The Clerk shall publish notice of the last day, time, and place for filing nomination petitions at least one (1) week before, and not more than three (3) weeks before, that date. No person shall sign his name to more than one (1) petition for any one office to be filled at the next regular city election. Where any name appears on more than one (1) petition for the same office, such name shall not be counted upon any petition for that office.

State law reference(s)--Charter to provide for nomination of elective officers, M.S.A., § 5.2073(b); candidates for local offices, § 6.1646(l).

#### **Sec. 10.10. Approval of petition.**

The Clerk shall accept for filing only nomination petitions on official blanks containing the required number of signatures for candidates having those qualifications required for elective city officers by this charter. When petitions are filed by persons other than the person whose name appears thereon as a candidate, they may be accepted for filing only when accompanied by the written consent of the person in whose behalf the petition or petitions were circulated. The Clerk shall, within five (5) days after the final filing date, determine the sufficiency of the signatures on each petition filed, and if he finds that any petition does not contain the required number of legal signatures of registered electors, he shall immediately notify the candidate in writing of the insufficiency of his petition. Each petition which is found by the Clerk to contain the required number of signatures of registered electors for candidates shall be marked "In Order," with the date thereof, and he shall immediately so notify the candidate whose name appears thereon, in writing.

#### **Sec. 10.11. Public inspection of petitions.**

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

#### **Sec. 10.12. Form of ballots.**

The form of the ballot used in any city primary or election shall conform as nearly as may be to that prescribed by the general laws of the state, except that no party designation or emblem shall appear upon any city ballot. The names of qualified nominees for each office shall be listed in a

single column and shall be rotated on the ballots. In all other respects the printing and numbering of ballots shall conform to the general laws of the state, relating to elections.

**Sec. 10.13. Canvass of votes.**

The Council shall be the board of canvassers to canvass the votes cast at all primaries and elections under this charter. The Council shall meet on the first Thursday after each city primary and election and publicly canvass the returns of such primary or election, and shall determine the vote upon all questions and propositions, and declare whether the same have been adopted or rejected and what persons have been nominated for election or elected at such primary or election.

**Sec. 10.14. Tie vote.**

If, at any city primary or election, there shall be no choice between candidates by reason of two (2) or more persons having received an equal number of votes, then the Council shall name a date for the appearance of such persons for the purpose of determining the nomination or election of such candidates by lot as provided by state law. No other method of determining nomination or election in the case of a tie shall be permitted and the result of any such determination shall be final and conclusive.

**Sec. 10.15. Recount.**

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

**Sec. 10.16. Recall.**

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

**Chapter 11.  
General Finance and Budget Procedure**

**Sec. 11.1. Fiscal year.**

The fiscal and budget year of the city shall begin on the first day of July.

**Sec. 11.2. Budget procedure.**

Each city officer and department head shall submit to the City Manager upon his request an itemized estimate of the expenditures for the next fiscal year, for the department or activities under his control. The City Manager shall prepare a complete itemized budget for the next fiscal year and shall submit it to the Council on or before the second Monday in April.

### **Sec. 11.3. Budget document.**

The budget document shall present a complete financial plan for the ensuing fiscal year. It shall include at least the following information:

- (a) Detailed estimates of all proposed expenditures for each department and office of the city, showing the expenditures for corresponding items for the current and last preceding fiscal years, with reasons for increases and decreases recommended, as compared with appropriations for the current year;
- (b) Statements of the bonded and other indebtedness of the city, showing the debt redemption and interest requirements, the debt authorized and unissued, and the condition of sinking funds, if any;
- (c) Detailed estimates of all anticipated income of the city from sources other than taxes and borrowing, with a comparative statement of the amounts received by the city from each of the same or similar sources for the last preceding and current fiscal years;
- (d) A statement of the estimated balance or deficit, as the case may be, for the end of the current fiscal year;
- (e) An estimate of the amount of money to be raised from current and delinquent taxes and the amount to be raised from bond issues which, together with income from other sources, will be necessary to meet the proposed expenditures;
- (f) Such other supporting schedules as the Council may deem necessary.

State law reference(s)--Charter to provide for annual appropriation, M.S.A., § 5.2073(h).

### **Sec. 11.4. Budget hearing.**

A public hearing on the budget shall be held before its final adoption, at such time and place as the Council shall direct, and notice of such public hearing shall be published at least one (1) week in advance by the Clerk in the manner authorized in Section 5.11 of this charter. A copy of the proposed budget shall be on file and available to the public for inspection during office hours at the office of the Clerk for a period of not less than one (1) week prior to such public hearing.

Constitution reference--Public hearing required previous to adoption of budget, Art. VII, § 32.

### **Sec. 11.5. Adoption of budget, tax limit.**

Not later than the fourth Monday in May, the Council shall, by resolution, adopt the budget for the next fiscal year and shall, in such resolution, provide for a levy of the amount necessary to be raised by taxes upon real and personal property for municipal purposes, which levy shall not exceed one and eight-tenths (1.8) per cent of the assessed valuation of all real and personal property subject to taxation in the city.

State law reference(s)--Charter to provide for taxation of real and personal property not to exceed 2% of value, M.S.A., § 5.2073(g).

#### **Sec. 11.6. Alteration of appropriations.**

After the budget has been adopted, no money shall be drawn from the treasury of the city nor shall any obligation for the expenditure of money be incurred, except pursuant to the budget appropriation. The Council may, however, transfer any unencumbered appropriation balance, or any portion thereof, from one department, fund or agency to another purpose for which an appropriation has been made or, after the holding of a public hearing after at least one week's notice of same published in accordance with Section 5.11 of this Charter, authorize the transfer of unused balances appropriated for one purpose to another purpose for which no appropriation was made in the budget or appropriate available revenues not included in the annual budget. The balance in any budget appropriation, which has not been encumbered, other than that of or pertaining to any municipal utility, at the end of the fiscal year, shall revert to the general fund and be reappropriated during the next fiscal year.

(Amd. of 8-5-75)

#### **Sec. 11.7. Budget control.**

At the beginning of each quarterly period during the fiscal year, and more often if required by the Council, the City Manager shall submit to the Council data showing the relation between the estimated and actual income and expenses to date; and if it shall appear that the income is less than anticipated, the Council may reduce appropriations, except amounts required for debt and interest charges, to such a degree as may be necessary to keep expenditures within the cash income.

#### **Sec. 11.8. Depository.**

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

#### **Sec. 11.9. Withdrawal of funds.**

All funds drawn from the treasury shall be drawn pursuant to the authority and appropriation of the Council and upon checks signed by two officers of the city to be registered by resolution of the Council. Each such check shall specify the fund or funds for which it is payable and shall be paid from no other fund or funds.

#### **Sec. 11.10. Independent audit.**

An independent audit shall be made of all accounts of the city government at least annually and more frequently if deemed necessary by the Council. Such audit shall be made by qualified

accountants experienced in municipal accounting and completed within the time required by state law. The results of such audit shall be made public in such manner as the Council may determine.

(Amd. of 8-11-97(2))

## **Chapter 12. General Taxation\***

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Constitution references--General powers of city to levy taxes for public purposes, Art. VII, § 21; taxation by cities and villages, § 7.1 et seq.

### **Sec. 12.1. Power to tax.**

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

State law reference(s)--Charter to provide for taxation, M.S.A., § 5.2073(f).

### **Sec. 12.2. Subjects of taxation.**

The subjects of ad valorem taxation for municipal purposes shall be the same as for state, county, and school purposes under the general law. Except as otherwise provided by this charter, city taxes shall be levied, collected and returned in the manner provided by state law.

State law reference(s)--Charter to provide for tax levy, collection and return procedure, M.S.A., § 5.2073(i).

### **Sec. 12.3. Exemptions.**

No exemptions for taxation shall be allowed, except such as are expressly required or permitted to be made by state law. In the case of exemptions made to persons who, in the opinion of the

Assessor and Board of Review, by reason of poverty, are unable to contribute towards the public charges, the Assessor or Board of Review shall require, as a condition to the grant of exemption, a trust deed or assignment to the city of all or any part of the real or personal property or insurance of the beneficiary of such exemption. Such trust deed or assignment shall be in such form as to be recordable in the office of the Register of Deeds of Midland County and shall state the amount at which the property would have been assessed if it had not been exempted. No such trust deed or assignment shall deprive the owner of the property to whom tax exemption is granted of his right to freely occupy and use the property, but shall give the city, in the event that the ownership of such property is transferred to another in any manner whatsoever, such an

interest therein as will provide for the payment to the city of an amount equal to all taxes, exclusive of interest, penalties, and collection fees, which would have been levied by the city against the property of such owner had the exemption not been granted.

#### **Sec. 12.4. Assessment.**

Unless otherwise provided by state law, the first day of April in each year shall be the assessment day for both real and personal property in the city. Assessment shall be based upon the uniform application of established rules, techniques, and procedures.

Editor's note--The date of tax day was changed to January 1 by Ordinance No. 352, adopted December 7, 1949. By Ordinance No. 503, adopted August 5, 1959, tax day was changed to December 31. Ordinance No. 503 appears as section 2-1 of the Code of Ordinances of the City of Midland. Public Act No. 288, passed in 1966, (M.S.A., § 7.2) changed the date of tax day to December 31.

#### **Sec. 12.5. Time for making assessment rolls.**

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

#### **Sec. 12.6. Valuing of real and personal property.**

Said Assessor shall estimate, according to state law, the value of every parcel of real property and set the same down opposite such description. He shall also estimate the value of all taxable personal property of each person and set the same down opposite the name of such person. Except in the case of uniform general increases in property assessments, in which cases notice shall be given by publication, the Assessor shall give notice by first class mail, not less than ten (10) days before the first meeting of the Board of Review, of any change in the assessment of any property to the owner thereof of record according to the last assessment roll of the city addressed to the address of such owner shown on such roll, but the failure on the part of the Assessor to give any such notice or of any such owner to receive any such notice shall not invalidate any assessment roll of the city or any assessment thereon.

#### **Sec. 12.7. Board of review.**

The Board of Review shall be appointed by the Council and shall be comprised of three (3) persons who are taxpayers to the city and have been residents of the city for not less than three (3) years. In the first instance, the full Board shall be appointed, one (1) to serve for a term of one (1) year, one (1) to serve for a term of two (2) years, and one (1) to serve for a term of three (3) years. Thereafter, the Council shall, annually in the month of April, appoint one (1) member of the Board to serve for the full term of three (3) years.

State law reference(s)--Charter to provide for board of review, M.S.A., § 5.2073(a).

#### **Sec. 12.8. Meeting of board of review.**

The Board of Review shall meet in two sessions in each year at such place as shall be designated by the Council. The first session of the Board shall convene on the second Monday in May of each year and shall continue in session from day to day for the purpose of considering and correcting the roll for three (3) days, and as much longer as may be necessary. In each case where the assessed value is increased or any property added to the rolls by the Board, the secretary shall, forthwith, give notice to the owners thereof according to the last assessment roll of the city by first class mail placed in the Midland Post Office not later than midnight of the Thursday following the first meeting of the Board. The second session of the Board shall convene on the third Monday of May of each year and shall continue in session for one (1) day and as much longer as may be necessary. The Board shall remain in session during such hours as the Council may designate.

Editor's note--Date of first session of Board of Review was initially changed by Ordinance No. 352, adopted December 7, 1949. Cities may, pursuant to Act No. 285, Public Acts 1949 (M.S.A., § 7.2 et seq.) set the date the Board of Review meets to review the assessment roll.

#### **Sec. 12.9. Notice of meeting.**

The Clerk shall give notice to the public of the time and place of the meeting of the Board of Review by publication at least once not less than ten (10) days immediately preceding such meeting and in the manner authorized by Section 5.11 of this charter.

#### **Sec. 12.10. Organization and functions of the board of review.**

On the first day of its meeting in each year, the Board of Review shall elect one of its members chairman. The Assessor shall be secretary of the Board and shall attend its meetings with the privilege of participating therein, but without the right to vote upon any decision of the Board. It shall be the duty of the Assessor to keep a permanent record of all proceedings, and to enter therein all resolutions and decisions of the Board. A majority of the members of the Board shall constitute a quorum. The members of said Board shall take the constitutional oath of office which shall be filed with the Clerk. For the purpose of reviewing and correcting assessments, the Board of Review shall have the same powers and perform like duties in all respects as are by the general tax law conferred upon and required of boards of review in townships, in reviewing assessments in townships for township, state, and county taxes. It shall hear the complaints of all persons considering themselves aggrieved by assessments, and if it shall appear that any person or property has been wrongfully assessed, or omitted from the roll, the Board shall correct the roll in such manner as it shall deem just. In all cases, the assessment roll shall be reviewed according to the facts existing on the assessment day and no change of the status of any property after said day shall be considered by the Board in making its decision. Except as otherwise provided by state law, no person other than the Board of Review shall make or authorize any change upon or additions or corrections to the assessment roll.

#### **Sec. 12.11. Endorsement of roll; validity.**

After the Board shall have completed its review of the assessment roll, a majority of its members shall immediately endorse thereon and sign a statement to the effect that the same is the

assessment roll of the city for the year in which it has been prepared. The commission of such endorsement shall not affect the validity of such roll. Upon the completion of said roll and from and after midnight following the last day of the meeting of the Board of Review, the same shall be the assessment roll of the city for county, school, and city taxes and for any other taxes on real and personal property that may be authorized by law and shall be conclusively presumed by all courts and tribunals to be valid and shall not be set aside except for causes set forth in the general laws of the state.

**Sec. 12.12. Clerk to certify tax levy.**

Within three (3) days after the Council has adopted the budget for the ensuing year, the Clerk shall certify to the Assessor the total amount which the Council determines shall be raised by general tax; all amounts of special assessments which the Council requires to be assessed or reassessed upon any property or against any person; and all other amounts which the Council may determine shall be charged, assessed, or reassessed against any person or property.

**Sec. 12.13. City tax roll.**

After the last day for the meeting of the Board of Review, the Assessor shall prepare a copy of the assessment roll to be known as the "City Tax Roll," and upon receiving the certification of the several amounts to be raised as provided in the preceding section, the Assessor shall proceed forthwith to spread upon said tax roll the several amounts determined by the Council to be charged, assessed, or reassessed against persons or property; and shall also proceed to spread the amounts of the general city tax according to and in proportion to the several valuations set forth in said assessment roll. For the purpose of avoiding fractions in computation on any tax roll, the Assessor may add to the amount of the several taxes to be raised not more than the amount prescribed by state law. Any excess created thereby on any tax roll shall belong to the city.

**Sec. 12.14. Tax roll certified for collection.**

After extending the taxes aforesaid and not later than the first day of July in each year, the Assessor shall certify said tax roll, and the Mayor shall annex his warrant thereto, directing and requiring the Treasurer to collect from the several persons named in said roll the several sums mentioned therein opposite their respective names as a tax assessment, and granting to him, for the purpose of collecting the taxes, assessments, and charges on such roll, all the powers and immunities possessed by township treasurers for the collection of taxes under the general laws of the state.

**Sec. 12.15. Taxes lien on property.**

The city taxes thus assessed shall become at once a debt due to the city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall on the first day of July become a lien upon such real property, and the lien for such amounts and for all interest and other charges thereon shall continue until payment thereof. All personal taxes shall also be a first lien, prior, superior, and paramount, upon all personal property of the persons so assessed from and after the first day of July in each year and shall so remain until paid, which

said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, execution, levy, judgment, or otherwise, and whether arising before or after the assessment of said personal taxes, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien except where such personal property is actually sold in the regular course of retail trade.

**Sec. 12.16. Notification of taxes due.**

The Treasurer shall not be required to call upon the persons named in the city tax roll, nor to make personal demand for the payment of taxes, but he shall give notice to the taxpayers of the city, at least ten (10) days prior to the first day of July in each year, of the time when said taxes will be due for collection by publication, at least once, in one or more of the newspapers published and circulated in the city, and as soon as practicable after receipt of the tax roll, shall forward a statement of taxes due by first class mail addressed to the several owners of the property upon which taxes are assessed according to the names of such owners and their addresses as indicated on the tax roll, which notice shall be deemed sufficient for the payment of all taxes on said tax roll. Failure on the part of the Treasurer to give said notice shall not invalidate the taxes on said tax roll nor release the person or property assessed from the penalty provided in this chapter in case of nonpayment of the same.

**Sec. 12.17. Tax payment schedule.**

City taxes shall be due on the first day of July of the year when levied. All taxes paid on or before the 15th day of September, shall be collected by the Treasurer without additional charge. The Treasurer shall add to all taxes paid after such 15th day of September, a four (4) per cent collection fee. Such added collection fees shall belong to the city and shall constitute a charge and shall be a lien against the property to which the taxes themselves apply, collectible in the same manner as the taxes to which they are added.

**Sec. 12.18. Apportioning of tax on portion of taxed item.**

Any person owning an undivided share or other part of any parcel of real property, assessed in one description, may pay on the share or part thus owned by paying an amount having the same relation to the whole tax as the value of the part on which payment is made has to the value of the whole parcel. The person making such payment shall accurately describe the part or share on which he makes payment and the receipt given and the record of the receiving officers shall show such description and by whom paid; and in case of the sale of the remaining part or share, for nonpayment of taxes, he may purchase the same in like manner as any disinterested person. The values above referred to shall be determined upon the request of any interested party by the Assessor, who, before making such determination, shall set a time for hearing and shall notify the interested parties by first class mail at their last known addresses, such notice to be mailed at least ten (10) days before the hearing.

**Sec. 12.19. Tax roll to county treasurer.**

Any taxes on the city tax roll which remain unpaid on the first day of March following the date when said roll was received by the Treasurer shall be returned to the county treasurer in the same manner and with like effect as returns by township treasurers of township, school, and county taxes. Such returns shall be made upon a delinquent tax roll to be prepared by the Treasurer and shall include all the additional charges and fees hereinbefore provided, which charges and fees shall, in such return, be added to the amount assessed in said tax roll against each description. The taxes thus returned shall be collected in the same manner as other taxes returned to the county treasurer are collected under the provisions of the general laws of the state and shall be and remain a lien upon the lands against which they are assessed, until paid.

**Sec. 12.20. Protection of city lien.**

The city shall have power to acquire by purchase any premises within the city at any tax or other public sale, or by direct purchase from the State of Michigan or the fee owner, when such purchase is necessary to protect the lien of the city for taxes or special assessments, or both, on said premises and may hold, lease, or sell the same for the purpose of securing therefrom the amount of such taxes or special assessments, or both, together with any incidental expenses incurred in connection with the exercise of this power. Any such procedure exercised by the city in the protection of its tax lien shall be deemed to be for a public purpose.

**Sec. 12.21. State, county and school taxes.**

For the purpose of assessing and collecting taxes in the city for state, county, and school purposes, the city shall be considered the same as a township, and all provisions of state law relative to the collection of such taxes and the fees to be paid therefor, the accounting therefor to the appropriate taxing units, and the returning of property to the county treasurer for nonpayment thereof shall apply to the performance thereof by the Treasurer, who shall perform the same duties and have the same powers as township treasurers under state law. So long as school taxes or any part thereof are collected at the same time as city taxes, they shall be collected subject to the same privileges and conditions as city taxes under the provisions of this charter.

**Chapter 13.  
Municipal Borrowing Power\***

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Constitution reference--Municipal power to borrow money and contract debts, Art. VII, § 21.

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**Sec. 13.1. General borrowing.**

Subject to the applicable provisions of state law and this charter, the Council, by proper ordinance or resolution, may authorize the borrowing of money for any purpose within the scope of the powers vested in the city and the issuance of bonds of the city or other evidences of

indebtedness therefor, and may pledge the full faith, credit, and resources of the city for the payment of the obligation created thereby.

**Sec. 13.2. Special assessment bonds.**

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

**Sec. 13.3. Mortgage bonds.**

When the city is authorized to acquire, own, or operate any public utility, it may, in accordance with the provisions of Sections 23, 24, and 25, of Article VIII of the Michigan Constitution of 1908,\* issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law in accordance with the provisions of the Michigan Constitution of 1908 pertaining thereto.

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Editor's note--Now Art. VII, §§ 24, 25, Constitution of 1963.

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**Sec. 13.4. Other bonds.**

The city shall have power to issue revenue or other types of bonds in the manner and for the purposes permitted by the constitution and general laws of the State of Michigan.

**Sec. 13.5. Preparation and records.**

Each bond or other evidence of indebtedness shall contain on its face a statement specifying the purpose for which the same is issued and it shall be unlawful for any officer of the city to use the proceeds thereof for any other purpose, except that whenever the proceeds of any bond issue, or any part thereof, shall remain unexpended and unencumbered for the purpose for which said bond issue was made, the Council may, by the affirmative vote of four (4) members, authorize the use of such unexpended and unencumbered funds for the retirement of such bond issue, or, if such bond issue shall have been fully retired or if any of such funds remain after such retirement, then for the retirement of other bonds or obligations of the city. All bonds and other evidences of indebtedness issued by the city shall be signed by the Mayor and countersigned by the Clerk, under the seal of the city. Interest coupons may be executed with the facsimile signatures of the

Mayor and Clerk. A complete and detailed record of all bonds and other evidences of indebtedness issued by the city shall be kept by the Clerk. Upon the payment of any bond or other evidence of indebtedness, the same shall be marked "Cancelled." Any officer who shall violate the provisions of this section shall be deemed guilty of misconduct in office.

#### **Sec. 13.6. Unissued bonds.**

No unissued bonds of the city shall be issued or sold to secure funds for any purpose other than that for which they were specifically authorized, and if any such bonds are not issued or sold within five (5) years after authorization, such authorization shall, as to such bonds, be null and void.

### **Chapter 14. Special Assessments**

#### **Sec. 14.1. Council resolution.**

The Council shall have power to determine that the whole or any part of the expense of any public improvement shall be defrayed by special assessments upon the property especially benefited in proportion to benefits received and shall so declare by resolution. Such resolution shall state the estimated cost of the improvement, what proportion of the cost thereof shall be paid by special assessments (which shall be in proportion to benefits received) and what part, if any, shall be a general obligation of the city, the number of installments in which assessments may be paid, and shall designate the districts or parcel of land or premises upon which special assessments shall be levied, and the proportion to be assessed against each such district or parcel of land or premises.

#### **Sec. 14.2. Hazards and nuisances.**

When any lot, building, or structure within the city, because of age or dilapidation, the accumulation of refuse or debris, the uncontrolled growing of noxious weeds, or because of any other condition or happening, becomes, in the opinion of the Council, a public hazard or nuisance which is dangerous to the health, safety, or welfare of the inhabitants of the city or of those residing or habitually going near such lot, building, or structure, the Council may, after investigation, give notice by publication or by registered mail addressed to the last known address of the owner or owners of the land upon which such nuisance exists, or to the owner or occupant of the building or structure itself, specifying the nature of the nuisance and requiring such owner to alter, repair, tear down, abate or remove the nuisance promptly and within a time to be specified by the Council, which shall be commensurate with the nature of the nuisance. If, at the expiration of the time limit in said notice, the owner has not complied with the requirements thereof, or in any case where the owner of the land or of the building or structure itself is not known, the Council may order such hazard or nuisance abated by the proper department or agency of the city which is qualified to do the work required, or may do the work by contract or by hire, and the cost of such abatement assessed against the lot, premises, or description of real property upon which such hazard or nuisance is located, by special assessment.

### **Sec. 14.3. Procedure to be fixed by ordinance.**

The Council shall prescribe by general ordinance complete special assessment procedure concerning the initiation of projects, plans and specifications, estimate of costs, determination of benefits received by the affected properties and the respective proportions thereof, notice and hearing, the making and confirming of the assessment roll and correction of errors, the collection of special assessments, and any other matters concerning the making of improvements or removal of hazards or nuisances by the special assessment method.

### **Sec. 14.4. Contested assessments.**

Except and unless notice is given to the Council in writing of an intention to contest or enjoin the collection of any special assessment for the construction of any public improvement or the removal or abatement of any public hazard or nuisance, within fifteen (15) days after the date of the resolution of the Council confirming the assessment roll for such improvement as prescribed by the ordinance authorized by Section 14.3, which notice shall state the grounds on which the proceedings are to be contested, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of such special assessment.

### **Sec. 14.5. Objection to special assessments.**

If, at or prior to a meeting of the council to establish a special assessment district in accordance with ordinances providing therefor, property owners of property located in the special assessment district whose property in the aggregate was assessed at fifty per cent (50%) or more of the total assessed value of the privately owned real property located therein, in accordance with the last preceding general assessment role or in case of paving or similar improvement, fifty per cent (50%) of the frontage is to be assessed for any such improvement shall object in writing to the proposed improvement, the improvement shall not be made without a four-fifths (4/5) affirmative vote of the members of the council.

Editor's note--Section 14.5 was adopted by a referendum held November 9, 1968.

## **Chapter 15. Contracts--Franchises--Permits**

### **Sec. 15.1. City may perform public work.**

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

### **Sec. 15.2. Plans and specifications.**

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

### **Sec. 15.3. Contracts.**

Whenever it becomes desirable for the city to enter into a contract with a second party for any purpose whatever, such instrument shall be drawn or approved as to form by the City Attorney and certified to by the Clerk as to sufficiency of funds. Copies of all contracts shall be filed in the office of the Clerk.

### **Sec. 15.4. Modifications in contracts.**

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

### **Sec. 15.5. Franchises.**

All irrevocable public utility franchises and all renewals, extensions and amendments thereof shall be granted only by ordinance. No such ordinance shall be adopted before thirty (30) days after application therefor has been filed with the Council, nor until a full public hearing has been held thereon. No such ordinance shall become effective until it has been submitted to the electors and has been approved by three-fifths of the electors voting thereon. No such ordinance shall be submitted to the electors at an election to be held less than sixty (60) days after the grantee named therein has filed its unconditional acceptance of such franchise, and it shall not be submitted to a special election unless the expense of holding the election as determined by the Council shall have been paid to the Treasurer by the grantee. No exclusive franchises shall ever be granted and no franchise shall be granted for a longer term than thirty (30) years. No such franchise shall be transferable, directly or indirectly, except with the approval of the Council expressed by ordinance.

Constitution reference--Franchises, licenses limited to a term of thirty years, Art. VII, § 30.

### **Sec. 15.6. Control and revocation.**

The Council shall cause to be instituted such actions or proceedings as may be necessary to prosecute a public utility company for violations of its franchise, the city charter, or ordinances of the city, and may revoke, cancel, or annul all franchises that may have been granted by the

city, which, for any reason, have become inoperative, illegal, or void and not binding upon the city.

**Sec. 15.7. Provisions stated not to be exclusive.**

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

**Sec. 15.8. Right of regulation.**

All public utility franchises granted after the adoption of this charter, whether it be so provided in the granting ordinance or not, shall be subject to the right of the city:

- (a) To repeal the same for misuse, or nonuse, or for failure to comply with the provisions thereof;
- (b) To require proper and adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency;
- (c) To establish reasonable standards of service and quality of products, and prevent unjust discrimination in service or rates;
- (d) To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;
- (e) To impose such other regulations as may be determined by the Council to be conducive to the safety, welfare, and accommodation of the public.

**Sec. 15.9. Regulation of rates.**

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

**Sec. 15.10. Revocable permit.**

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

**Sec. 15.11. Use of streets by utility.**

Every public utility franchise shall be subject to the right of the city to use, control, and regulate the use of its streets, alleys, bridges, and public places and the space above and beneath them. Every public utility shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges, and public places, as shall arise from its use thereof and shall protect and save the city harmless from all damages arising from said use; and may be required by the city to permit joint use of its property and appurtenances located in the streets, alleys, and public places of the city, by the city, and other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor; provided, that, in the absence of agreement, upon application by any public utility, the Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, which award shall be final.

## **Chapter 16. Municipal Utilities**

### **Sec. 16.1. General powers respecting utilities.**

The city shall possess and hereby reserves to itself all the powers granted to cities by the constitution and general laws of the State of Michigan to acquire, construct, own, operate, improve, enlarge, extend, repair, and maintain, either within or without its corporate limits, public utilities, including but not by the way of limitation, public utilities for supplying water, light, heat, power, gas, and sewage treatment, and garbage disposal facilities, or any of them, to the municipality and the inhabitants thereof; and also to sell and deliver water, light, heat, power, gas, and other public utilities and services without its corporate limits to an amount not to exceed the limitations set by state law and constitution.

Constitution reference--Utilities generally, Art. VII, § 24.

### **Sec. 16.2. Rates.**

The Council shall have the power to fix, from time to time, such just and equitable rates as may be deemed advisable for supplying the inhabitants of the city and others with water, with electricity for light, heat, and power and with such other utility services as the City may provide.

### **Sec. 16.3. Utility charges; collection.**

The Council shall provide, by ordinance, for the collection of all public utility charges made by the city and for such purpose, shall have all the power granted to cities by Act 178 of the Public Acts of 1939. When any person or persons, or any firm or corporation, shall fail or refuse to pay to the city any sums due on utility bills, the utility service or services upon which such delinquency exists may be shut off or discontinued and suit may be instituted by the city for the collection of the same in any court of competent jurisdiction.

### **Sec. 16.4. Accounts.**

Separate accounts shall be kept for each public utility owned or operated by the city, distinct from other city accounts, and in such manner as to show the true and complete financial result of such city ownership or operation, or both, including all assets, liabilities, revenues, and expenses. They shall show as nearly as possible, the value of any service furnished to or rendered by any such public utility by or to any other city department. The Council shall annually cause to be made a report showing the financial results of such city ownership or operation, or both, which report shall give for each utility, the information specified in this section, and such further information as the Council shall deem expedient. Such report shall be on file in the office of the Clerk for public inspection.

**Sec. 16.5. Disposal of plants.**

The city shall not sell, exchange, lease, or in any way alien or dispose of the property, easements, income or other equipment, privilege or asset belonging to and appertaining to any utility which it may acquire, unless and except the proposition for such purpose shall first have been submitted, at an election held for the purpose in the manner provided in this charter, to the electors of the city who are qualified to vote on questions involving the direct expenditure of money or the issuance of general obligation bonds of the city and approved by them by a three-fifths (3/5) majority vote of the electors voting thereon. All contracts, negotiations, licenses, grants, leases or other forms of transfer in violation of this provision, shall be void and of no effect as against the city. The provisions of this section shall not, however, apply to the sale or exchange of any articles of equipment of any city-owned utility as are worn out or useless, or which could, with advantage to the service, be replaced by new and improved machinery or equipment.

**Chapter 17.  
City Liability\***

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State law reference(s)--Tort Liability Act, Act No. 170, Public Acts 1964 (M.S.A., § 3.996 et seq.).

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**Sec. 17.1. Notice to city of claim for negligent injury.**

No action shall be brought against the city for any negligent injury to person or property unless brought within the period limited by law from the time such injury was sustained, nor unless the person or persons claiming to be so injured shall serve or cause to be served, within sixty (60) days after such injury shall have occurred, a notice in writing upon the Clerk, which notice shall set forth substantially the time and place of such injury, and the nature thereof, the manner in which it occurred, the extent of such injury so far as the same has become known, the names and addresses of the witnesses known at the time by claimant, and a statement that the person receiving such injury intends to hold the city liable for such damages as may have been sustained by him. No person shall bring any action against the city to recover for any negligent injury to

person or property unless he shall also present to the Clerk his claim in writing and under oath, setting forth particularly the nature and extent of such injury and the amount of damages claimed by reason thereof, which claim shall be presented to the Council by the Clerk.

It shall be a sufficient bar and answer in any court to any action or proceeding for the collection of any demand or claim against the city for any negligent injury that the notice of injury and the verified proof of claim, as in this section required were not presented and filed within the time and in the manner as herein provided.

**Sec. 17.2. Notice to city of claim for injury arising from street defects.**

The city shall not be liable in damages sustained by any person in the city, either to his person or property, by reason of any defective highway, street, bridge, sidewalk, crosswalk, or culvert, or by reason of any obstruction, ice, snow, or other incumbrance upon such street, sidewalk, crosswalk or public highway, situated in the city, unless such person shall serve or cause to be served, within sixty (60) days after such injury shall have occurred, a notice in writing, upon the Clerk, which notice shall set forth substantially the time and place of such injury, the nature of the defect, the manner in which it occurred, and the extent of such injury as far as the same has become known, the names and addresses of the witnesses known at the time by claimant, and a statement that the person receiving such injury intends to hold the city liable for such damages as may have been sustained by him. No person shall bring any action against the city for any damages to person or property arising out of any obstruction, ice, snow or other encumbrance upon such street, sidewalk, crosswalk or public highway, situated in the city, unless he shall also present to the Clerk his claim in writing and under oath, setting forth particularly the nature and extent of such injury and the amount of damages claimed by reason thereof, which claims shall be presented to the Council by the Clerk.

It shall be a sufficient bar and answer in any court to any action or proceeding for the collection of any demand or claim against the city, under this section, that the notice of injury and the verified proof of claim, as in this section required, were not presented and filed within the time and in the manner as herein provided.

**Sec. 17.3. No estoppel by representation.**

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

**Chapter 18.  
Miscellaneous**

**Sec. 18.1. Tense.**

Except as otherwise specifically provided or indicated by the context, all words used in this charter indicating the present tense shall not be limited to the time of the adoption of this charter,

but shall extend to and include the time of the happening of any event or requirement for which provision is made therein, either as a power, immunity, requirement, or prohibition.

### **Sec. 18.2. Headings.**

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

### **Sec. 18.3. Effect of illegality of any part of charter.**

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

### **Sec. 18.4. Amendments.**

This charter may be amended at any time in the manner provided in Act No. 279 of the Public Acts of 1909, as amended. Should two (2) or more amendments, adopted at the same election, have conflicting provisions, the one receiving the largest affirmative vote shall prevail as to those provisions.

Schedule

### **Sec. 1. Election to adopt charter.**

This charter shall be submitted to a vote of the qualified electors of the City of Midland at a special city election to be held on Tuesday, November 7, 1944. If this charter is adopted at such election, it shall, except for the purpose of the election of the first officers under this charter, take effect and become the charter of the City of Midland on Monday, April 9, 1945, at 12:00 o'clock noon.

### **Sec. 2. Form of ballot.**

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

Instruction--A cross (X) in the square before the word "Yes" is in favor of the proposed charter, and a cross (X) in the square before the word "No" is against the proposed charter.

"Shall the proposed charter of the City of Midland, drafted by the Charter Commission which was elected on April 3, 1944, be adopted?"

Yes

No

**Sec. 3. First election under this charter.**

For the purpose of electing the first city officers of the city under this charter, Chapters 1, 3 and 10 of this charter and Sections 4 and 5 of this schedule shall become effective on January 1, 1945.

**Sec. 4. First elective officers under charter.**

The first election of officers under this charter shall be held on Monday, April 2, 1945, at which election there shall be elected five (5) Councilmen, and one (1) Constable, who shall in each case serve for terms beginning on the 9th day of April, 1945, and terminating on November 12, 1946, or until such time thereafter as their successors shall qualify and assume the offices to which they are elected. The primary for such election shall be held on Monday, February 19, 1945. At the regular biennial city election in 1946, a Municipal Judge shall be elected who shall assume office on the date and serve for the term prescribed in Chapter 9 of this charter. The terms specified in this section are for the purpose of bridging the transition from the schedule of terms of office in the prior charter of the city and those herein provided.

**Sec. 5. Administrative and other officers.**

If this charter is adopted at the election thereon, the terms of office of the Mayor, each alderman, and each supervisor of the city, holding office by virtue of election or appointment under the former charter of the city and of the City Clerk and City Treasurer, shall terminate on April 9, 1945, at 12:00 noon. The persons holding the last two such offices under the former charter of the city shall thereupon assume the offices of the Clerk and Treasurer, respectively, under this charter and shall hold such offices on the same basis as though they had been appointed thereto in the manner provided in this charter. All other administrative officers and employees of the city shall continue in the respective offices and employment held by them at the time this charter becomes effective, and shall be subject to the provisions thereof.

**Sec. 6. Status of schedule chapter.**

The purpose of this schedule chapter is to inaugurate the government of the City of Midland under this charter and it shall constitute a part of this charter only to the extent and for the time required to accomplish that end.

Resolution of Adoption

At a meeting of the Charter Commission of the City of Midland held on the 29th day of August, 1944, the following resolution was offered by Commissioner Nicholas:

Resolved that the Charter Commission of the City of Midland does hereby adopt the foregoing proposed charter of the City of Midland, and the Clerk of this Commission is directed to transmit

a copy thereof to the Governor of the State of Michigan for his approval in accordance with state law.

The resolution was seconded by Commissioner Thompson and adopted by the following vote:

Yeas: Commissioners Baker, Hunter, Groening, Nicholas, Robertson, Thompson, Towsley, Winston, and Bandeen, chairman.

Nays: None.

The chairman declared the foregoing resolution carried unanimously and requested the members of the Charter Commission to authenticate said resolution and also the copy of the charter to be presented to the Governor and filed with the City Clerk by attesting their names thereto in the following manner:

Attested by Commissioners:

WILLIAM J. BAKER WILLIAM A. GROENING RALPH M. HUNTER REV. V. V.  
NICHOLAS KARL B. ROBERTSON FRANK F. THOMPSON WILBUR D. TOWSLEY  
ARTHUR W. WINSTON ORREN I. BANDEEN, Chairman

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

STATE OF MICHIGAN :

:SS

COUNTY OF MIDLAND :

Anna E. Coons, Clerk of the Charter Commission of the City of Midland, being duly sworn says that at an election duly called and held in the City of Midland on the 3rd day of April, 1944, the following named persons were duly elected as a Charter Commission to frame a revised charter for the City of Midland, namely:

William J. Baker, Orren I. Bandeen, Chairman, Ralph M. Hunter, William A. Groening, Rev. V. V. Nicholas, Karl B. Robertson, Frank F. Thompson, Wilbur D. Towsley, Arthur W. Winston,

and that the annexed and foregoing charter, duly framed and, by the foregoing resolution, adopted by said Charter Commission, is a true and correct copy thereof, and that the said Charter Commission directed that said charter be presented to the electors of the City of Midland in accordance with the requirements of the laws of the State of Michigan which provide therefor.

ANNA E. COONS, Clerk of the Charter Commission of the City of Midland

Dated: August 30, 1944

Subscribed and sworn to before me this 30th day of August, 1944.

ARTHUR SEGERLUND Notary Public, Midland County, Mich. My commission expires Jan. 24, 1947.

I do hereby approve the above and foregoing charter of the City of Midland. Dated: September 6, 1944.

HARRY F. KELLY Governor of the State of Michigan.

I, ANNA E. COONS, City Clerk of the City of Midland, Michigan, hereby certify that the foregoing is a true copy of the revised charter of the City of Midland, duly adopted at an election held November 7th, 1944, in the City of Midland.

I further certify that the vote upon the proposition to adopt said revised charter was as follows:

YES--3,516

NO--1,189

I further certify that the vote was canvassed and approved by the Council of the City of Midland on November 10, 1944.

I further certify that two copies of this charter were filed with the County Clerk of Midland County and a like number with the Secretary of State of Michigan on November 21, 1944.

ANNA E. COONS, City Clerk.

January 5, 1945