

# CHARTER

## OF THE CITY OF BEREAL, OHIO

### TABLE OF CONTENTS

EDITOR'S NOTE: The Berea Charter was originally adopted on May 3, 1960. Dates appearing in parentheses following a section heading indicate that those provisions were subsequently added, amended or repealed on the date given.

#### PREAMBLE

#### SECTION I. NAME AND BOUNDARIES

#### SECTION II. POWERS

#### SECTION III. THE MAYOR

- Item 1. Executive and Administrative Powers.
- Item 2. Term and Qualifications (11/4/86, 11/6/90, 11-6-01).
- Item 3. Appointing Power.
- Item 4. General Powers and Duties.
- Item 5. Veto Power.
- Item 6. Succession to the Office (11/7/06).
- Item 7. Location of Office.
- Item 8. Right of Mayor and Directors in Council.

#### SECTION IV. THE COUNCIL

- Item 1. Membership, Election, Qualification and Term (11/4/86, 11-6-01).
- Item 2. President of Council (11/7/06).
- Item 3. Organization and Duties (11/2/82).
- Item 4. Meetings (11/2/82, 11/8/88, 11/8/16).
- Item 5. Form of Legislative Action (11/2/71, 11-6-01).
- Item 6. Emergency Measures (11-6-01).
- Item 7. Effective Date of Ordinances and Resolutions.
- Item 8. Franchise.
- Item 9. Division of Municipality into Five Wards (11/2/82, 11/6/90).
- Item 10. Salaries and Surety Bonds.
- Item 11. Use of Term "Elected".

#### SECTION V. ADMINISTRATIVE DEPARTMENTS. (11/6/90, 11-6-01).

#### SECTION VI. DEPARTMENT OF PUBLIC SERVICE

- Item 1. Divisions Established. (11-5-96).
- Item 2. The Director (11/2/71).

#### SECTION VI-A DEPARTMENT OF RECREATION AND COMMUNITY SERVICES

- Item 1. Divisions Established (11-5-96, 11-6-01).
- Item 2. The Director (11/4/86, 11-6-01).

#### SECTION VII. DEPARTMENT OF PUBLIC SAFETY

- Item 1. Divisions Established. (11-5-96).
- Item 2. The Director (11/2/71).
- Item 3. Division of Fire.
- Item 4. Division of Police.

#### SECTION VIII. DEPARTMENT OF LAW

- Item 1. The Director.

#### SECTION IX. DEPARTMENT OF FINANCE

- Item 1. The Director (11/7/72; 11/8/11).
- Item 2. Reports.
- Item 3. Certification of Funds.
- Item 4. Public Bidding (11/6/90).
- Item 5. Annual Estimate and Appropriation Ordinance.
- Item 6. Transfers, Balances, and Payments of Appropriations.

#### SECTION X. BOARDS AND COMMISSIONS

- Item 1. General (11/8/77).
- Item 2. Planning Commission (11/4/86, 5/2/89, 11-6-01, 11/7/06).
- Item 3. (Reserved).
- Item 4. Board of Control. (11/8/11)
- Item 5. Civil Service Commission (11/8/77).
- Item 6. Charter Review Commission (11/8/66).
- Item 7. (Reserved).
- Item 8. Board of Ethics (11/7/67).

#### SECTION XI. TAXATION

- Item 1. Limitation on the Rate of Taxation (11/6/84).
- Item 2. Levies for Debt Service.
- Item 3. Submission of Extra Levy.
- Item 4. Other Taxes.
- Item 5. Additional Levies.

#### SECTION XII. IMPROVEMENTS AND ASSESSMENTS

- Item 1. Public Improvements.
- Item 2. Methods of Special Assessment.

- Item 3. Resolution of Necessity (11/6/90).
- Item 4. Notice Served.
- Item 5. Plans of Proposed Improvements.
- Item 6. Board of Revision of Assessments
- Item 7. Claims for Damages.
- Item 8. Preliminary Assessment.
- Item 9. Work to be Done.
- Item 10. Interest on Assessment Bonds.
- Item 11. City's Portion of Cost and Rebates.
- Item 12. Sidewalks, Curbs, Gutters (11/6/90).
- Item 13. Improvement on Petition of Property Owners (11/6/90).

#### SECTION XIII. NOMINATIONS AND ELECTIONS

- Item 1. Municipal Elections. (11/8/16)
- Item 2. Nominating Procedures. (11/8/16)
- Item 3. Primary Elections. (11/8/16)
- Item 4. Certificate of Nomination When No Primary is Held. (11/8/16)
- Item 5. Election Procedures. (11/8/16)
- Item 6. Reserved
- Item 7. General Provision. (11/8/16)
- Item 8. Qualified Electors. (11/8/16)

#### SECTION XIV. INITIATIVE AND REFERENDUM (11/8/66, 11/4/86)

#### SECTION XV. RECALL

- Item 1. Recall Procedures.
- Item 2. Petitions.
- Item 3. Signatures.
- Item 4. Filing and Certification.
- Item 5. Supplemental Petitions.
- Item 6. Recall Election.
- Item 7. Ballots (11/4/86).
- Item 8. Succeeding Officer.

#### SECTION XVI. GENERAL PROVISIONS

- Item 1. Effective dates.
- Item 2. Oath of Office.
- Item 3. Continuance of Contracts and Enactments.
- Item 4. Amendments to the Charter.
- Item 5. Investigations.
- Item 6. Continuance in Office and Qualifications - Elected or Appointed Personnel (11/8/66).
- Item 7. Separability.
- Item 8. Interpretation of the Charter.
- Item 9. Use of Gender.
- Item 10. Conflict of Interest (11/7/67, 11-6-01).

### CHARTER OF THE CITY OF BEREAL, OHIO PREAMBLE

In order that we may exercise our duties as responsible citizens to the full extent and secure for ourselves the full benefits of self government available to us under the Constitution and laws of the State of Ohio, we, the people of the City of Berea, in the County of Cuyahoga and State of Ohio, do hereby adopt this Charter for the government of our City.

#### SECTION I

##### Name and Boundaries

The municipal corporation now existing as the City of Berea shall continue to be a body politic and corporate under the same name and with the same boundaries. The Municipality shall have authority to change its boundaries and annex other territory in the manner authorized by the General Laws of Ohio. Territories that may be annexed shall immediately become subject to the provisions of this Charter.

#### SECTION II

##### Powers

The City of Berea shall have all power now or hereafter granted to municipalities by the Constitution and laws of Ohio.

All powers shall be exercised in the manner prescribed by this Charter, or if not prescribed herein, then in such manner as shall be provided by ordinance or resolution of the Council, or in such manner as may be prescribed by the General Laws of Ohio.

#### SECTION III

##### The Mayor

#### ITEM III-1. EXECUTIVE AND ADMINISTRATIVE POWERS.

The executive and administrative powers of the City shall be vested in the Mayor, directors of departments, and other administrative officers provided for in this Charter or by ordinance.

#### ITEM III-2. TERMS AND QUALIFICATIONS.

- (a) The Mayor shall be elected for a term of four (4) years commencing on the first Sunday of January following a regularly

scheduled municipal election, and shall serve until a successor is elected, qualified and assumes office.

(b) The Mayor shall be elected by a majority of the votes cast for such office at a regularly scheduled municipal election. If no candidate shall receive a majority of the votes cast for such office at a regularly scheduled municipal election, a special election shall be conducted on the first Tuesday of December immediately thereafter between the two candidates receiving the highest number of votes for such office at the said regularly scheduled municipal election and the candidate receiving the majority of the votes cast in the special election shall assume the office of the Mayor on the first Sunday of January following the special election.

(c) The Mayor shall be a qualified elector of the City, and a bona fide resident of the City for at least two (2) years immediately prior to any election or appointment to such office.

(d) The Mayor shall hold no other public office in conflict with the duties of Mayor.

(e) The provisions of this Item shall come into full force and effect with the regularly scheduled municipal election for November, 1987.

(Amended 11/4/86; 11-6-90; 11-6-01).

#### **ITEM III-3. APPOINTING POWER.**

It shall be the duty of the Mayor to appoint the directors of all departments and to make all other appointments provided for by law or ordinance unless otherwise provided herein. All appointees of the Mayor shall serve until removed by him or until their respective successors are appointed.

#### **ITEM III-4. GENERAL POWERS AND DUTIES.**

It shall be the duty of the Mayor to act as chief conservator of the peace within the City; to supervise the administration of the affairs of the City; to see that all ordinances of the City are enforced; to recommend to the Council for adoption such measures as he may deem necessary or expedient and to keep the Council advised of the financial condition and future needs of the City. He shall sign on behalf of the City all contracts, conveyances, evidences of indebtedness and all other instruments not otherwise provided by this Charter or by ordinance of Council to be signed on behalf of the City by another official. He shall exercise such other powers and perform such other duties as are conferred or required by this Charter, by any resolution of the Council or by the General Laws of Ohio.

#### **ITEM III-5. VETO POWER.**

Any ordinance or resolution passed by the Council shall be signed by the President of Council or other presiding officer and presented to the Mayor by the Clerk of Council. If the Mayor approves such ordinance or resolution, he shall sign it within ten (10) days after its passage or adoption by the Council, but if he does not approve it, he shall return it to the Council with his objections within said ten (10) days by delivery to the Clerk of Council, which objections shall be entered in full on the journal of the Council. The Mayor may approve or disapprove the whole or any item of an ordinance appropriating money, but otherwise his approval or disapproval shall be addressed to the entire ordinance or resolution. If the Mayor does not sign or veto an ordinance or resolution after its passage or adoption within the time specified, it shall take effect in the same manner as if he had signed it. When the Mayor has disapproved an ordinance or resolution or item of it, as herein provided, the Council may, but in no event later than the next regular meeting, reconsider it and pass or adopt it by vote of two-thirds (2/3) of the Members elected to Council; in such event it shall take effect as if it had on that day received the signature of the Mayor. In all such cases the votes shall be taken by yeas and nays and entered upon the journal.

#### **ITEM III-6. SUCCESSION TO THE OFFICE.**

(a) The Mayor may, by writing filed with the Clerk of Council on the day he assumes his office, designate the order of succession to his office. In the event of one or more occurrences identified in Item 6(c) below. Such designation shall include the Director of Public Service, Finance, Recreation and Community Services, Public Safety and Law and may be altered by writing filed with the Clerk of Council, who shall keep any such designation on file in the office of the Clerk of Council.

(b) In the event that the Mayor fails to file the designation provided in Item 6(a), the Director of Public Service shall, as Acting Mayor, perform the duties of Mayor under the circumstances described in Item 6(c); and should, in such event, the Director of Public Service be unable for any cause to serve as Acting Mayor, the Director of Finance, the Director of Recreation and Community Services, the Director of Public Safety or the Director of Law shall serve as Acting Mayor, in the order named.

(c) In the event of death or resignation of the Mayor, or his removal from office or ceasing to be a resident of the City, or for those periods in which he may be unable to perform the duties of the office of the Mayor, by reason of temporary absence from the City, temporary disability, or disability lasting more than sixty (60) consecutive days, the Director designated by the Mayor pursuant to Item 6(a) above, or if no designation has been made by the Mayor, the Director identified in Item 6(b) above, shall serve as Mayor until the Mayor recommences to perform the duties of his office, or until the next regular councilmanic election which, under such circumstances, shall also require a Mayoral election.

In the event that the Mayor remains unable to perform the duties of his office for a period of time exceeding sixty (60) days and no Director is then willing and able to serve as Acting Mayor as provided hereinabove, the Council shall, within sixty (60) days thereafter, elect an Acting Mayor from within or without its own body who shall meet the requirements of Item 2(c) and (d) hereinabove and shall serve as Mayor until the next regular councilmanic election which, under such circumstances, shall also require a Mayoral election. If a vacancy is thereby created in Council, such vacancy shall be filled in the manner provided in Section IV, Item 3.

(d) Any officer serving as Acting Mayor pursuant to Item 6(c) above, other than service as Acting Mayor due to the temporary absence or temporary disability of the Mayor, shall then no longer serve or continue to perform the duties of the office to which such officer was initially elected or appointed.

(Amended 11-7-06.)

#### **ITEM III-7. LOCATION OF OFFICE.**

The Mayor shall have his office in the City Hall, and shall devote his entire time during business hours, and such other times as may be necessary, to the business of the City.

#### **ITEM III-8. RIGHT OF MAYOR AND DIRECTORS IN COUNCIL.**

The Mayor and the directors of all departments established by this Charter, or that may hereafter be established by ordinance, shall be

entitled to seats in the Council. Neither the Mayor nor the director of any department shall have a vote in the Council, but the Mayor shall have the right to introduce ordinances and resolutions and to take part in the discussion of all matters coming before the Council. The directors of departments shall be entitled to take part in all discussions in Council relating to their respective departments.

## SECTION IV

### The Council

#### ITEM IV-1. MEMBERSHIP, ELECTION, QUALIFICATION AND TERM.

The legislative powers of the City shall be vested in a Council consisting of seven (7) Members. One (1) Member shall be elected from each of the five (5) wards of the City, and two (2) Members shall be elected from the City at large. All Members of Council shall be elected for a term of two (2) years commencing on the first Sunday of January following a regularly scheduled election. Each Member shall be a qualified elector of the City, and a resident of the City not less than two (2) years immediately prior to any election or appointment to such office, and provided further, that a Member representing any one of the wards of the City shall, in addition, be, and continue to be, a bona fide resident of the ward thus represented during the entire term of such office.

(Amended 11-4-86; 11-6-01)

#### ITEM IV-2. PRESIDENT OF COUNCIL.

The President of Council shall be elected by a popular vote and have the qualifications of councilman-at-large.

The term of the President of Council shall be the same as for those elected to Council, and his duties shall be to preside at all meetings of Council, appoint various Council Committees, perform such duties as may be imposed by Council upon its presiding officer and such duties as are imposed on him by this Charter, and coordinate the work of the various committees appointed by him. He shall be the Chairman of the Coordinating Committee of Council.

If the President of Council dies, resigns, is removed from office or ceases to be a resident of the City, he shall cease to hold the office of President of Council, and the Council shall thereupon elect from its members one who shall serve as President of Council. The person so chosen shall thereafter and to the end of his term of office be vested with all of the authority and responsibility of the office of President of Council, and the vacancy thereby created in Council shall be filled in the manner provided in Item 3 of this Section IV.

(Amended 11-7-06.)

#### ITEM IV-3. ORGANIZATION AND DUTIES.

Within one (1) day from the commencement of its term, the Council shall elect a president pro tempore to preside at meetings of Council in the absence of the President of Council, a Clerk of Council, and such other employees as are necessary, and fix their duties. Such officers and employees shall serve until the next Council is organized in accordance with this item, but may be removed at any time at a regular meeting of the Council by a two-thirds (2/3) vote of the members elected thereto.

The powers of the Council shall be legislative only; it shall perform no administrative duties, and it shall neither appoint nor confirm any officer or employee in the City government except those of its own body, unless otherwise provided in this Charter. All vacancies in Council shall be filled by Council itself. If the Council fails within thirty (30) days to fill a vacancy, the power of Council shall terminate, and the Mayor shall fill the vacancy by appointment. All contracts requiring the authority of Council for their execution shall be entered into and conducted to performance by the board or officers having charge of the matters to which they relate. After the authority to make such contracts has been given, and the necessary appropriation made, the Council shall take no further action thereon, other than that of a legislative nature.

The Council shall be the judge of the election and qualifications of its members. A majority of all members elected shall be a quorum to do business but a lesser number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The Council shall determine its own rules and order of business and shall keep a journal of its proceedings.

Council shall have in addition to any powers, duties, or obligations set forth in this Charter any additional powers, duties or obligations, except as may be in conflict with those granted in this Charter, as are set forth in the General Laws and the Constitution of Ohio. In the event that there is a conflict between this Charter and the General Laws of Ohio in the powers, duties or obligations, then those granted, allowed or imposed by this Charter shall prevail.

(Amended 11/2/82)

#### ITEM IV-4. MEETINGS.

(a) Regular Meetings. At 7:30 p.m., local time, on the Monday following the Sunday on which its term of office commences, Council shall convene and organize, at which time the Council shall elect its officers. Thereafter, the Council shall meet on the first and third Mondays of each calendar month at such time as it may hereafter set by ordinance. If the regular meeting shall fall on a legal holiday, then such regular meeting shall be held on the day following.

(Amended 11/2/82)

(b) Public Meetings. All meetings of the Council, whether regular or special, or of its committees shall be open to the public, and any citizen shall have access to the minutes and records thereof at all reasonable times; except that executive sessions may be held to discuss those subjects permitted by the General Laws of Ohio in accordance with the procedures set forth in the General Laws of Ohio.

(Amended 11/8/88)

(c) Special Meetings. Special meetings may be called by the Mayor or any three (3) Members of Council. There shall be given at least twenty-four (24) hours notice in writing of such special meeting, served personally on each Member of Council, as otherwise set forth by ordinance, or left at his usual place of residence. Such notice shall state the subjects to be considered at the meeting and no other subjects shall be considered prior to the disposition of those for which such meeting was called. (Amended 11/8/16)

(d) Compel Attendance. The attendance at any special meeting of the Council shall be considered a waiver of notice required by the preceding subsection and if two-thirds (2/3) of the members elected to Council are present the meeting may proceed as a duly called special meeting.

(e) Emergency Meetings. Emergency meetings may be called by the Mayor or President of Council by written notice as provided in (c) hereof given at any time up to the time of meeting.

(f) Recess. Council by majority vote may recess for the months of July and August.

#### ITEM IV-5. FORM OF LEGISLATIVE ACTION.

The action of the Council shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by ayes and nays and entered upon the journal, but this shall not apply to the ordering of an election, or direction by the Council to any board or officer to furnish the Council with information as to the affairs of any department or office. No by-law, ordinance, or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale or transfer of property, shall be passed until it has been fully and distinctly read on three (3) different days, and with respect to any such by-law, ordinance, or resolution, there shall be no authority to dispense with this rule, except by a three-fourths (3/4) vote of all members elected to the Council, taken by ayes and nays on each by-law, resolution, or ordinance, and entered on the journal. By-laws, ordinances and resolutions shall be deemed to have been fully and distinctly read if a written or printed copy of the by-law, ordinance or resolution shall have been furnished to each Member of Council prior to its introduction and if the title thereof is fully read, provided that such by-law, ordinance or resolution shall be read in full if so directed by motion approved by affirmative vote of at least a majority of the Members of Council. No ordinance or resolution shall be passed without the concurrence of a majority of all members elected to the Council.

No ordinance or resolution shall contain more than one subject matter, which subject shall be clearly expressed in its title, and no ordinance or resolution shall be revised or amended unless the ordinance or resolution superseding it contains the entire ordinance or resolution so revised or amended or the section or sections so revised or amended, and having been revised or amended the original ordinance, resolution, section or sections thereof, shall be expressly repealed.

All ordinances, resolutions, statements, orders, proclamations and reports required by law or by this Charter or by ordinance to be published shall be published in the manner provided by ordinance or if required to be posted shall be posted in City Hall and any other location as determined by the Mayor and/or Council, and for a period of not less than fifteen (15) days prior to the effective date thereof. An emergency ordinance or resolution shall also be published or posted as aforesaid, but said requirement for posting or publishing shall not postpone the effective date thereof as provided in this Charter.

(Amended 11-2-71; 11-6-01)

#### **ITEM IV-6. EMERGENCY MEASURES.**

The Council may, by a two-thirds (2/3) vote of the members elected thereto, pass emergency measures to take effect at the time provided in Item 7 hereof. An emergency measure is an ordinance or resolution necessary for the immediate preservation of the public peace, property, health, safety, or welfare, or providing for the usual daily operation of a municipal department. Ordinances appropriating money may be passed as emergency measures, but no measures (a) which change the amount of salary or compensation for any elected officers of the City, (b) which pertain to zoning matters or building matters, (c) which make a grant, renewal or extension of a franchise or other special privilege, or (d) which regulate the rate to be charged for its service by any public utility, whether privately or publicly owned or operated, shall ever be so passed. Each emergency measure shall contain a statement explaining with particularized specification the necessity for such emergency action.

(Amended 11-6-01)

#### **ITEM IV-7. EFFECTIVE DATE OF ORDINANCES AND RESOLUTIONS.**

Each ordinance or resolution providing for the appropriation of money or for an annual tax levy, or for improvements petitioned for by the owners of 51% or more of the land area or the frontage of property to be specially assessed therefor, and any emergency ordinance or resolution necessary for the immediate preservation of the public peace, property, health, safety or welfare of the City, or providing for the usual daily operation of a municipal department shall take effect, unless a later date be therein specified, upon its approval by the Mayor, or upon the expiration of the time within which it may be vetoed by the Mayor, or upon its passage over the Mayor's veto, as the case may be. No other ordinance or resolution shall become effective until after the expiration of thirty (30) days following its approval by the Mayor or thirty (30) days after the expiration of the time (10 days) within which it may be vetoed by the Mayor or thirty (30) days after its passage by Council over the Mayor's veto, as the case may be.

#### **ITEM IV-8. FRANCHISE.**

The Council may by ordinance grant a franchise to any person, firm or corporation to construct or operate a public utility on, across, under, over, or above any public street or public real estate within the City for a period not in excess of twenty-five (25) years; and it may prescribe in the ordinance the kind or quality of service or product to be furnished, the rate or rates to be charged therefor, and such other terms as Council shall deem conducive to the public interest. Such franchise may be amended or renewed in the manner and subject to the provisions established by this Charter for original grants. No consent of the owner of property abutting on any public street or public real estate shall be necessary to the effectiveness of any such grant, amendment or renewal.

All such grants, amendments and renewals shall be made subject to the continuing right of the Council to provide reasonable regulations for the operation of such utilities with reference to such public streets and public real estate, including the right to require such reconstruction, relocation, alteration or removal of structures and equipment used in such streets or public realty as shall, in the opinion of Council, be necessary in the public interest.

#### **ITEM IV-9. DIVISION OF MUNICIPALITY INTO FIVE (5) WARDS.**

(a) Upon the adoption of this Charter and at least sixty (60) days prior to the filing date of nominating petitions for the terms beginning on January 1, 1962, the present Council shall divide the City into five (5) wards which shall be as nearly equal in population as is possible, each ward to be composed of contiguous and compact territory, bounded by natural boundaries or street lines. In the event Council shall not have fixed the division of wards herein prescribed, the Mayor shall cause such division to be made at least thirty (30) days prior to the filing date herein provided. If and when any particular territory is annexed to, or merged with, the City, the Council shall by ordinance declare it a part of the adjacent ward or wards. If as a result of such declaration the ward having the smallest population is ten or more percent smaller in population than the ward having the largest population, a re-division of the City into wards shall be made as provided in this Item, provided such re-division shall not cause the ward having the smallest population to be more than five percent (5%) smaller than the ward having the largest population. Such re-division shall be in addition to any re-division required by Item 9(b).

(Amended 11/6/90)

(b) Beginning in the year 1992, and each ten (10) years thereafter, and not later than sixty (60) days prior to the filing date of

nominating petitions, the Council shall study the then existing wards to determine whether their populations have remained relatively equal to each other. If the ward having the smallest population is ten or more percent smaller in population than the ward having the largest population, a re-division of the City into wards shall be made in the manner provided for in Item 9(a) of this Section IV, provided such re-division shall not cause the ward having the smallest population to be more than five percent (5%) smaller than the ward having the largest population.

(Amended 11/2/82)

#### **ITEM IV-10. SALARIES AND SURETY BONDS.**

The Council shall have the power to fix the compensation of the Mayor, its own members and the compensation of each employee of the City, including officers and members of any board or commission of the City, whether elected, appointed or chosen, and to establish bond for the faithful discharge of the duties of office. The premium on any bond required by the Council shall be paid by the City. The compensation of all elected officials shall be fixed prior to the date set for filing for an office in the regular municipal election for terms of office beginning on the next succeeding first day of January, and shall not thereafter be changed in respect to any such term or terms or any part thereof. The salaries of appointed officials shall not be reduced during their term of appointment unless requested by the Mayor. The Council may authorize the payment or reimbursement of expenses incurred in the furtherance of the interest of the City by any official, employee, or member of any department, board or commission of the City.

#### **ITEM IV-11. USE OF TERM "ELECTED".**

Whenever in this Charter the term "members elected to Council" is used it shall include members appointed to Council.

### **SECTION V**

#### **Administrative Departments**

The following departments, each headed by a Director appointed by the Mayor, are hereby established by this Charter:

- (a) Department of Law
- (b) Department of Public Service
- (c) Department of Finance
- (d) Department of Public Safety
- (e) Department of Recreation and Community Services

The Council may, upon recommendation of the Mayor, create additional departments by ordinance. The Mayor shall have the power to combine or reassign divisions within and without departments, and change functions and duties thereof as the public service shall require.

Each director of a department shall at all times be a qualified elector of the City of Berea, and shall serve at the pleasure of the Mayor. No director of a department shall be employed by the City under the terms of an employment contract, and no such contract of employment shall be implied at law or in equity.

(Amended 11-6-01)

### **SECTION VI**

#### **Department of Public Service**

##### **ITEM VI-1. DIVISIONS ESTABLISHED.**

The Department of Public Service shall consist of the following divisions:

- a. Division of Engineering
- b. Division of Public Properties, including Streets, Parks, Public Grounds, Sewers, Sewage Treatment and Public Buildings
- c. Division of Refuse Collection and Disposal
- d. Division of Permits and Inspections
- e. Division of Water
- f. Division of Utilities: Franchises and Privately Owned Utilities
- g. Division of Public Health

(Approved by voters 11-5-96)

##### **ITEM VI-2. THE DIRECTOR.**

(a) Qualifications: The Director of Public Service shall have knowledge of personnel, personnel management, engineering, building maintenance, construction, sanitation and water and sewer problems.

(b) Duties of the Director: The Director of Public Service shall have charge of the Department of Public Service. He shall make all necessary rules and regulations for the government of the department and the divisions thereof. He shall have charge of all engineering, construction, inspection, maintenance, repair, and cleaning of all public improvements and properties. He shall have charge of all private building inspections and all zoning code inspections. He shall have charge of making and preserving all surveys, maps, plans, drawings, estimates and contracts for all public improvements and properties. All contracts for public improvements, work or repair shall be executed in the name of the City by the Director only after approval by the Council and shall be entered into only with the lowest responsive and responsible bidder after public competitive bidding to the extent provided for by this Charter. He shall perform such other duties, consistent with his office, as may be required by this Charter, by ordinance of the Council, or as directed by the Mayor.

(c) Deputy Director: The Director of Public Service shall, with the approval of the Mayor, designate a Deputy Director of Public Service, either from the Department of Public Service, or another Department who shall, in the absence of the Director of Public Service for any reason, perform all of the duties herein imposed upon the Director of Public Service.

(Amended 11/2/71)

### **SECTION VIA**

#### **Department of Recreation and Community Services**

##### **ITEM VIA-1. DIVISIONS ESTABLISHED.**

The Department of Recreation and Community Services shall consist of the following Divisions:

- a. Division of Recreation
- b. Division of Senior Citizens
- c. Division of Social Services
- d. Division of Public Welfare

(Amended 11-6-01)

#### **ITEM VIA-2. THE DIRECTOR.**

(a) Qualifications: The Director of Recreation and Community Services shall have general knowledge of the operation and maintenance of municipal recreational facilities and programs, and of matters involving the activities of senior citizens and other social service programs.

(b) Duties of the Director: The Director of Recreation and Community Services shall have charge of the Department of Recreation and Community Services, and shall issue all necessary rules and regulations for the government of the Department and the Divisions thereof. The Director shall be charged with the duty of developing all municipal recreation programs, and the operation and maintenance of all recreation facilities. The Director shall plan, organize, coordinate and otherwise supervise all social service programs funded by the City, or available through City participation. The Director of Recreation and Community Services shall perform such other duties, consistent with the office, as may be required by this Charter, by ordinance of Council, or as directed by the Mayor.

(Amended 11-6-01)

### **SECTION VII**

#### **Department of Public Safety**

##### **ITEM VII-1. DIVISIONS ESTABLISHED.**

The Department of Public Safety shall consist of the following Divisions:

- a. Division of Fire
- b. Division of Police

(Approved by voters 11-5-96)

##### **ITEM VII-2. THE DIRECTOR.**

(a) Qualifications: The Director of Public Safety shall have knowledge of the workings of the Police and Fire Divisions, safety, health and sanitation department, and rules and regulations providing for their operation.

(b) Duties of the Director: The Director of Public Safety shall have charge of the Department of Public Safety. He shall make all necessary rules and regulations for the government of the Department and the Divisions thereof. He shall be charged with the duty of enforcing all police, fire, safety, health, and sanitary regulations that may be prescribed by ordinances or rules of the City or, when applicable, the General Laws of Ohio. The Director of Public Safety shall perform such other duties, consistent with his office, as may be required by this Charter, by ordinance of Council, or as directed by the Mayor.

(Amended 11/2/71)

##### **ITEM VII-3. DIVISION OF FIRE.**

The Division of Fire shall be in active charge of a Chief.

There shall be established a Bureau of Fire Protection and Investigation within the Division of Fire. The operation of this Bureau shall be by personnel of the Division of Fire. The Fire Chief shall be responsible for its organization and supervision.

##### **ITEM VII-4. DIVISION OF POLICE.**

The Division of Police shall be in active charge of a Chief.

There shall be established a Detective Bureau within the Division of Police. The operation of this Bureau shall be by personnel of the Division of Police. The Chief of Police shall be responsible for its organization and supervision.

### **SECTION VIII**

#### **Department of Law**

##### **ITEM VIII-1. THE DIRECTOR.**

(a) Qualifications: The Director of Law shall have charge of the Law Department of the City. He shall have been duly admitted to the practice of law in the State of Ohio and shall have been engaged in the active, full-time practice of law continuously for a period of five (5) years, or more, next preceding his appointment.

(b) Duties: The Director of Law shall act as legal counsel and in such capacity serve the Mayor, Council, administrative officers, departments, and the commissions and boards of the City. As the legal counsel and attorney, he shall represent the City in all proceedings in court or before any administrative body and in such other matters and controversies as he is by resolution or ordinance directed to prosecute. He or an Assistant Director of law shall act as prosecuting attorney for the City. He shall perform all other duties now or hereinafter imposed upon city law directors by the General Laws of Ohio unless otherwise provided by ordinance of the Council and shall perform such other duties as may be required by this Charter and/or as Council or the Mayor may impose upon him consistent with his office. He shall be empowered to designate such assistants as shall be authorized by and approved by Council.

In the absence of the Director of Law for any reason, the first Assistant Director of Law shall perform all of the duties herein imposed upon the Director of Law.

### **SECTION IX**

#### **Department of Finance**

##### **ITEM IX-1. THE DIRECTOR.**

(a) Qualifications: The Director of Finance shall have a Bachelor's or higher degree in Finance or a related field and shall have knowledge and experience in finance, accounting, taxation, and business administration in a government setting.

(Amended 11/8/11.)

(b) Duties: The Director of Finance shall have charge of the Department of Finance and shall administer the fiscal affairs of the City, including: the supervision and maintenance of records and accounting procedures which shall conform to the General Laws of Ohio; the compilation of estimates for the budget of all departments of the City; the exercise of financial budgetary controls over appropriations made; the custody of funds, investments, and other property of the City; the issuance of licenses; the collection of fees, assessments, and tax revenues for which the City is responsible; the investment and deposit of funds as may be provided by Council; the payment of the public debt of the City; and such other duties as may be required by this Charter and/or as Council or the Mayor may impose upon him consistent with this office.

(c) Deputy Director: The Director of Finance shall, with the approval of the Mayor, designate a Deputy Director of Finance from the Department of Finance who shall, in the absence of the Director of Finance for any reason, perform all the duties herein imposed upon the Director of Finance.

(Amended 11/7/72)

#### **ITEM IX-2. REPORTS.**

The Director of Finance shall make reports in the form and at such intervals as may be requested by the Mayor or the Council, showing the financial standing of the City or of any department or agency thereof.

#### **ITEM IX-3. CERTIFICATION OF FUNDS.**

No contract, agreement or other obligation involving the expenditure of monies shall be entered into, nor shall any ordinance, resolution or order for the expenditure of monies be passed or issued by the Council, or be authorized by any official of the City, unless the Director of Finance shall have first certified in writing to the Council, or to the proper official, as the case may be, that the money required for such contract, agreement, obligation or expenditure is in the treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose. All monies actually in the treasury to the credit of the fund from which they are to be drawn, and all monies applicable to the payment of the obligation or appropriation involved, that are anticipated to come into the treasury before the maturity of such contract, agreement or obligation from taxes, assessments, fees, or from sales of services, products or by-products of any municipal undertaking, and monies to be derived from lawfully authorized bonds or notes shall, for the purpose of such certificate, be deemed to be in the treasury to the credit of the appropriate fund, and shall be subject to such certification. The provisions of this section shall not be construed to prevent the making of contracts for a period extending beyond a single fiscal year when such contracts are otherwise authorized by this Charter or by the General Laws of Ohio.

#### **ITEM IX-4. PUBLIC BIDDING.**

A contract for the expenditure of funds of the City not exceeding the amount set by the General Laws of Ohio may be authorized without public bidding. The Council may also authorize a contract expending the funds of the City without public bidding for (a) the acquisition of real property; (b) the discharge of non-contractual claims against the City; (c) personal services; (d) the joint use of facilities or exercise of powers in conjunction with other political subdivisions; (e) the product or services of public utilities (including those operated both municipally and/or publicly); and (f) any item and/or service declared necessary as an emergency by three-quarters (3/4) vote of all members elected to Council. Other than excepted in this Item, no expenditure of funds of the City shall be made unless the same is pursuant to a contract made with the lowest responsive and responsible bidder upon such contract, as defined by the General Laws of Ohio, after public advertising and receipt of bids as provided by Ordinance.

(Amended 11/6/90)

#### **ITEM IX-5. ANNUAL ESTIMATE AND APPROPRIATION ORDINANCE.**

The General Laws of Ohio shall govern the proceedings for the preparation of estimates of contemplated revenue and the expenditures and the adoption of the annual budget, measures authorizing annual tax levies and annual and temporary appropriation measures.

#### **ITEM IX-6. TRANSFERS, BALANCES, AND PAYMENTS OF APPROPRIATIONS.**

Any accruing revenue of the City not appropriated under an appropriation ordinance, and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned, may from time to time be appropriated by the Council to such uses as will not conflict with any use for which specifically such revenue accrued. 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 appropriations made by the Council, and whenever an appropriation is so made the Clerk of Council shall forthwith give notice to the Director of Finance. At the end of each fiscal year all unexpended balances of appropriations shall revert to the respective funds from which the same were appropriated and shall then be subject to future appropriation; but appropriations may be made in furtherance of improvements or other projects of the City which will not be completed within the current year. Money appropriated as hereinabove provided shall not be used for purposes other than those designated in the appropriation ordinance without authority from Council.

### **SECTION X**

#### **Boards and Commissions**

##### **ITEM X-1. GENERAL.**

(a) An appointee to be eligible to serve as a member of a board or commission of the City shall be and remain a qualified elector of the City of Berea.

(b) A vacancy occurring during the term of any member of a board or commission shall be filled for the unexpired term in the manner authorized for an original appointment.

(c) The Mayor shall have the right to remove an appointed member of a board or commission with the approval of two-thirds (2/3) of the elected members of the Council, provided, however, that such removal shall not be effective until such member shall have been notified in writing of the charge against him at least ten (10) days in advance of any hearing upon such charge, and he or his counsel has been given an opportunity at such hearing to be heard, present evidence, and examine any witness appearing in support of such charge.

(d) Each board and commission shall keep a journal of its proceedings. The voting shall be taken by name in the form of ayes and nays and entered in the journal, and the vote of a majority of all members shall be necessary to adopt any question, motion or order.

(e) All meetings of boards and commission shall be open to the public.

(Amended 11/8/77)

## **ITEM X-2. PLANNING COMMISSION.**

(a) Organization. There is created hereby a Municipal Planning Commission which shall consist of seven (7) members as follows:

- (1) The Mayor, who shall be the Chairman of the Commission, or in the Mayor's absence, the Mayor's designee shall chair the meeting; and
- (2) Six (6) electors of the City, who shall be appointed by the Mayor and confirmed by the Council, each of whom shall serve for a term of five (5) years, except that the initial appointments of the six (6) members' terms commencing in 2007 shall be staggered terms as follows: two (2) members shall be appointed for a two-year term; two (2) members shall be appointed for a four-year term and two (2) members shall be appointed for a six-year term. Upon the expiration of the initial term, all appointments or re-appointments shall be for a five-year term. No person shall be appointed or re-appointed to more than two (2) consecutive five-year terms. The Mayor shall endeavor to appoint one person to the Commission having professional competence and experience in each of the following areas: architecture, real estate, construction, law and urban planning.
- (3) The Director of Law, the Director of Public Service, the City Engineer, the Fire Chief and the Chairman of the Council Committee concerned with building and zoning matters, shall serve as ex officio members, without vote, and shall be entitled to full participation in debates and discussions of the Commission.
- (4) A vacancy occurring during the term of any member shall be filed, for the unexpired term, in the manner authorized for an original appointment.
- (5) Compensation. The members of the Planning Commission shall serve without compensation, unless otherwise authorized by Ordinance.
- (6) Funds. The Council shall appropriate such funds year to year as are necessary to carry out the duties, training and functions of the Municipal Planning Commission.

(Amended 11-7-06.)

(b) Powers and Duties. It shall be the function and duty of the Municipal Planning Commission to:

- (1) Control the planning of the City and provide regulations for the platting, and use of all lands within the City so as to secure their harmonious development; and
- (2) Provide for the coordination of streets with other streets, and with the official Municipal (Master) Plan; and
- (3) Provide for open spaces for traffic, utilities, access for firefighting apparatus, recreation, light and air, for the avoidance of congestion of population, and the allotment of sufficient area for the parking of motor vehicles; and
- (4) Regulate the manner in which streets and other public ways are graded and improved, the manner in which water, sewer and other utility facilities are installed, and establish any conditions precedent to the approval of any proposed plat; and
- (5) Make plans and maps of the City which bear a relation to the planning of the City, and make changes in and additions to, such plans and maps when advisable; and
- (6) Review, examine and approve all signs to be placed permanently anywhere in the City for a total period in excess of forty-five (45) days; and
- (7) Hear and decide appeals for exceptions to, and variances from, the application of the Zoning Code and of Ordinances or orders governing zoning in the City; and
- (8) Hear and decide appeals from any order, decision, requirement or determination relative to the enforcement of the Zoning Code, any Building Code, or in the varying of the application of any such Code; and
- (9) Affirm or reverse, in whole or in part, or modify any order, requirement, decision or determination made enforcing the Zoning Code or any Building Code; and
- (10) Exercise with respect to buildings situated in the City the same powers as are exercised by the Board of Building Standards under the Statutory Law of the State of Ohio to the extent that it is competent for this Charter so to authorize; and
- (11) Formulate and submit to the Council proposed changes, modifications or amendments to various Building and Zoning Codes which the Commission determines to be desirous; and
- (12) Exercise such other and additional powers as may be conferred upon it by Ordinance of the City or the Statutory Law of the State of Ohio with regard to matters coming within its purview.

(c) Meetings, Order of Business. The Municipal Planning Commission shall meet on the first and third Tuesdays or Thursdays of each month as it shall choose. The Commission may schedule additional meetings as may be needed from time to time to carry out its functions.

During the first portion of each meeting of the Commission, it shall hear and decide applications for variances, exceptions, exemptions or appeals and, in the second portion of each meeting, the Commission shall undertake the work necessary to carrying out its other functions as set forth herein. Except as provided herein, the Commission shall establish its own agenda and order of business for each of its meetings.

(d) Mandatory Referral. No building designed for use by the public, street, park, playground, bridge, tunnel, or publicly or privately owned utility or part thereof shall be constructed or authorized to be constructed in the City, nor shall any street be opened for any purpose whatsoever, nor shall any street be widened, narrowed, relocated, vacated, or its use changed, nor any such ordinance referring to zoning or other regulations controlling the use or development of land be passed, unless and until such proposal shall have been submitted to the Municipal Planning Commission for report and recommendation. Any matter so referred to the Municipal Planning Commission shall be acted upon by it within forty-five (45) days from the date of referral unless a longer time be allowed by Council. If the Municipal Planning Commission shall fail to act within the time allotted, it shall be deemed to have approved such matter. Any

ordinance, resolution or order thus referred to the Municipal Planning Commission which is not approved by the Commission shall require a two-thirds (2/3) vote of all members elected to Council for the adoption or authorization of the same.

(e) Procedure Before the Planning Commission. Any matter required to be submitted to the Municipal Planning Commission shall be presented to the Commission by the applicant or his representative thereof in such manner and form as the Commission shall determine necessary for its consideration of such matter. The Commission may, at its discretion, advise and recommend such changes and modifications in any proposal submitted to it, as may be deemed advisable.

In the event that any proposal should require further study on matters of traffic congestion, utility access, harmonious development, architectural review, aesthetic consideration or any other matter which the Commission deems necessary for its consideration of the same, such proposal may be referred to a technical advisor who shall report his findings and recommendations to the Commission, in writing, pursuant to ordinances of the Council.

At such time as the Commission determines that it has before it sufficient information upon which to make a determination upon any matter presented to it, the Commission shall exercise such authority as is granted to it herein to approve or disapprove such matter, or to grant such exceptions or variances from applicable law as it may determine appropriate.

(f) Limitation. The Commission shall be limited by the provisions of the Zoning Code of the City, the Building Code(s) of the City and other Ordinances of the City relating to zoning and building matters in making its determination in any particular case, and shall vary, modify and grant exceptions to the provisions of such applicable laws only in cases where strict enforcement thereof would result in manifest injustice, impose unnecessary hardship, or would be contrary to the intent and purpose of such law.

(g) Effective Date, Terms of Current Members. The provisions of this Item shall become effective upon certification by the Board of Elections of approval by a majority of those electors voting upon the issue, and all terms of the current Members of the Commission shall continue without interruption through the term for which such Members were appointed.

(Amended 11-4-86; 5-2-89; 11-6-01)

### **ITEM X-3. (RESERVED).**

### **ITEM X-4. BOARD OF CONTROL.**

The Mayor and the directors of the several departments established by this Charter and/or ordinance shall constitute a Board of Control. The Mayor shall be Chairman and shall appoint a secretary. No contract involving an expenditure in excess of \$2,500.00 shall be entered into without the prior approval of the Board of Control. The Board shall have such further powers and perform such further duties as shall be prescribed by ordinance. All expenditures by the City involving an amount of \$2,500.00 or less shall not be made unless approved or ratified by the Board of Control. (Amended 11-8-11.)

### **ITEM X-5. CIVIL SERVICE COMMISSION.**

(a) Membership. The Mayor shall appoint six persons, two for a term of two years, two for a term of four years, and two for a term of six years who shall constitute the Civil Service Commission of the City of Berea. Each alternate year thereafter the Mayor shall appoint two persons, as successors of the members whose terms expire, to serve six years.

(b) Officers. The Commission shall designate one of its members as Chairman and a Secretary who need not be a member of the Commission.

(c) Duties. The Commission shall provide by rule for ascertainment of merit and fitness as the basis for appointment and promotion in the classified service of the City, as required by the Constitution of the State of Ohio and for appeals from the action of the appointing authority in any case of transfer, reduction or removal, and the action of the Commission on any such appeal shall be final except as otherwise provided by law. The Commission shall keep a record of its proceedings and examinations, which shall be open to the public inspection and shall, in all matters not in conflict with this Charter, conduct its affairs in accordance with the provisions of the general law.

(d) Classification of Service. The civil service of the City is hereby divided into unclassified and classified service. The unclassified service shall include:

1. All officers elected by the people;
2. Any member of a board or commission or any head, superintendent, any foreman of a department, sub-department or division thereof, other than the police and fire division;
3. One secretary to the Mayor and one secretary to each head, superintendent and foreman of any department, sub-department, or division, or his assistants;
4. Any deputy of an elected or appointed officer who holds a fiduciary relationship to his principal;
5. Any office or position requiring peculiar or exceptional qualifications;
6. Plumbing, heating, building, electrical, health and sanitary or sewer inspectors;
7. Provisional employees whose employment without extension by the Commission shall not exceed one hundred twenty (120) days;
8. Unskilled labor;
9. School guards and auxiliary safety department employees;
10. Any non-elective office or job in the service of the City which the Civil Service Commission determines not to be subject to classification and competitive examination.

The classified service shall include:

1. Members, including officers, of the Police and Fire Divisions;
2. Except as herein provided the Civil Service Commission shall determine the practicability of classification and competitive

examination for any non-elective office or job in the service of the City.

Any person in the classified service, who is serving the City on the effective date of this amendment to the Charter, may be retained in the same or similar position without examination.

(Amended 11/8/77)

#### **ITEM X-6. CHARTER REVIEW COMMISSION.**

Not later than January 1, 1971, and each five (5) years thereafter, the Mayor must appoint a committee of nine (9) qualified electors of the City to be known as a Charter Review Commission. Such Commission shall review and recommend to the Council not less than ninety (90) days prior to the next regular municipal election, any alterations, revisions, and amendments to this Charter as in its judgment seem advisable. The Council shall submit to the electors any such proposed alterations, revisions or amendments to the Charter at the regular municipal election, in the manner provided in Section XVI, Item 4 of this Charter.

The members of the Commission shall serve without compensation and their appointment shall terminate when their report has been received by Council.

(Amended 11/8/66)

#### **ITEM X-7. (RESERVED).**

#### **ITEM X-8. BOARD OF ETHICS.**

(a) There is hereby created a Board of Ethics, consisting of three members appointed by the Mayor, subject to the approval of a majority of the members elected to Council. The initial members of the Board shall be appointed by the Mayor not later than December 1, 1967. The members of such Board shall serve without compensation for three-year terms, except that of the original appointments, one shall be for a term expiring June 30, 1969, one for a term expiring June 30, 1970, and one for a term expiring June 30, 1971.

(b) The Board of Ethics shall have the following functions, powers and duties:

1. The Board shall receive complaints against Members of Council, officers and employees of the City, and members of any board or commission of the City concerning conduct alleged to be in violation of any provisions of this Charter or any law or ordinance which establishes ethical standards for or otherwise regulates the conduct of Members of Council, officers or employees of the City or members of any board or commission of the City. The Board shall investigate each complaint and render a report to the Mayor and Council.
2. Upon the written request of any Member of Council, officer or employee of the City, or member of any board or commission of the City, or whenever it deems it advisable, the Board may render advisory opinions with regard to questions concerning ethics, conflicts of interest or other matters involving performance of official duties.
3. The Board shall recommend legislation, and amendments thereof, to Council relating to standards of conduct for Members of Council, officers and employees of the City, and members of any board or commission of the City with respect to interests in contracts, work or services with or for the City, representation of private interests before municipal agencies and courts, disclosure of interest in legislation before Council, acceptance of gifts and favors, disclosure of confidential information, holding of investments in conflict with official duties, incompatible employment, future employment and such other standards of conduct as it may deem advisable.
4. In cooperation with the Mayor and Council, the Board may provide a continuing program of education and information for Members of Council, officers and employees of the City and members of any board or commission of the City with regard to ethics, conflicts of interest and other matters involving performance of official duties.

(c) Every department, division, board, commission or other agency of the City shall furnish to the Board of Ethics such data, information, statements and assistance as may be necessary for the proper exercise of its functions, powers and duties. The Board of Ethics shall adopt uniform rules and regulations for the method of performing its functions, powers and duties, including the filing of complaints, the conduct of investigations, hearings and deliberations, issuance of reports, and the conduct of its meetings.

(Amended 11/7/67)

### **SECTION XI**

#### **Taxation**

##### **ITEM XI-1. LIMITATION ON THE RATE OF TAXATION.**

For the purpose of paying the current operating expenses of the City and for the purpose of any other expense which may lawfully be included within the general levy for the general fund of the City, including one mill for police disability and pension purposes and one mill for firemen's disability and pension purposes, the Council, by two-thirds (2/3) vote of all members elected thereto, is hereby granted the authority, without a vote of the people, to levy taxes annually upon the tax lists or duplicates of property assessed and listed for taxation according to value for the tax year 1984 and each year thereafter an amount not in excess of 5.85 mills per dollar of assessed valuation.

(Amended 11/6/84)

##### **ITEM XI-2. LEVIES FOR DEBT SERVICE.**

The Council shall annually levy a sufficient sum to pay the interest and bond retirement fund charges on all bonds and notes of the City of Berea heretofore or hereafter lawfully issued, and the expenses incident to the management of the bond retirement fund, which entire levy shall be outside of limitations provided in this Charter, but subject to limitations imposed by general law, and placed before and in preference to all other levies.

##### **ITEM XI-3. SUBMISSION OF EXTRA LEVY.**

The Council may at any time prior to September 15th in any year declare by resolution, adopted by a vote of not less than two-thirds (2/3) of the members elected to Council, that the amount of taxes which may be raised within the limitation of this Charter will be insufficient to provide an adequate amount for the necessary requirements of the Municipality for current operating expenses and other

expenses payable from the general fund of the Municipality and such permanent improvements and equipment as shall have an estimated useful life of five (5) years or more, and that it is necessary to levy taxes in excess of such limitation in addition to the levies authorized and limited by this Charter for the municipal purpose or purposes specified in such resolution.

Such resolution shall specify the additional rate which it is necessary to levy, the purpose or purposes thereof, the number of years, not exceeding five (5), during which such rate shall be in effect and the date of the proposed election thereon. Such resolution shall be effective upon its adoption and shall be certified within five (5) days thereafter to the election authorities, who shall place such question upon the ballot at an election to be held on the first Tuesday after the first Monday of November of such year. If a majority of those voting thereon vote for the approval of such additional levy the Council shall, for a period not in excess of that prescribed in such resolution, make such levy or such part thereof as it finds necessary and certify the same to the County Auditor to be placed on the tax list and collected as other taxes.

#### **ITEM XI-4. OTHER TAXES.**

The limitation of this Charter upon the power of Council to levy taxes shall not operate as a limitation upon the power of Council to levy taxes upon such other subjects and for such other purposes as may be lawful under the Constitution and General Laws of Ohio.

#### **ITEM XI-5. ADDITIONAL LEVIES.**

The authority of the Council to submit additional levies to a vote of the people under authority of the Constitution or General Laws of Ohio shall not be deemed impaired or abridged by reason of any provision in this Charter contained.

### **SECTION XII**

#### **Improvements and Assessments**

##### **ITEM XII-1. PUBLIC IMPROVEMENTS.**

The Council shall have power by ordinance to provide for the construction, reconstruction, repair and maintenance by contract or directly by the employment of labor, of all things in the nature of all public improvements and to provide for the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting adjacent and contiguous or other specially benefited property. The amount assessed against the property specially benefited to pay for such local improvements shall not exceed the amount of benefits accruing to such property. Any cost for such improvement in excess of any sum assessed therefor shall be paid by the City.

##### **ITEM XII-2. METHODS OF SPECIAL ASSESSMENT.**

Special assessments upon property deemed benefited by a public improvement shall be by any one or any combination of the following methods:

- (a) By a percentage of the tax value of the property assessed.
- (b) In proportion to the benefits which may result from the improvement.
- (c) By the foot frontage of the property bounding and abutting upon the improvement.

##### **ITEM XII-3. RESOLUTION OF NECESSITY.**

When it is deemed necessary to make a public improvement to be paid for in whole or in part by special assessment, the Council shall declare the necessity thereof by resolution and such resolution shall contain a statement of the portion of the total cost to be assessed, the method of assessment, the mode of payment and the number of annual installments in which the assessments shall be paid. Such resolution shall thereupon be certified to the Director of Finance, who shall proceed to make an assessment report in accordance with the method of assessment provided in the resolution, which report shall be filed with the Council, and shall show the lots and lands assessed, and the amount of the assessment as to each, and the number of annual installments in which such assessments shall be paid.

(Amended 11/6/90)

##### **ITEM XII-4. NOTICE SERVED.**

Upon the filing of such report the Director of Finance shall cause written notice to be served upon the owner of each lot or parcel of land assessed or upon the persons in whose names the same may be assessed for taxation upon the tax duplicate, said notice to be served as is provided for service of summons in civil action or by certified mail or registered mail; and as to all persons who cannot be found, publication of such notice shall be made at least once in a newspaper of general circulation in the City. Said notice shall contain a statement of the character of the proposed improvement, the fact that the assessment report has been filed with the Council, the amount of such assessment on such lot or parcel of land and the number of installments, and shall set a time and place when objections to the improvement, the character and termini thereof and the assessment and claims for damages will be heard before the Board of Revision of Assessments.

##### **ITEM XII-5. PLANS OF PROPOSED IMPROVEMENTS.**

At the time of the passage of the resolution hereinbefore provided, there shall be on file in the office of the Director of Public Service plans, profiles, grades, specifications and estimates of cost of the proposed improvement. All such plans, profiles, grades, specifications and estimates shall be open to the inspection of all persons interested therein.

##### **ITEM XII-6. BOARD OF REVISION OF ASSESSMENTS.**

The Board of revision of Assessments shall consist of the Mayor, the Director of Law, the Director of Finance, the Director of Public Service and the President of Council. The Mayor shall be the Chairman of the Board and the Director of Finance shall be the Secretary thereof; it shall hold its hearing on the claims and objections with respect to any improvement not earlier than ten (10) days after the service of notice and completion of publication thereof as hereinbefore provided; it shall meet at such place as provided by its rules, and shall hear all claims for damages and objections to the improvement. A majority of those constituting the Board of Revision of Assessments shall have power to determine all objections submitted to it, and as to each improvement the Board may, after such hearing, amend, equalize and adjust the assessment report, and shall report its findings with respect to any damage claims that may have been

filed and as to the necessity for the improvement and the character and termini thereof and any amendments it directs in the assessments, to the Council.

#### **ITEM XII-7. CLAIMS FOR DAMAGES.**

At or before the time of the passage of the ordinance directing that the improvement shall proceed, the Council shall determine whether the claims for damage so filed shall be judicially inquired into before commencing, or after the completion of, the proposed improvement. If it decides that the damages shall be assessed before commencing the improvement, the Director of Law shall then make such application and such proceedings shall be had thereon as are provided by statute relating to the assessment of damages on such claims. If the Council determines to assess the damages after the completion of the improvement for which a claim for damages has been filed, the Director of Law shall within ten (10) days after the completion of the improvement make written application and the same proceedings shall be had as hereinbefore provided. No person who claims damages arising from any causes shall commence a suit therefor against the City until sixty (60) days after he shall have filed a claim for such damages with the Board of Revision. This provision shall not apply to an application for an injunction, or other proceedings, to which it may be necessary to resort in case of urgent necessity.

#### **ITEM XII-8. PRELIMINARY ASSESSMENT.**

When the Board of Revision of Assessments shall have made its final report to the Council as to any improvement, such report shall thereupon be considered by the Council which shall have the power either to confirm or reject the same and the further power either to abandon such improvement or proceed therewith in accordance with the plans, profiles, grades, specifications and estimates of cost therefor and in accordance with the preliminary assessments prepared by the Director of Finance or as revised by the Board of Revision provided, however, that if the Board of Revision shall recommend changes in the character or termini of the improvement or the properties to be assessed therefor, and Council shall concur in such recommendation, then new proceedings for the installation of such improvement shall be required commencing with the filing of revised plans, profiles, grades, specifications and estimates of cost and the adoption of a new resolution declaring the necessity of such improvement, all in the manner hereinbefore provided. If the report of the Board of Revision is confirmed by the Council, a copy thereof shall forthwith be filed in the office of the Director of Finance for the inspection of all persons interested therein.

If the Council decides to proceed with the improvement, an ordinance for the purpose shall be passed. Such ordinance shall set forth specifically the lots and lands to be assessed for the improvement, shall contain a statement of the general nature of the improvement, the method of assessment, the mode of payment therefor, a reference to the resolution theretofore passed for such improvement with date of its passage, and a statement of the intention of Council to proceed therewith in accordance with such resolution and in accordance with the plans, profiles, grades, specifications and estimates of cost provided for such improvement.

In setting forth specifically the lots and lands abutting upon the improvement and to be assessed therefor, it shall be sufficient to describe them as all the lots and land abutting and abounding upon such improvement between and including the termini of the improvement, and in describing those which do not so abut it shall be sufficient to describe the lots by their appropriate lot numbers, and the lands by metes and bounds, and this rule of description shall apply in all proceedings in which lots and lands are to be charged with special assessments.

The ordinance to proceed shall confirm the preliminary assessment for the improvement upon the lots and lands to be assessed therefor. Such assessments shall be payable by the owners of the property assessed in full in cash at the time stipulated in the ordinance, and if not so paid in cash, they shall be payable in installments as provided in the ordinance levying the assessments.

No public improvement, the cost or part of the cost of which is to be specially assessed on the owners of property, shall be made without the concurrence of three-fourths (3/4) of the Members of Council elected thereto, unless the owners of 51% or more of the land area or the foot frontage to be assessed petition in writing therefor in which event the Council, a majority of members elected thereto concurring, may proceed with the improvement in the manner provided herein.

#### **ITEM XII-9. WORK TO BE DONE.**

When the Council shall have passed an ordinance determining to proceed with an improvement to be paid for in whole or in part by special assessments, the Director of Public Service shall, as provided by ordinance, either directly by the employment of labor or by entering into a contract therefor as provided by law, cause the improvement to be made.

#### **ITEM XII-10. INTEREST ON ASSESSMENT BONDS.**

When bonds or notes are issued in anticipation of the collection of assessments the interest thereon, until the assessments become available, shall be treated as part of the cost of the improvement for which assessment may be made.

#### **ITEM XII-11. CITY'S PORTION OF COST AND REBATES.**

In the absence of a petition providing for the assessment of the entire cost, the City shall pay such part of the cost and expense of improvements for which such special assessments are levied as the Council deems just, which part shall not be less than one-fiftieth (1/50) of all such cost and expense; and in addition thereto the City shall pay the cost of intersections. The Council may provide for the payment of the City's portion of all such improvements by the issuance of bonds or notes therefor, and may levy taxes to pay such bonds or notes and the interest thereon. The Council may provide for the transferring to the general fund of such portion of the proceeds of special assessments or of the proceeds of bonds issued in anticipation of the collection of special assessments and of the proceeds of bonds or notes issued or taxes levied to provide funds for the payment of the City's share of the cost of improvements, as is equal to the estimated cost of the engineering and inspection done or to be done directly by the City in connection with said improvement.

Within sixty (60) days after the completion of any improvement, the Director of Finance shall report to the Council the final cost of the improvement, including the property owners' portion and the City's portion, if any. If the property owners' portion of the final cost of the improvement is less than the aggregate amount of the preliminary assessments confirmed by the ordinance to proceed, the Director of Finance shall further submit a revised list of individual assessments reduced in the proportion that the property owners' portion of the final cost bears to the aggregate amount of the preliminary assessments and the revised final assessments so reported shall be approved by ordinance of the Council which shall levy the assessments over such period of years as Council shall fix and which shall provide for

the payment of appropriate rebates to property owners who have paid their assessments in cash, all of which rebates shall be paid not later than ninety (90) days after the completion of the improvement. If the property owners' portion of the final cost of the improvement exceeds the aggregate cost of the preliminary assessments confirmed by the ordinance to proceed such excess shall be paid by the City and the preliminary assessments shall become the final assessments and shall be levied by the Council over such period of years as it shall fix. The provisions of this Item 11 with respect to the reduction of assessments based upon final costs, rebates, and the allocation to the City of the excess of final costs over estimated costs shall apply to petitioned-for improvements. Assessments shall be a lien from the date of levy of Council as provided herein upon the respective lots and parcels of lands assessed, enforceable in the manner provided by general law.

Interest on the preliminary assessments not paid in cash within the time fixed therefor, at the rate borne by the notes or bonds of the City issued in anticipation of the levy or collection thereof, shall be added to each assessment and shall not be included in any calculation of rebate or of determination whether the property owners' portion of the final cost exceeds the preliminary assessment.

#### **ITEM XII-12. SIDEWALKS, CURBS, GUTTERS.**

The Council may by resolution declare that certain specified sidewalks, curbings or gutters shall be constructed or repaired. Upon the passage of such a resolution the Clerk of Council shall notify the owner of each parcel of land abutting upon such sidewalks, curbings or gutters of the passage of such resolution by serving of written notice or publication in the manner provided by General Law. If such sidewalks, curbings, or gutters are not constructed or repaired within the time designated by the resolution, the Director of Public Service may proceed by direct employment of labor, or by contract to do or have done the said construction or repair at the expense of the owner and all such expense shall be assessed on the property abutting or bounding thereon. Such assessment shall be collected in the manner provided by the General Laws of Ohio.

(Amended 11/6/90)

#### **ITEM XII-13. IMPROVEMENT ON PETITION OF PROPERTY OWNERS.**

When a petition, subscribed to by the owners of seventy-five (75) percent or more of the land area to be benefited and assessed or the owners of seventy-five (75) percent or more of the frontage of property abutting upon a street, alley or highway of any description between designated points within the municipal corporation, is regularly presented to the Council, the entire cost of any improvement so petitioned for, including the cost of intersections and all other necessary expenses and without reference to the value of the lands of those who subscribed to such petition, may be assessed and collected, over a time period not exceeding that allowed by the General laws of the State of Ohio, proportioned to the whole assessment, in a manner which may be fixed by Council.

(Amended 11/6/90)

The petition shall contain a general description of the improvement requested, including the termini, the method of assessment and a statement that the signers of said petition do consent and request that assessments be levied and collected without reference to the value of the property of the subscribers, and waive all benefits of statutory limitations on amounts of assessments, and further waive all notices of the proceedings in the levy of such assessment or of making the improvements.

When the lot or land of one who did not subscribe the petition is assessed, such assessment shall not exceed statutory limitations on amount of assessments.

Notice shall be served upon the owners of land or lots that did not subscribe the petition and in the manner provided hereinbefore for public improvements.

In general the proceedings for an improvement that has been petitioned for shall be the same as the proceedings for any other public improvement by special assessments with the exception of the City's portion of the cost.

### **SECTION XIII**

#### **Nominations and Elections**

##### **ITEM XIII-1. PRIMARY ELECTIONS.**

Regular municipal elections shall be held on the first Tuesday after the first Monday in November in odd-numbered years in years requiring an election. Such other elections shall be held as may be required by law or provided for in this Charter. (Amended 11/8/16)

##### **ITEM XIII-2. REGULAR MUNICIPAL ELECTIONS.**

Nominations for municipal elective offices shall be initiated by filing nonpartisan petitions. Each candidate for a municipal elective office shall be a qualified elector of the City of Berea, and each candidate for the office of Ward-Council member shall be a qualified elector of the ward for which he seeks office prior to the due date for filing of nominating petitions with the Board of Elections. Each petition for nomination of a candidate for the office of Mayor shall be signed by not less than seventy-five (75) registered electors of the Municipality. Each petition for nomination of a candidate for the office of Council-At-Large or Council President shall be signed by not less than seventy-five (75) registered electors of the Municipality. Each petition for nomination of a candidate for the office of Ward-Council member shall be signed by not less than fifty (50) registered electors of the Municipality residing in the ward from which election is sought. Such petition or petitions when filed must be accompanied by the written acceptance of the nominee. Each signator of a petition shall sign his name and after his name shall designate his address and date of signing. Nominating petitions for candidacy for an office shall be filed with the Board of Elections of Cuyahoga County not less than sixty (60) days prior to the date of the primary election for such office. (Amended 11/8/16)

##### **ITEM XIII-3. SPECIAL ELECTIONS.**

Candidates for all offices to be voted for at any municipal election under the provisions of this Charter shall be nominated at a nonpartisan primary election to be held on the first Tuesday after the first Monday in May in odd-numbered years as required.

The number of candidates for the Mayor, Council President, and Ward-Council member at any regular municipal election in the Municipality shall be the two candidates on the primary election ballot receiving the highest number of votes at the primary election. The number of candidates for the office of Council-At-Large at any regular municipal election in the Municipality shall be the four (4) candidates on the primary election ballot receiving the highest number of votes at the primary election.

In case there shall not be more than two persons who shall have filed petitions for the office of Mayor, Council President, and Ward-Council member as provided for in this Charter, then said

persons shall be the candidates at the regular municipal election and the primary for the particular office shall not be held. In case there shall not be more than four (4) persons who shall have filed petitions for the office of Council-At-Large as provided for in this Charter, then said persons shall be the candidates at the regular

municipal election, and the primary for such office shall not be held. (Amended 11/8/16)

**ITEM XIII-4. CERTIFICATE OF NOMINATION WHEN NO PRIMARY IS HELD.**

If in any odd numbered year no valid declaration of candidacy is filed for nomination as a candidate for an election to any office to be voted for at the regular municipal election to be held in such year, or if the number of persons filing such declaration of candidacy for nominations as candidates of election to such office does not exceed, as to any such office, the number of persons to be elected to such office, then no primary election shall be held for the purpose of nominating candidates for election to offices to be voted for at such regular municipal election, and no primary ballots shall be provided for such election. The election officials whose duty it would have been to provide for and conduct the holding of such primary election, shall declare the results thereof and issue certificates of nomination to the person entitled thereto as if such primary election had been held, and shall declare each of such persons to be nominated, issue appropriate certificates of nomination to each of them, and certify their names to the proper election officials in order that their names may be printed on the official ballots provided for use in the next succeeding regular municipal election in the same manner as through such primary election had been held and such person had been nominated at such election. (Amended 11/8/16)

**ITEM XIII-5. DESIGNATION OF CANDIDATES.**

Write-in votes for municipal candidates shall be permitted only if a duly nominated candidate cannot participate due to death or other disqualification; or if each candidate does not have an opponent. The ballots used in municipal elections shall be without party mark or designation of any sort. The names of all candidates shall be placed upon the same ballot and shall be rotated in the manner provided by the general laws of Ohio.

The one (1) candidate having the highest number of votes cast for the office of Mayor shall be declared duly elected.

The one (1) candidate having the highest number of votes cast for the office of Council President shall be declared duly elected.

The two (2) candidates having the highest number of votes cast for the office of Council-At-Large shall be declared duly elected.

The one (1) candidate having the highest number of votes cast for each of the offices of the respective Ward-Council offices shall be declared duly elected.

Except as otherwise provided in this Charter, the laws of the State of Ohio shall govern the nomination and election to elective offices of the Municipality.

(Amended 11/8/16)

**ITEM XIII-6. RESERVED.**

**ITEM XIII-7. GENERAL PROVISION.**

Where no special provision is made in this Charter governing general, primary or special elections, registration and the conduct of such elections, the provisions of the General Laws of Ohio shall control. (Amended 11/8/16)

**ITEM XIII-8. QUALIFIED ELECTORS.**

Every citizen of the United States who is of the age of 18 years or over, who possess the qualifications herein required, shall be entitled to vote at a special or regular municipal election. No person shall be permitted to vote at any election unless he has been a resident of the State, County and voting precinct thirty (30) days next preceding the election at which he desires to vote, except as otherwise herein provided. A qualified voter who has resided in the State and in the County the length of time required herein and who moves from one precinct to another within the City of Berea, shall have the right to vote in such precinct provided the precinct shall have corrected his registration as required by law. No person residing in any registration precinct shall be entitled to vote at any election or shall sign any nominating, initiative, referendum or recall petition unless he is duly registered as an elector in the manner duly provided by law. The term "qualified elector" as used throughout this Charter shall be construed to mean an elector who has complied with the foregoing requirements. (Amended 11/8/16)

## SECTION XIV

### Initiative and Referendum

(a) Ordinances and other measures may be proposed by initiative petition and adopted by election, and ordinances and other measures adopted by the Council shall be subject to referendum to the extent and in the manner now or hereafter provided by the Constitution or in the General Laws of Ohio, except that the period for filing referendum petitions shall continue until the date when the ordinance or other measure otherwise becomes effective under Section IV, Item 7, and except that an ordinance or measure may be submitted upon a referendum petition to the electors for their approval or rejection at an election to be held on any date determined by Council occurring at least 90 days after the certifying of such petition to the Board of Elections, but not later than the next regular municipal election occurring at least 90 days following such certification.

(Amended 11/8/66)

(b) Any ordinance to be submitted to the electors of the City by Initiative Petition shall be placed upon the ballot by means of the following language, to wit:

Shall an Ordinance, submitted by Initiative Petition, entitled \_\_\_\_\_ (title) \_\_\_\_\_ and providing for \_\_\_\_\_ (brief description) \_\_\_\_\_ (of effect) \_\_\_\_\_ be approved, adopted and enacted into law?

\_\_\_\_\_ : Yes :  
\_\_\_\_\_ : No :

(c) Any Ordinance passed by the Council which is thereafter to be submitted to the electors of the City by Referendum Petition for

rejection shall be placed on the ballot by means of the following language, to wit:

Shall Ordinance (number), adopted by the Council of the City of Berea on (date), entitled (title) and providing for (brief description of effect) be continued in full force and effect?

\_\_\_\_\_ : Yes \_\_\_\_\_  
\_\_\_\_\_ : No \_\_\_\_\_

(Amended 11/4/86)

## SECTION XV

## Recall

**ITEM XV-1. RECALL PROCEDURES.**

Any elective officer provided for in this Charter may be removed from office by the electors qualified to vote for a successor to such office. No such officer may be removed unless he has served for six (6) months of his term.

A petition demanding that the question of removing such official be submitted to the electors qualified to vote for his successor, shall be addressed to the Council and filed with the Clerk of Council. Such petition shall be signed by qualified electors equal in number to at least fifteen percent (15%) of the total votes cast at the last preceding regular municipal election for the office of the officer sought to be recalled, in case the officer was elected by the voters of the entire City, and at least fifteen percent (15%) of the total vote cast in a ward at the last preceding regular municipal election for the office if the officer was elected by the voters of that ward.

## ITEM XV-2. PETITIONS.

Petition papers shall be procured only from the Clerk of Council, who shall keep a sufficient number of such blank petition papers on file for distribution as herein provided. Prior to the issuance of such petition papers an affidavit shall be made by one or more qualified electors and filed with the Clerk of Council, stating the name and office of the officer sought to be removed. The Clerk of Council, upon issuing any such petition paper to an elector shall enter in a record to be kept in his office, the name of the elector to whom issued and shall certify upon each such paper the name of the elector to who issued and the date of issuance. No petition paper so issued shall be accepted as part of a petition unless it bears such certificates of the Clerk of Council and unless it is filed as provided herein.

**ITEM XV-3. SIGNATURES.**

Each signer of a recall petition shall sign his name in ink or indelible pencil and shall place thereon after his name, his place of residence by street and number. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition and that each signature appended to the paper was made in his presence and is the genuine signature of the person whose name it purports to be.

**ITEM XV-4. FILING AND CERTIFICATION.**

All papers comprising a recall petition shall be assembled and filed with the Clerk of Council as one instrument within thirty (30) days after the filing with the Clerk of Council of the affidavit stating the name and office of the officer sought to be removed. Within ten (10) days from the date of the filing of such petition the Clerk of Council shall determine the sufficiency thereof and attach thereto a certificate showing the result of his examination. If the Clerk of Council shall certify that the petition is insufficient he shall set forth in the certificate the particulars in which the petition is deficient, and shall return a copy of the certificate by depositing the same in United States mail with postage prepaid to the person designated in such petition to receive it.

**ITEM XV-5. SUPPLEMENTAL PETITIONS.**

In the event the initial petition contained prima facie sufficient signatures, such recall petition may be supported by supplemental signatures of qualified electors signed in the manner required in Item 3 (Signatures.) of this Section appended to petitions issued, signed and filed as required for the original petition at any time within twenty (20) days after the date of the certificate of insufficiency by the Clerk of Council. The Clerk of Council shall within ten (10) days after such supplemental petitions are filed make a like examination of them, and if his certificate shall show the same to be still insufficient he shall return it in the manner described in Item 4 (Filing and Certification.) of this Section to the person designated in such petition to receive it, without prejudice however to the filing of a new petition for the same purpose, provided that no new petition shall be filed within one (1) year thereafter.

**ITEM XV-6. RECALL ELECTION.**

If a recall petition or supplemental petition shall be certified by the Clerk of Council to be sufficient he shall at once submit the same with his certificate to the Council and shall notify the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five (5) days after such notice the Council shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than thirty (30) nor more than forty (40) days after the petition has been presented to the Clerk of Council, at the same times as any other general or special election held within such period, but if no such election is to be held within such period, the Council shall call a special recall election to be held within the time aforesaid. Such special recall election shall be submitted to the electors of the entire City of Berea if such officer to be recalled was elected by the electors of the entire City of Berea, and such recall election shall be submitted to the electors of a single ward if the officer to be recalled was elected by the electors of a single ward. The election authorities shall publish notice and make all arrangements for holding such election, which shall be conducted and the result thereof returned and declared in all respects as are the results of special municipal elections.

**ITEM XV-7. BALLOTS.**

Any recall petition to be submitted to the electors of the City shall be placed upon the ballot by means of the following language, to

wit:

Shall (name of person to be recalled) continue to hold the office of (name of office)?

: Yes :  
: No :

(Amended 11/4/86)

#### **ITEM XV-8. SUCCEEDING OFFICER.**

The incumbent, if not recalled in such election, shall continue in office for the remainder of his unexpired term subject to the recall as before except as provided in this Charter. If recalled in the recall election he shall, regardless of any technical defects in the recall petition, be deemed removed from office upon the announcement of the official canvass of that election, and the office shall be filled by Council for the unexpired term, except as otherwise provided in this Charter. The successor of any person so removed shall hold office during the unexpired term of his predecessor.

### **SECTION XVI**

#### **General Provisions**

##### **ITEM XVI-1. EFFECTIVE DATES.**

For the purpose of nominating and electing the elective officials of this City provided for in this Charter and fixing the salary of those to be elected in the regular municipal election of 1961, this Charter shall be in effect from and after the date of its approval by the electors, and for all other purposes on and after the first day of January, 1961. At the regular municipal election of 1961 there shall not be an election for the offices of treasurer and solicitor. The treasurer, solicitor and auditor elected at the regular municipal election in 1959 or their respective successors shall continue in office after December 31, 1961, until, as to the solicitor there shall have been appointed a Director of Law, and as to the treasurer and auditor there shall have been appointed a Director of Finance; upon such appointments, respectively, they shall cease to hold office and their offices shall be abolished. The above effective date shall not limit the term of the Mayor and Members of the Council elected at the regular municipal election held November 3, 1959. The Mayor and Members of the Council shall have all the rights and powers provided herein the same as if they had been elected under the provisions of this Charter and shall continue in office until their successors are elected and qualified under the provisions of this Charter. All other elective officers and all appointees holding office at the time this Charter goes into effect shall continue in office and in the performance of their duties until provisions shall have been otherwise made in accordance with this Charter for the performance or discontinuance of the duties of any such office. When such provisions shall have been made, the terms of any such officer shall expire and the office shall be abolished.

##### **ITEM XVI-2. OATH OF OFFICE.**

Every officer of the City shall be required to subscribe to an oath or affirmation, that he will in all respects faithfully discharge the duties of his office, before entering upon the duties thereof. This oath or affirmation is to be filed and kept in the office of the Clerk of Council.

##### **ITEM XVI-3. CONTINUANCE OF CONTRACTS AND ENACTMENTS.**

All contracts entered into by the City prior to the taking effect of this Charter are continued in full force and effect. All public work begun prior to the taking effect of this Charter shall be continued and perfected hereunder. All public improvements for which legislative steps have been taken under law in force at the time of the adoption thereof may be carried to completion in accordance with the provisions of such laws. All ordinances and resolutions in force at the time of the taking effect of this Charter, not inconsistent with its provisions, shall continue in force until amended or repealed.

##### **ITEM XVI-4. AMENDMENTS TO THE CHARTER.**

The Council may by an affirmative vote of two-thirds (2/3) of all of its members submit to the electors any proposed amendment or amendments to the Charter; or upon the receipt of a petition signed by not less than ten (10) percent of the electors of the City setting forth any proposed amendment or amendments to this Charter, the Council shall forthwith submit such proposed amendment or amendments to the electors in accordance, in each instance, with the provisions of this Charter, the Constitution and General Laws of Ohio now or hereafter in effect. The Council shall determine the manner of submission of any proposed amendment or amendments to the electors to the extent that such submission is not governed by this Charter or the Constitution or the General Laws of Ohio.

##### **ITEM XVI-5. INVESTIGATIONS.**

The Mayor or the Council may without notice cause the affairs of any department or the conduct of any officer or employee of the City to be examined. The Mayor or the Council shall have the power to compel the attendance of witnesses, the production of books, papers and other evidence, and to cause witnesses to be punished for contempt, as is conferred by law.

##### **ITEM XVI-6. CONTINUANCE IN OFFICE AND QUALIFICATIONS ELECTED OR APPOINTED PERSONNEL.**

Any person holding an office or position established by this Charter, whether elected or appointed, shall continue in such office until his successor has been elected or appointed and qualified, unless otherwise provided in this Charter.

All persons holding elective and appointive offices shall be and remain qualified electors of the City and shall, except as otherwise provided herein, hold no other public office other than that of notary public or member of the National Guard or Reserve Forces of the United States, and shall not be interested in any contract with the City.

(Amended 11/8/66)

**ITEM XVI-7. SEPARABILITY.**

If any item or part of an item of this Charter proves to be invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force or effect of any other item, or part of an item of this Charter unless it clearly appears that such other item, or part of an item, is wholly and necessarily dependent for its operation upon the item or part of an item so held in valid or unconstitutional.

**ITEM XVI-8. INTERPRETATION OF THE CHARTER.**

The Section and Item headings herein have been inserted for convenient reference and are not intended to define or limit the scope of, or otherwise affect, any provisions of this Charter.

**ITEM XVI-9. USE OF GENDER.**

Wherever in this Charter the male gender is used, it is hereby understood that it shall include the female gender.

**ITEM XVI-10. CONFLICT OF INTEREST.**

It is hereby declared to be the policy of the City of Berea that municipal officials and employees shall impartially and faithfully exercise their official functions without the influence of private interests and that:

- (a) Members of Council, officers or employees of the City or members of any board or commission of the City, whether directly or indirectly:
  1. Shall not be interested in any contract with the City;
  2. Shall not be interested in any contract, work or service, or in any acquisition by the City of any property, the cost of which is payable from City funds, or in any purchase of any property from the City;
  3. Shall not have any interest in, other than their fixed compensation and reimbursable expenses, any expenditure of funds by the City;
  4. Shall not ask, demand or receive any private compensation or reward for the performance of their public duties;
- (b) No person within a period of one year after termination of his services as a Member of Council, or as an officer or employee of the City or as a member of any board or commission of the City shall accept private employment or receive private compensation for services, whether as attorney, agent or employee, with respect to any matter which was under his charge during the period of such service;
- (c) Any Member of Council, officer or employee of the City, or member of any board or commission of the City, who has substantial financial interest in any business, firm or corporation affected by any legislation or other matter pending before any City agency of which he is a member or employee, or who has any other substantial private interest in any such legislation or pending matter, shall not vote upon or take any other official action with respect to the legislation or pending matter. Council shall, by ordinance and upon consideration of any recommendations made by the Board of Ethics, implement and supplement this Item 10 by adopting and amending a code of ethics setting forth standards of conduct for officers and employees of the City, with appropriate provisions for enforcement, including penalties for violation thereof.
- (d) Each elected official and appointed director shall annually sign a conflict of interest form in substantially similar format as that utilized by the City's Annual Outside Audit. The City Board of Ethics shall keep this form or a form of their own design on file.

(Amended 11-7-67; 11-6-01)

**CODIFIED ORDINANCES OF BEREA**