

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
MCDONOUGH COUNTY, ILLINOIS**

STEVEN WAILAND,

Plaintiff,

v.

CITY OF MACOMB, a municipal
corporation; MICHAEL INMAN, MAYOR
OF THE CITY OF MACOMB, in his
official capacity; MELANIE FALK,
CLERK OF THE CITY OF MACOMB, in
her official capacity; and GRETCHEN
DEJAYNES, CLERK OF MCDONOUGH
COUNTY, ILLINOIS, in her official
capacity,

Defendants.

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)
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) **MOTION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND/OR
PERMANENT INJUNCTION AND
WRIT OF MANDAMUS**

) Case No. _____
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**PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND/OR PERMANENT INJUNCTION
AND WRIT OF MANDAMUS**

Plaintiff Steven Wailand, pursuant to 735 ILCS 5/11-101 *et seq.*, moves this Court to issue a temporary restraining order, preliminary injunction and/or permanent injunction and a writ of mandamus against the Defendants. In support of his motion, Plaintiff states:

1. Plaintiff seeks a temporary restraining order, preliminary injunction and/or permanent injunction to restrain Defendants from nullifying his February 26, 2013, election to the position of Second Ward Alderman for the City of Macomb, and a writ of mandamus to require them to perform their legal duties so that he may take the office to which the voters elected him.

2. Plaintiff brings this Motion as an emergency motion and requests an immediate hearing and oral argument. Time is of the essence because Defendants have scheduled a

supplementary election for April 9, 2013, and will then seat whoever they recognize as Second Ward Alderman.

3. A summary of points and authorities in support of Plaintiff's motion is attached hereto as Attachment 1.

4. A memorandum of law in support of Plaintiff's Motion is attached hereto as Attachment 2.

5. A proposed order is attached hereto as Attachment 3.

6. For all the reasons stated in Plaintiff's summary of points and authorities, Memorandum of Law, and Verified Complaint, Plaintiff respectfully requests that this Court grant Plaintiff's Motion.

DATED: MARCH 30, 2013

Respectfully submitted,



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ATTACHMENT 1

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
MCDONOUGH COUNTY, ILLINOIS**

STEVEN WAILAND,)	
)	
Plaintiff,)	
)	MOTION FOR TEMPORARY
v.)	RESTRAINING ORDER,
)	PRELIMINARY INJUNCTION AND/OR
CITY OF MACOMB, a municipal)	PERMANENT INJUNCTION AND
corporation; MICHAEL INMAN, MAYOR)	WRIT OF MANDAMUS
OF THE CITY OF MACOMB, in his)	
official capacity; MELANIE FALK,)	Case No. _____
CLERK OF THE CITY OF MACOMB, in)	
her official capacity; and GRETCHEN)	
DEJAYNES, CLERK OF MCDONOUGH)	
COUNTY, ILLINOIS, in her official)	
capacity,)	
)	
Defendants.)	

SUMMARY STATEMENT OF POINTS AND AUTHORITIES

Plaintiff Steven Wailand, by his attorneys Diane Cohen and Jacob Huebert of the Liberty Justice Center, and for his Motion for Declaratory Judgment, Injunctive Relief and Writ of Mandamus against Defendants City of Macomb; Michael Inman, Mayor of the City of Macomb; Melanie Falk, Clerk of the City of Macomb; and Gretchen DeJaynes, Clerk of McDonough County, all individuals in their official capacities, submits the following Statement of Points and Authorities:

I. State and local law governing City elections

The Illinois Constitution, state law, the Municipal Code of City of Macomb, and the City of Macomb’s Special Charter, all govern voting rights and the conducting of elections, including the February 26, 2013, Macomb City election for the office of Second Ward Alderman: The Macomb Municipal Code mandates that the candidate “receiving a majority of the votes cast for . . . city alderman in each ward or wards at any general election shall be declared elected.”

Macomb Mun. Code Sec. 2-3(5); The city's "Special Charter," Article III, Sec. 2, mandates that "persons having the highest number of votes for any office shall be declared elected." City of Macomb Special Charter, pp. 167-68; The Illinois Municipal Code provides that the person with the "highest number of votes for an office is the person elected to that office." Illinois Mun. Code, 65 ILCS 5/3.1-10-20; The Macomb Municipal Code provides that certificates of election shall be given to the candidate declared elected after the date fixed by the Code for the holding of a supplementary election. Macomb Mun. Code, Sec. 2-3(7).

According to the city's Municipal Code, supplementary elections are held only when no candidate receives a majority of votes cast in a general election. Should such an election be necessary, it would be held on April 9, 2013. Macomb Mun. Code, Sec. 2-3(5).

Plaintiff Steven Wailand's Legal Rights to the Office of Alderman

Because Steven Wailand received a majority of the votes in the February 26, 2013, election, by operation of above-cited law, he was declared elected and has the clear legal right to receive a certificate of election for the office of Second Ward Alderman for the city of Macomb. Macomb Mun. Code Sec. 2-3(5), (7).

Mayor's Duties to Certify/Seat Plaintiff

The Illinois Municipal Code provides that "whenever a person has been . . . elected to office, the mayor . . . shall issue a certificate of . . . election." 65 ILCS 5/3.1-55-5. The Mayor of Macomb's legal duty to issue a certification of the election of Wailand to the office of Second Ward Alderman is clear and nondiscretionary. 65 ILCS 5/3.1-55-5.

City Clerk's Duties to Notify Plaintiff of this Election

The City's Special Charter provides that it is the "duty of the City Clerk to notify all persons elected . . . of their election." Macomb Special Charter, Art. III, Sec. 2, p. 168. The City

Clerk's legal duty to notify Wailand of his election to the office of Second Ward Alderman is clear and nondiscretionary. Macomb Special Charter, Art. III, Sec. 2.

County Clerk's Duties to Certify Plaintiff's Election

The McDonough County Clerk is the election authority for McDonough County. *See* 10 ILCS 5/15-1. The County Clerk has the clear legal duty to not to hold a supplementary election when a candidate in a general election receives a majority vote. Macomb Mun. Code Sec. 2-3(5). Under the Illinois Election Code, the county clerk must issue certificates of election. *See* 10 ILCS 5/15-1 and 5/22-10.

Definition of "Majority" as Used in the Macomb Municipal Code if More than Half

Pursuant to the City of Macomb Municipal Code: "Words and phrases shall be construed according to the common and approved usage of the language." Macomb Mun. Code Sec. 1-2 "Nontechnical and technical" words.

The common and approved definition of the word "majority" is more than half of the total. *See, e.g.*, Black's Law Dictionary (9th ed. 2009) ("a number that is more than half of a total; a group of more than 50 percent <the candidate received 50.4 percent of the votes – barely a majority>"); Cambridge Dictionary of American English (2d ed. 2000) ("more than half of a total number or amount; the larger of something"); Merriam-Webster's Collegiate Dictionary (11th ed. 1998) ("a number or percentage equaling more than half of the total"); the American Heritage Dictionary of the English Language (5th ed. 2011) ("the greater number of a part; a number more than half of the total. 2. The amount by which the greater number of votes cast, as in an election, exceeds the total number of remaining votes."); and The New Shorter Oxford English Dictionary (4th ed. 1993) ("The great number or part; a number which is more than half the hole number spec. the larger party voting together in a deliberative assembly or electoral

body.”) The Illinois Supreme Court has also recognized that the term “majority” means “a number greater than half of a total.” *Lipinski v. Chicago Bd. of Elections*, 114 Ill.2d 95, 103 (1986) (citing Webster’s Third New International Dictionary 1363 (1971)).

II. Illinois Constitution Article III, Section 1, Right to Vote – Due Process of Law

Article III, section 1, of the Illinois Constitution, reaffirms the principle that all qualified citizens have a constitutionally protected right to vote and to have their votes counted. If the vote cast by all those who favor a particular candidate exceeds the number cast in favor of a rival, the result is constitutionally protected from nullification except by the voters themselves. *Tully v. Edgar*, 171 Ill.2d 297, 308 (1996).

Any person who causes an Illinois citizen to be deprived of their right to vote shall be liable to that citizen, and any person affected, in an action for redress. 10 ILCS 5/29-17.

III. Illinois Constitution Article I, Section – Property Interest in Office – Due Process of law

Plaintiff has a property interest in the office to which the voters elected him. *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis Dist. No. 189*, 178 Ill. 2d 399, 416-18 (1997).

IV. Plaintiff’s is Entitled to Injunctive Relief

In order to prevail on a motion for injunctive relief – whether a motion for temporary restraining order or preliminary injunction – a plaintiff must demonstrate that: (1) he has a protected right; (2) he will suffer irreparable harm if injunctive relief is not granted; (3) his remedy at law is inadequate; and (4) there is a likelihood of success on the merits. *See Houseknecht v. Zagel*, 112 Ill. App. 3d 284, 291–92 (1st Dist.1983).


V. Plaintiff's is Entitled to Mandamus

“A writ of mandamus will be granted only if a plaintiff can establish a clear, affirmative right to relief, a clear duty of the public officer to act, and clear authority in the public officer to comply with the writ.” *People ex rel. Waller v. McKoski*, 185 Ill.2d 393, 398 (2001).

Mandamus is the appropriate procedures to restore an illegally removed office holder to office and also to correct procedure to challenge municipal officers who have exceeded their jurisdiction. *See Likens v. Baas*, 133 Ill. App. 3d 42, 56 (1985); *People v. Kroll*, 4 Ill. App. 2d 435 (1954). Where the City is under a clear legal duty to act, but fails to do so, it exceeds its jurisdiction. *Likens*, 133 Ill.App.3d at 56-57 (citing *People v. Dreher*, 302 Ill. 50 (1922)).

DATED: MARCH 30, 2013

Steven Wailand

By:  _____
One of his attorneys

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ATTACHMENT 2

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
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STEVEN WAILAND,)	
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Plaintiff,)	
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CITY OF MACOMB, a municipal)	
corporation; MICHAEL INMAN, MAYOR)	
OF THE CITY OF MACOMB, in his)	
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CLERK OF THE CITY OF MACOMB, in)	
her official capacity; and GRETCHEN)	
DEJAYNES, CLERK OF MCDONOUGH)	
COUNTY, ILLINOIS, in her official)	
capacity,)	
)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND/OR PERMANENT INJUNCTION
AND WRIT OF MANDAMUS**

Plaintiff Steven Wailand, by his attorneys Diane Cohen and Jacob Huebert of the Liberty Justice Center, pursuant to 735 ILCS 5/11-101 *et seq.*, moves for a Temporary Restraining Order, Preliminary Injunction, and/or Permanent Injunction, and a Writ of Mandamus against Defendants City of Macomb; Michael Inman, Mayor of the City of Macomb; Melanie Falk, Clerk of the City of Macomb; Gretchen DeJaynes, Clerk of McDonough County (all individuals in their official capacities). In support of this Motion, Plaintiff states as follows:

INTRODUCTION

The rule of law requires the government to exercise its power in accordance with well-established and clearly written rules, regulations, and legal principles. Through this Motion, Plaintiff seeks to vindicate his rights secured by the Illinois Constitution, and state and local law,

and the fundamental rights of Macomb citizens to exercise their right to vote and have their vote count.

I.

STATEMENT OF FACTS

Plaintiff Received the Majority of Votes in the February 26, 2013, Election; thus, By Operation of Law, Plaintiff was Elected to the Office of Second Ward Alderman

On February 26, 2013, Plaintiff Steven Wailand ran on the ballot for office of Alderman of the Second Ward in the City of Macomb. Wailand faced one opponent, Kay Hill, in the election. The official results of the election were reported and certified by Defendant Gretchen DeJaynes, the McDonough County Clerk, as follows: Steven Wailand received 17 votes, or 51.52% of total votes cast, while Kay Hill received 16 votes, or 48.48% of the total votes cast. Verified Compl. (“Compl.”), ¶¶ 5-9. These voting results are not being contested or otherwise disputed.

The Macomb Municipal Code mandates that the candidate “receiving a majority of the votes cast for . . . city alderman in each ward or wards at any general election shall be declared elected.” Macomb Mun. Code Sec. 2-3(5). Accordingly, because Steven Wailand received a majority of the votes in the February 26 election, he was “declared elected” by operation of law to the office of Second Ward alderman. *Id.*

The City’s Special Charter provides that it is the “duty of the City Clerk to notify all persons elected . . . of their election.” City Special Charter, Art. III, Sec. 2, p. 168, attached to Compl., as Plf.’s Exh. 1.¹ The Macomb Municipal Code provides that a certificate of election “shall” be given to the candidate declared elected after the date fixed by the Code for the holding of a supplementary election. Macomb Mun. Code, Sec. 2-3(7). The Illinois Municipal Code

¹ Plaintiff’s Verified Complaint with exhibits is attached hereto as Attachment 1.

provides that “whenever a person has been . . . elected to office, the mayor . . . shall issue a certificate of . . . election.” 65 ILCS 5/3.1-55-5.

According to the City Municipal Code, supplementary elections are held only when no candidate receives a majority of votes cast in a general election. Macomb Mun. Code, Sec. 2-3(5).

Defendants refuse to allow Plaintiff to take office as the Second Ward Alderman even though he was declared elected by operation of law

On February 28, 2013, Defendants announced that a supplementary election would be held for the Second Ward alderman race, claiming that neither candidate in the race received a majority of votes in the election. Defendants claim that Plaintiff did not win a majority of the votes cast because he did not receive “fifty percent of the vote plus one vote” in the election. Compl. ¶¶ 19-20.

On February 27, 2013, Wailand met with the City Clerk, Defendant Falk, at City Hall. Compl. ¶ 21. Wailand asked Falk why his election would not be certified since he won the majority of votes in the election, and why, instead, a supplementary election would be held. Falk responded that Wailand’s share of the vote was not a “majority,” which the City and County define as “fifty percent plus one vote of the votes cast in an election.” Compl. ¶ 21. When Wailand inquired where this purported definition was codified, Falk responded that it was in City’s Special Charter. Wailand asked Falk if she could show him where this definition was located in the City’s Special Charter. But when Falk looked at the Charter, she could not find the definition. Compl. ¶22. Falk then told Wailand that she would keep looking through the Special Charter for the definition. Falk also suggested that Wailand speak with Macomb City Attorney Kristen Petrie to inquire about the purported “fifty percent plus one vote” definition of

“majority,” and directed Wailand to talk to County Clerk DeJaynes if the City attorney could not identify the source of this purported rule. Compl. ¶22.

Wailand left Falk’s office and then went to speak with the City attorney. Petrie told Wailand that it was not her responsibility to know the election rules for the City of Macomb. Compl. ¶ 23. After leaving Petrie’s office, Wailand went to the County Clerk’s office to speak with DeJaynes. DeJaynes took Wailand to another office so that she could go over the Special Charter with him and show him where the “fifty percent plus one vote” rule was codified; however, DeJaynes could not find the rule in the Charter. Compl. ¶ 24. Wailand then asked her where the rule was codified. DeJaynes responded: “That’s how we have always done it.” Compl. ¶ 24. Wailand then went back to the City Clerk’s office to ask Falk if she found anything in the Special Charter that referred to the “fifty percent plus one vote rule.” Falk responded that she had not found anything yet, but would call him the next day to advise him whether she found anything that supported the existence of the rule. Compl. ¶ 25.

On February 28, Wailand called Falk to follow up. When he asked her if she had found any reference to the existence of the “fifty percent plus one vote” rule in the Special Charter, Falk responded “no,” but stated: “We Googled the definition of ‘fifty percent plus one vote’ and found that fifty percent plus one was a majority.” Falk advised Wailand that based on their Google search they were sticking to their definition of “majority.” Compl. ¶ 26.

On March 6, 2013, Wailand emailed City Attorney Petrie to request a written statement from the City declaring the City’s decision in this matter and the reasoning behind it. *See* emails between Wailand and Petrie, Compl., Plf.’s Gr. Exh. 2. On that same day, Petrie responded that she would “work on a written opinion this week and [would] hopefully have something for [him] by early next week.” *Id.* Wailand immediately responded by requesting that Petrie provide the

City's response by March 7 or 8 because time was of the essence. *Id.* On March 8, 2013, Petrie responded by advising him that she "surmised that the questions and requests for written explanation should be directed to the County Clerk of McDonough County." *Id.* Petrie further stated that the "certification of the election was issued by the County Clerk and the City does not participate in this action; therefore, it would not be appropriate for the City to issue written or verbal statement explaining or discussing the decision of the County Clerk." *Id.*

After receiving Petrie's March 8 email, Wailand spoke with Petrie in person to follow up. Petrie advised him that she talked to the Illinois Municipal League about the situation, and that the League advised her that this matter was the County's responsibility and that she should not be involved. Petrie then said she was not able to have any further discussions with Wailand. Compl. ¶ 29.

On Monday, March 18, Wailand addressed the Macomb City Council about the February 26 election and the City and County's refusal to declare him the winner and certify his election. Mayor Michael Inman, who presides over City Council meetings, stated that public comments were not open to discussion and that the Council would deliver a statement at the next Committee of the Whole meeting. Compl. ¶ 30. On March 25, 2013, at the start of the Council's Committee of the Whole meeting, Mayor Inman made a formal statement declaring that the City Clerk "informed" him that "there were no deviations from the past practice on how the election of February 26, 2013, was conducted by her office," and that the "procedures and protocols that were utilized in the City's election on February 26, 2013, are the same and consistent with City election procedures and protocols that have been utilized by her office during her entire thirty-year tenure in the City clerk's office." Compl. ¶ 31;

https://www.youtube.com/watch?feature=player_embedded&v=yT8RudSrFpA

Counsel for Plaintiff was retained pro bono on March 19, 2013. On March 20, the undersigned Plaintiff's counsel sent a letter to Defendants in an attempt to resolve this matter without resort to litigation. The undersigned also spoke with counsel for Defendants for the same purpose. These efforts were unsuccessful.

The City and County have scheduled a "supplementary election" to be held for the Second Ward alderman seat, on April 9, 2013. According to the City's Municipal Code, the certification of election is to be issued after the date fixed for the holding of supplementary elections. Macomb Mun. Code, Sec. 2-3(7). The Second Ward Alderman takes office at a date on or after the certification of election is issued.

Definition of "Majority" is More than Half

Pursuant to the City of Macomb Municipal Code: "Words and phrases shall be construed according to the common and approved usage of the language." Macomb Mun. Code Sec. 1-2 "Nontechnical and technical" words. The common and approved definition of the word "majority" is more than half of the total. *See, e.g.*, Black's Law Dictionary (9th ed. 2009) ("A number that is more than half of a total; a group of more than 50 percent <the candidate received 50.4 percent of the votes – barely a majority>."); Cambridge Dictionary of American English (2d ed. 2000) ("more than half of a total number or amount; the larger of something"); Merriam-Webster's Collegiate Dictionary (11th ed. 1998) ("a number or percentage equaling more than half of the total"); the American Heritage Dictionary of the English Language (5th ed. 2011) ("the greater number of a part; a number more than half of the total. 2. The amount by which the greater number of votes cast, as in an election, exceeds the total number of remaining votes."); and The New Shorter Oxford English Dictionary (4th ed. 1993) ("The great number or part; a number which is more than half the whole number spec. the larger party voting together in a

deliberative assembly or electoral body.”²; *See* Compl., Plf.’s Gr. Exh. 3. Further, lest there be any doubt about the meaning of the word “majority,” the Illinois Supreme Court has recognized that “majority” means “a number greater than half of a total.” *Lipinski v. Chicago Bd. of Elections*, 114 Ill.2d 95; 103 (1986) (citing Webster’s Third New International Dictionary 1363 (1971)).

II.

STANDARD OF REVIEW

In order to prevail on a motion for injunctive relief – whether a motion for temporary restraining order or preliminary injunction – a plaintiff must demonstrate that: (1) he has a protected right; (2) he will suffer irreparable harm if injunctive relief is not granted; (3) his remedy at law is inadequate; and (4) there is a likelihood of success on the merits. *See Houseknecht v. Zagel*, 112 Ill. App. 3d 284, 291–92 (1st Dist.1983).

When a court considers whether to grant a preliminary injunction, it may also consider whether the burden upon the defendant, should the injunction issue, outweighs the benefit to the plaintiff. Courts will not engage in this balancing, however, where a defendant's actions were “done with full knowledge of the plaintiff's rights and with an understanding of the consequences which might ensue.” *ABC Trans Nat. Transp., Inc. v. Aeronautics Forwarders, Inc.*, 62 Ill. App. 3d 671, 682-83 (1st Dist.1978). Further, where an official has acted arbitrarily and capriciously,

² Black’s Law Dictionary has a separate entry for the term “half plus one,” and calls it an “inexact (and often inaccurate) approximation for a majority.” Black’s Law explains: “For a body with 100 members, a majority is indeed half plus one, or 51. But for a body with an odd number of members, ‘half plus one’ would not be a whole number. So ‘a simple majority’ is a better choice for designating majority rule.” Plf.’s Gr. Exh. 3. Likewise, Roberts Rules of Order (11th ed. 2011), specifically addresses the issue of what constitutes a majority in determining the result of a vote: “The word ‘majority’ in this context means, simply, more than one half.” Roberts Rules explains that “the use of any other definition, such as 50 percent plus one, is apt to cause problems.” *Id.*

and has thus abused his discretion, a court may act to prevent such abuse. *Houseknecht*, 112 Ill. App. 3d at 291; *see also Rosehill Cemetery Co. v. City of Chicago*, 352 Ill. 11, 30 (1933) (no balancing of harms where plaintiff's right to use property as cemetery without city interference was "clear.")

As set forth below, Plaintiff has directly suffered and will continue to suffer irreparable injury to protected constitutional and statutory rights for which he has no adequate remedy at law. Given the constitutional and statutory rights at stake for Plaintiff and Defendants' arbitrary and capricious actions, Plaintiff submits that there should be no inquiry into the balancing of the equities.

III.

ARGUMENT

A. Mandamus is Proper

"A writ of mandamus will be granted only if a plaintiff can establish a clear, affirmative right to relief, a clear duty of the public officer to act, and clear authority in the public officer to comply with the writ." *People ex rel. Waller v. McKoski*, 185 Ill.2d 393, 398 (2001).

Mandamus is the appropriate procedure to restore an illegally removed office holder to office and also to correct procedure to challenge municipal officers who have exceeded their jurisdiction. *See Likens v. Baas*, 133 Ill. App. 3d 42, 56 (1st Dist. 1985); *People v. Kroll*, 4 Ill. App. 2d 435 (1st Dist. 1954). Where the City is under a clear legal duty to act, but fails to do so, it exceeds its jurisdiction. *Likens*, 133 Ill.App.3d at 56-57 (citing *People v. Dreher*, 302 Ill. 50 (1922)).

Defendants have a clear legal duty to certify Plaintiff's election to the office of Second Ward Alderman of the City of Macomb

Because Steven Wailand received a majority of the votes in the February 26, 2013, election, he was declared elected by operation of law and has the clear legal right to receive a certificate of election for the office of Second Ward Alderman for the city of Macomb. Macomb Mun. Code Sec. 2-3(5), (7). Further, the Mayor of Macomb has a clear and nondiscretionary legal duty to issue a certification of the election to Plaintiff. 65 ILCS 5/3.1-55-5. Likewise, the City Clerk's legal duty to notify Wailand of his election to the office of Second Ward Alderman is clear and nondiscretionary. City Special Charter, Art. III, Sec. 2. As the election authority for McDonough County pursuant to the Illinois Election Code, the County Clerk must issue a certificate of election (10 ILCS 5/15-1 and 5/22-10), and therefore has a clear legal duty to not hold a supplementary election on April 9, 2013, for the office of Second Ward Alderman because a candidate in a general election, Plaintiff, received a majority vote. Macomb Mun. Code Sec. 2-3(5).³

B. Plaintiff's Fundamental Right to Vote and to Due Process of Law Are Being Irreparably Harmed and Declaratory and Injunctive Relief Is Necessary and Appropriate.

The Illinois Supreme Court, in *Tully v. Edgar*, 171 Ill.2d 297, 305 (1996), recognized that “suffrage – the expression of the people of their will – is fundamental to a viable form of government and that Article III, section 1, of the Illinois Constitution, reaffirms the principle that

³ The McDonough County Clerk is the election authority for McDonough County. See 10 ILCS 5/15-1. Under the Illinois Election Code, the county clerk must, among other duties: a) provide “blanks, poll books and other necessary election blanks for each precinct and district in his county, and cause a suitable number thereof to be delivered to the judges of election” at least 10 days before election, § 5/15-3; b) print ballots and furnish them to judges, § 5/16-5; c) provide booths and supplies for voting, § 5/17-8; d) receive tally sheets and certificates of results from election judges, and transmits results to the local election official, § 5/17-22; and e) issue certificates of election, § 5/22-10.

all qualified citizens have a constitutionally protected right to vote and to have their votes counted.”

Tully involved a class action lawsuit brought by voters challenging the constitutionality of a statute, pursuant to Article I, Sec. 2 of the Illinois Constitution, which cut short the terms of existing elected trustees of a state university, which effectively removed them from office. The voters claimed that the statute violated their rights of suffrage because the statute operated as a “post-hoc negation” of their right to vote. *Id.* at 301. The state argued that the right to vote is implicated only when legislation directly interferes with a citizen’s right to vote or to have that vote counted. But the Court held that it “strains logic to suggest that the right to vote is implicated by legislation that prohibits a citizen from casting a vote or from having that vote counted, but is not implicated by legislation that, in effect, deprives that same vote of its natural and intended effect.” *Id.* at 306.

Like the *Tully* plaintiffs who challenged a post-hoc law, Plaintiff challenges Defendants’ post-hoc decision to arbitrarily and capriciously change the definition of the word “majority,” as used in the City Code to determine the winner of an election. Like the statute at issue in *Tully*, Defendants’ decision here “eviscerates the election process by providing that, even though [Steven Wailand] received the majority of the votes cast and counted on election day, [he is] prohibited from holding office for the term to which [he was] elected.” *Id.* at 306.

Indeed, “the democratic form of government guaranteed by our constitution requires something more than adherence to form. It is not merely the casting of a vote or its mechanical counting that is protected by our constitution. It is the effect given to the vote – namely, the office – that is protected.” *Id.* at 307. Defendants’ refusal to certify the election of Plaintiff based on their arbitrary and capricious definition of “majority,” which is tantamount to an ex-post-facto

changing of the number of the votes required to win the election and be certified elected, is nullifying Plaintiff's and all other voters' votes and depriving Plaintiff the office to which he was elected. Indeed, as the Supreme Court explained in *Tully*: "If the votes cast by all those who favor a particular candidate exceeds the number cast in favor of a rival, the result is constitutionally protected from nullification except by the voters themselves." *Id.* at 308. "When the people have chosen their representative in a valid election, [an act] that nullifies the people's choice by eliminating the right of the elected official to serve, implicates the fundamental right to vote." *Id.*

Any person who causes an Illinois citizen to be deprived of their right to vote, such as Defendants here, shall be liable to that citizen, and any person affected, in an action for redress. 10 ILCS 5/29-17. Defendants' nullification of the February 26 Second Ward Alderman election irreparably harms Plaintiff's fundamental right as a voter. Accordingly, Plaintiff respectfully requests that the Court protect and enforce this right by granting this Motion.

C. Plaintiff's Right to the Seat to which the Voters Elected Him and Plaintiff's Rights to Due Process of Law

In addition to Defendant's conduct implicating Plaintiff's fundamental right to vote, Plaintiff also has a property interest in the office to which the voters elected him. *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis Dist. No. 189*, 178 Ill. 2d 399, 417-18 (1997). Accordingly, by Defendants' nullification of the February 26 election, they are arbitrarily and capriciously denying Plaintiff his property right to hold the office of Second Ward Alderman.

IV. DECLARATORY RELIEF AND INJUNCTION SHOULD BE GRANTED

A. Plaintiff Has Protected Rights and Will Suffer Irreparable Harm for which there is No Adequate Remedy at Law

Given the impending unauthorized April 9, 2013, supplementary election, Plaintiff does not have an adequate remedy at law. Once that election is held, and/or if another candidate is certified or otherwise seated in the office of Second Ward Alderman, Plaintiff will suffer irreparable harm by being subject to an unlawful election, having his constitutional rights as a voter infringed, and by being denied the certificate of election based on the results of the February 26 election.

B. Likelihood of Success on the Merits

As set forth above, Defendants are denying the citizens', including Plaintiff's, fundamental right to vote, protected by the Illinois Constitution, as well as Plaintiff's right to hold the office to which he was elected. Defendants' conduct is premised on a post-hoc, arbitrary and capricious interpretation of the City's Municipal Code, which directly contradicts state law, the City's own Special Charter, and the commonly understood meaning of the term "majority." Accordingly, Plaintiff has a likelihood of success on the merits.

V. WAIVER OF BOND

Plaintiff should not be required to post a bond because this case serves the public interest – specifically, the citizens' (including Plaintiff's) fundamental right to vote and have their vote count and Plaintiff's right to be declared elected to the office he won by a majority of the votes cast in the election. *See Dave the Prairie Soc'y v. Green Dev. Group, Inc.*, 338 Ill. App. 3d 800, 804-05 (1st Dist. 2003) (reversing imposition of bond where plaintiff served the public interest.) Further, requiring a bond in this non-commercial case would impose undue hardship on Plaintiff, a full-time college student, who is seeking to preserve his rights guaranteed by the Illinois

Constitution and state and local law. Declaratory judgment and/or injunctive relief would not cause Defendants hardship because it would order Defendants to perform their existing legal duties as required by the clear language of the City's own Code, Special Charter, and state law. When imposition of a bond would be an undue hardship on a plaintiff in a preliminary injunction, it is not an abuse of discretion not to order the imposition of bond. *See Mitchell v. Mitchell*, 10 Ill.App.2d 437, 444 (1956). A party's limited financial resources can provide good cause for requiring no bond. *Id.*; *see also Save the Prairie*, 338 Ill. App. 3d at 804-05.

RELIEF REQUESTED

Accordingly, Plaintiff Steven Wailand requests that this honorable Court:

- A. Enter judgment in favor of Plaintiff.
- B. Enter a declaratory judgment that the word “majority” in Macomb Municipal Code Section 2-3(5) means “more than half”; that any vote total received by a candidate constituting more than 50 percent of the votes cast is a “majority”; that Plaintiff’s 17 votes out of the 33 votes cast in the February 26, 2013, election for Second Ward Alderman in the City of Macomb constitute a majority of the votes cast in that election; and that Plaintiff is therefore “declared elected” to the office of Second Ward Alderman for the City of Macomb by operation of Section 2-3(5) of the Macomb Municipal Code.
- C. Issue an Order of Mandamus requiring Michael Inman, Mayor of the City of Macomb, to issue a certification of the election of Steven Wailand to the office of Second Ward Alderman, as required by 65 ILCS 5/3.1-55-5.
- D. Issue an Order of Mandamus requiring the City Clerk, Falk, to notify Wailand of his election to the office of Second Ward Alderman for the City of Macomb, as required by Article III, Section 2, of the City’s Special Charter.
- E. Issue an Order of Mandamus enjoining the City Clerk, Melanie Falk, and County Clerk Gretchen DeJaynes, from holding a supplemental election scheduled for April 9, 2013.
- F. Issue an Order of Mandamus requiring the County Clerk, Gretchen DeJaynes, to issue a certificate of election resulting from the February 26, 2013, election of Plaintiff for the office of Second Ward Alderman for the City of Macomb, as required by the Illinois Election Code.

G. Enter a declaratory judgment that the Defendants' nullification of Plaintiff's election to the office of Second Ward Alderman for the City of Macomb in the February 26, 2013, election would deprive Plaintiff of his right to vote without due process of law.

H. Enter a declaratory judgment that the Defendants' nullification of Plaintiff's election to the office of Second Ward Alderman for the City of Macomb deprives Plaintiff of his right to the office to which he was elected and therefore deprive him of a property interest without due process of law.

I. Preliminarily and permanently enjoin Defendants from applying Macomb Municipal Code Section 2-3(5) in a manner that is inconsistent with the definition of "majority" as being "more than half."

J. Award Plaintiff reasonable costs and attorneys' fees; and

K. Award Plaintiff any additional relief it deems just and proper.

CONCLUSION

WHEREFORE, in light of the forgoing, Plaintiff respectfully requests that this Court grant Plaintiff's Motion.

DATED: MARCH 30, 2013

Respectfully submitted,

STEVEN WAILAND

By. 

One of his Attorneys

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CERTIFICATE OF SERVICE

I, Diane Cohen, an attorney, certify that copies of Plaintiff's Verified Complaint and Motion, and Memorandum in Support of Motion, were served via email and facsimile delivery and deposited in the regular U.S. mail on March 30, 2013, to:

Michael J. Inman

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Diane S. Cohen
Attorney for Plaintiff

**Attachment 1 to Memorandum in Support of Motion:
Verified Complaint**

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
MCDONOUGH COUNTY, ILLINOIS

STEVEN WAILAND,)
)
 Plaintiff,)
)
 v.) MOTION FOR TEMPORARY
) RESTRAINING ORDER,
) PRELIMINARY INJUNCTION AND/OR
 CITY OF MACOMB, a municipal) PERMANENT INJUNCTION AND
 corporation; MICHAEL INMAN, MAYOR) WRIT OF MANDAMUS
 OF THE CITY OF MACOMB, in his)
 official capacity; MELANIE FALK,) Case No. _____
 CLERK OF THE CITY OF MACOMB, in)
 her official capacity; and GRETCHEN)
 DEJAYNES, CLERK OF MCDONOUGH)
 COUNTY, ILLINOIS, in her official)
 capacity,)
)
 Defendants.)

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF AND WRIT OF MANDAMUS**

Plaintiff Steven Wailand, by his attorneys Diane Cohen and Jacob Huebert of the Liberty Justice Center, and for his Complaint for Declaratory Judgment, Injunctive Relief and Writ of Mandamus against Defendants City of Macomb; Michael Inman, Mayor of the City of Macomb; Melanie Falk, Clerk of the City of Macomb; and Gretchen DeJaynes, Clerk of McDonough County, all individuals in their official capacities, states as follows:

Introduction

1. The rule of law requires the government to exercise its power in accordance with well-established and clearly written rules, regulations, and legal principles. In this Complaint, Plaintiff seeks the proper and just enforcement of state and local election laws and to vindicate the constitutional rights of Macomb citizens to exercise their fundamental right to vote and have their vote count.

Parties

2. Plaintiff Steven Wailand is a junior at Western Illinois University, majoring in chemistry, with a double minor in neuroscience and pre-law. Wailand is over 18 years of age, a resident of the City of Macomb, County of McDonough, Illinois, and a citizen of the United States. Wailand is a registered voter in Illinois, voted in the February 26, 2013, election, and is duly qualified hold the office of City of Macomb alderman.

3. Defendants are City of Macomb, a municipal corporation; Michael Inman, Mayor of the City of Macomb, Illinois; Melanie Falk, Clerk of the City of Macomb; and Gretchen DeJaynes, the Clerk of McDonough County, Illinois (collectively referred to herein as “Defendants”).

Jurisdiction

4. Jurisdiction is proper in this Court pursuant to Ill Const. Art. VI, Sec. 9.

Factual Allegations

The February 26, 2013, election for City of Macomb Aldermen

5. Steven Wailand ran on the ballot for Alderman of the Second Ward, City of Macomb, in the February 26, 2013, City of Macomb election (sometimes referred to herein as the “election.”)

6. Wailand faced one opponent, Kay Hill, in the February 26 election.

7. The official results of the election were reported and certified by the McDonough County Clerk, as follows: Steven Wailand received 17 votes, or 51.52% of total votes cast, while Kay Hill received 16 votes, or 48.48% of the total votes cast.

8. The voting results of the February 26 election are not contested or otherwise disputed.

9. Defendants do not dispute that Wailand received more than half the number of votes cast in the election.

State and local law governing City elections

10. The Macomb Municipal Code mandates that the candidate “receiving a majority of the votes cast for . . . city alderman in each ward or wards at any general election shall be declared elected.” Macomb Mun. Code Sec. 2-3(5).

11. The City’s “Special Charter,” Article III, Sec. 2, mandates that “persons having the highest number of votes for any office shall be declared elected.” City of Macomb Special Charter, pp. 167-68, Plf.’s Exh.1.

12. The Illinois Municipal Code provides that the person with the “highest number of votes for an office is the person elected to that office.” Illinois Mun. Code, 65 ILCS 5/3.1-10-20.

13. According to the Macomb Municipal Code, because Steven Wailand received a majority of the votes in the February 26 election, he is “declared elected” as the second ward alderman. Macomb Mun. Code Sec. 2-3(5).

14. The City’s Special Charter provides that it is the “duty of the City Clerk to notify all persons elected . . . of their election.” Macomb Special Charter, Art. III, Sec. 2, p. 168, Plf.’s Exh. 1.

15. The Macomb Municipal Code provides that certificates of election shall be given to the candidate declared elected after the date fixed by the Code for the holding of a supplementary election. Macomb Mun. Code, Sec. 2-3(7).

16. According to the City's Municipal Code, supplementary elections are held only when no candidate receives a majority of votes cast in a general election. Should such an election be necessary, it would be held on April 9, 2013. Macomb Mun. Code, Sec. 2-3(5).

17. The Illinois Municipal Code provides that "whenever a person has been . . . elected to office, the mayor . . . shall issue a certificate of . . . election." 65 ILCS 5/3.1-55-5.

18. The McDonough County Clerk is the election authority for McDonough County. *See* 10 ILCS 5/15-1. Under the Illinois Election Code, the county clerk must, among other duties: a) provide "blanks, poll books and other necessary election blanks for each precinct and district in his county, and cause a suitable number thereof to be delivered to the judges of election" at least 10 days before any election, § 5/15-3; b) print ballots and furnish them to judges, § 5/16-5; c) provide booths and supplies for voting, § 5/17-8; d) receive tally sheets and certificates of results from election judges, and transmit results to the local election official, § 5/17-22; and e) issue certificates of election, § 5/22-10.

City and County officials refuse to issue certificate of election to Plaintiff

19. On February 28, 2013, Defendants announced that a supplementary election would be held for the Second Ward alderman seat because neither candidate in the race received a majority of votes in the election.

20. Defendants claim Plaintiff did not win a majority of the votes cast because he did not receive "fifty percent of the vote plus one vote" in the election.

21. On February 27, 2013, Wailand met with the City Clerk, Falk, at City Hall. Wailand asked Falk why his election would not be certified and why, instead, a supplementary election would be held. Falk responded that Wailand's share of the vote was not a

“majority,” which the City and County define as “fifty percent plus one *vote* of the votes cast in an election.”

22. When Wailand inquired where this purported definition was codified, Falk responded that it was in City’s Special Charter. Wailand asked Falk if she could show him where this definition was located in the Charter. But when Falk looked at the Charter, she could not find the definition. Falk then told Wailand that she would keep looking through the Special Charter for the definition. Falk also suggested that Wailand speak with Macomb City Attorney Kristen Petrie to inquire about the purported “fifty percent plus one vote” definition of “majority,” and directed Wailand to talk to County Clerk DeJaynes if the City attorney could not identify the source of this purported rule.

23. Wailand left Falk’s office and then went to speak with the City Attorney. Petrie told Wailand that it was not her responsibility to know the election rules for the City of Macomb.

24. After leaving Petrie’s office, Wailand went to the County Clerk’s office to speak with DeJaynes. DeJaynes took Wailand to another office so that she could go over the Special Charter with him and show him where the “fifty percent plus one vote” rule was codified; however, DeJaynes could not find the purported rule in the Charter. Wailand then asked her where the rule was codified. DeJaynes responded: “That’s how we have always done it.”

25. Wailand then went back to the City Clerk’s office to ask Falk if she found anything in the Special Charter that referred to the “fifty percent plus one vote” rule. Falk responded that she had not found anything yet, but would call him the next day to advise him whether she found anything that supported the existence of the rule.

26. On February 28, Wailand called Falk to follow up. When he asked her if she had found any reference to the existence of the “fifty percent plus one vote” rule in the Special

Charter, Falk responded “no,” but stated: “We Googled the definition of ‘fifty percent plus one vote’ and found that fifty percent plus one was a majority.” Falk advised Wailand that based on their Google search, they were sticking to their definition of “majority.”

27. On March 6, 2013, Wailand emailed City Attorney Petrie to request a written statement from the City declaring the City’s decision in this matter and the reasoning behind it. (See emails between Wailand and Petrie, Plf.’s Gr. Exh. 2.) On that same day, Petrie responded that she would “work on a written opinion this week and [would] hopefully have something for [him] by early next week.” *Id.* Wailand immediately responded by requesting that Petrie provide the City’s response by March 7 or 8 because time was of the essence.

28. On March 8, 2013, Petrie responded to Wailand via email and advised him that she “surmised that the questions and requests for written explanation should be directed to the County Clerk of McDonough County.” Petrie further stated that the “certification of the election was issued by the County Clerk and the City does not participate in this action; therefore, it would not be appropriate for the City to issue a written or verbal statement explaining or discussing the decision of the County Clerk.” (See March 8 email, Plf.’s Gr. Exh. 2.)

29. After receiving Petrie’s March 8 email, Wailand spoke with Petrie in person to follow up. Petrie advised him that she talked to the Illinois Municipal League about the situation, and that the League advised her that this matter was the County’s responsibility and that she should not be involved. Petrie then said she was not able to have any further discussions with Wailand.

30. On Monday, March 18, Plaintiff addressed the City Council about the February 26 election and the reasons why the City and County should declare him elected and certify his election. Mayor Michael Inman, who presides over City Council meetings, stated that public

comments were not open to discussion and that the Council would deliver a statement at the next Committee of the Whole meeting.

31. On March 25, 2013, at the start of the Macomb City Council's Committee of the Whole meeting, Mayor Inman made a formal statement declaring that the City Clerk "informed" him that "there were no deviations from the past practice on how the election of February 26, 2013, was conducted by her office," and that the "procedures and protocols that were utilized in the City's election on February 26, 2013, are the same and consistent with City election procedures and protocols that have been utilized by her office during her entire thirty-year tenure in the City clerk's office."

https://www.youtube.com/watch?feature=player_embedded&v=yT8RudSrFpA

32. The City and County have scheduled a "supplementary election" to be held for the Second Ward alderman seat on April 9, 2013.

Plaintiff's demand on Defendants to declare him elected

33. On March 19, 2013, Plaintiff secured pro bono legal representation, by the undersigned, to seek the enforcement of his rights under state and local law.

34. On March 20, 2013, Plaintiff's counsel sent written correspondence, via regular mail, email and facsimile delivery, to Defendants and their counsel demanding that Plaintiff be declared elected and certified as the Alderman for the Second Ward, City of Macomb. The letter asked the City and County to contact Plaintiff's counsel or otherwise respond to the letter by the close of business, March 22, 2013. Neither the City nor the County responded to the letter.

35. On March 25, 2013, Plaintiff's counsel called the City's attorney to discuss the March 20 correspondence. Having received no response, Plaintiff's counsel called the City attorney again on March 27, 2013, at which time the City's attorney stated that the City would

not be responding in writing to Plaintiff's March 20 correspondence and would be standing behind its interpretation of the word "majority" in the City's Municipal Code meaning "fifty percent plus one vote," and would proceed with the April 9 supplementary election.

36. Due to the confusing information Defendants gave Plaintiff about who is in charge of certifying him elected to the Second Ward Alderman seat, counsel for Plaintiff asked the City attorney to confirm who gives the certification of election and to explain the City Clerk's role in the election. The City attorney refused to answer the question.

37. On March 27, Plaintiff's counsel spoke with the McDonough County State's Attorney regarding Plaintiff's March 20 correspondence. The State's Attorney stated several times that he believed Plaintiff was "right," and that the "fifty percent plus one vote" rule could not be found in any applicable law, code or rule. He stated, however, that the County Clerk was standing behind that definition of majority.

38. Due to the confusing information Defendants gave Plaintiff about who is in charge of certifying him elected to the Second Ward Alderman seat, counsel for Plaintiff asked the State's Attorney to confirm who gives the certification and the County Clerk's role in the election. The State's Attorney refused to answer the question.

Definition of "Majority"

39. Pursuant to the City of Macomb Municipal Code: "Words and phrases shall be construed according to the common and approved usage of the language." Macomb Mun. Code Sec. 1-2 "Nontechnical and technical" words.

40. The common and approved definition of the word "majority" is more than half of the total. *See, e.g.*, Black's Law Dictionary (9th ed. 2009) ("A number that is more than half of a total; a group of more than 50 percent <the candidate received 50.4 percent of the votes – barely

a majority>.”); Cambridge Dictionary of American English (2d ed. 2000) (“more than half of a total number or amount; the larger of something”); Merriam-Webster’s Collegiate Dictionary (11th ed. 1998) (“a number or percentage equaling more than half of the total”); the American Heritage Dictionary of the English Language (5th ed. 2011) (“the greater number of a part; a number more than half of the total. 2. The amount by which the greater number of votes cast, as in an election, exceeds the total number of remaining votes.”); and The New Shorter Oxford English Dictionary (4th ed. 1993) (“The great number or part; a number which is more than half the whole number spec. the larger party voting together in a deliberative assembly or electoral body.”) *See also* Plf.’s Gr. Exh. 3.

41. The Illinois Supreme Court has also recognized that the term “majority” means “a number greater than half of a total.” *Lipinski v. Chicago Bd. of Elections*, 114 Ill.2d 95, 103 (1986) (citing Webster’s Third New International Dictionary 1363 (1971)).

COUNT I **DECLARATORY RELIEF**

42. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 41, as if fully set forth herein.

43. For reasons including but not limited to those stated in this Verified Complaint, an actual and live controversy exists between Plaintiffs and Defendants. The parties have genuine and opposing interests. These interests are direct and substantial and a judicial determination of the parties’ controversy will be final and conclusive.

44. Plaintiff is therefore entitled to declaratory judgment that Plaintiff was declared elected to the office of Second Ward Alderman of the City Macomb on February 26, 2013, and must be given a certificate of election.

45. Plaintiff has directly suffered and will continue to suffer irreparable injury and has no adequate remedy at law.

COUNT II
MANDUMUS

46. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 45, as if fully set forth herein.

47. Because Steven Wailand received a majority of the votes in the February 26, 2013, election, by operation of law he was declared elected and has the clear legal right to receive a certificate of election for the office of Second Ward Alderman for the city of Macomb. Macomb Mun. Code Sec. 2-3(5), (7).

48. The Mayor of Macomb's legal duty to issue a certification of the election of Wailand to the office of Second Ward Alderman is clear and nondiscretionary. 65 ILCS 5/3.1-55-5.

49. The City Clerk's legal duty to notify Wailand of his election to the office of Second Ward Alderman is clear and nondiscretionary. Macomb Special Charter, Art. III, Sec. 2.

50. The County Clerk has the clear legal duty to not to hold a supplementary election when a candidate in a general election receives a majority vote. Macomb Mun. Code Sec. 2-3(5).

51. The County Clerk is the election authority for McDonough County. Under the Illinois Election Code, the county clerk must issue certificates of election. *See* 10 ILCS 5/15-1 and 5/22-10.

52. Plaintiff has directly suffered and will continue to suffer irreparable injury and has no adequate remedy at law.

COUNT III
ILLINOIS CONSTITUTION ARTICLE III, SECTION 1
RIGHT TO VOTE – DUE PROCESS OF LAW

53. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 52, as if fully set forth herein.

54. The expression by the people of their will is fundamental to a viable democratic form of government.

55. Article III, section 1, of the Illinois Constitution, reaffirms the principle that all qualified citizens have a constitutionally protected right to vote and to have their votes counted.

56. If the vote cast by all those who favor a particular candidate exceeds the number cast in favor of a rival, the result is constitutionally protected from nullification except by the voters themselves. *Tully v. Edgar*, 171 Ill.2d 297, 308 (1996).

57. Defendants' refusal to certify the election of Plaintiff to the office of Second Ward Alderman, and Defendants' arbitrary and capricious definition of "majority" and/or ex post facto altering of the number of the votes required to win the election and be certified elected, nullified the votes in favor of Plaintiff, including Plaintiff's vote.

58. Any person who causes an Illinois citizen to be deprived of their right to vote shall be liable to that citizen, and any person affected, in an action for redress. 10 ILCS 5/29-17.

59. Plaintiff has directly suffered and will continue to suffer irreparable injury to his rights under the Illinois Constitution and has no adequate remedy at law for this infringement of his constitutional rights.

COUNT IV

**ILLINOIS CONSTITUTION ARTICLE I, SECTION 2
PROPERTY INTEREST IN OFFICE - DUE PROCESS OF LAW**

60. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 59, as if fully set forth herein.

61. Plaintiff has a property interest in the office to which the voters elected him. *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis Dist. No. 189*, 178 Ill. 2d 399, 416-18 (1997).

62. Defendants are arbitrarily and capriciously denying Plaintiff the right to hold the office to which he was declared elected.

63. Plaintiff has directly suffered and will continue to suffer irreparable injury to his rights to due process of law under the Illinois Constitution and has no adequate remedy at law for this infringement of his constitutional rights.

**COUNT V
INJUNCTIVE RELIEF**

64. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 63, as if fully set forth herein.

65. Due to the upcoming supplementary election on April 9, time is of the essence. Injunctive relief in the form of a Temporary Restraining Order and/or Preliminary and/or Permanent Injunction, and a Writ of Mandamus is immediately needed to prevent irreparable harm to Plaintiff.

66. For reasons including but not limited to those stated in this Verified Complaint, Plaintiff has no adequate legal, administrative or other remedy by which to prevent or minimize the continuing and/or threatened irreparable harm to his right to be notified of his election and be

given a certificate of election to the office of Alderman of the Second Ward of the City of Macomb. The public interest and equities favor issuing an injunction declaring that the word “majority” means “more than half” and that Plaintiff was thus declared elected and has a right to a certificate of election.

Bond Should be Waived

67. Plaintiff should not be required to post a bond because this case serves the public interest – specifically, the citizens’ (including Plaintiff’s) fundamental right to vote and have their vote count and Plaintiff’s right to be declared elected to the office he won by a majority of the votes cast in the election. Requiring a bond in this non-commercial case would impose undue hardship on Plaintiff, a full-time college student, who is seeking to preserve his rights guaranteed by the Illinois Constitution, and state and local law. Declaratory judgment and/or injunctive relief would not cause Defendants hardship because it would order Defendants to perform their existing legal duties as required by the clear language of the City's own Code, Special Charter, and state law.

WHEREFORE, Plaintiff respectfully requests that this Court issue an order mandating that Defendant Mayor Michael Inman issue Plaintiff a certificate of election, that Defendant City Clerk Melanie Falk notify Plaintiff of his election to the office of Second Ward Alderman, and that County Clerk DeJaynes deliver a certificate of election in connection with the February 26, 2013, election reflecting Plaintiff’s election to the office of Alderman of the Second Ward, City of Macomb, in the February 26, 2013, election.

RELIEF REQUESTED

Plaintiff Steven Wailand requests that this honorable Court:

- A. Enter judgment in favor of Plaintiff.
- B. Enter a declaratory judgment that the word “majority” in Macomb Municipal Code Section 2-3(5) means “more than half”; that any vote total received by a candidate constituting more than 50 percent of the votes cast is a “majority”; that Plaintiff’s 17 votes out of the 33 votes cast in the February 26, 2013, election for Second Ward Alderman in the City of Macomb constitute a majority of the votes cast in that election; and that Plaintiff is therefore “declared elected” to the office of Second Ward Alderman for the City of Macomb by operation of Section 2-3(5) of the Macomb Municipal Code.
- C. Issue an Order of Mandamus requiring Michael Inman, Mayor of the City of Macomb, to issue a certification of the election of Steven Wailand to the office of Second Ward Alderman, as required by 65 ILCS 5/3.1-55-5.
- D. Issue an Order of Mandamus requiring the City Clerk, Falk, to notify Wailand of his election to the office of Second Ward Alderman for the City of Macomb, as required by Article III, Section 2, of the City’s Special Charter.
- E. Issue an Order of Mandamus enjoining the City Clerk, Melanie Falk, and County Clerk Gretchen DeJaynes, from holding a supplemental election scheduled for April 9, 2013.
- F. Issue an Order of Mandamus requiring the County Clerk, Gretchen DeJaynes, to issue a certificate of election resulting from the February 26, 2013, election of Plaintiff for the office of Second Ward Alderman for the City of Macomb, as required by the Illinois Election Code.
- G. Enter a declaratory judgment that the Defendants’ nullification of Plaintiff’s election to the office of Second Ward Alderman for the City of Macomb in the February 26, 2013, election would deprive Plaintiff of his right to vote without due process of law.
- H. Enter a declaratory judgment that the Defendants’ nullification of Plaintiff’s election to the office of Second Ward Alderman for the City of Macomb deprives Plaintiff of his right to the office to which he was elected and therefore deprive him of a property interest without due process of law.
- I. Preliminarily and permanently enjoin Defendants from applying Macomb Municipal Code Section 2-3(5) in a manner that is inconsistent with the definition of “majority” as being “more than half.”
- J. Award Plaintiff reasonable costs and attorneys’ fees; and
- K. Award Plaintiff any additional relief it deems just and proper.

DATED: MARCH 30, 2013

Steven Wailand

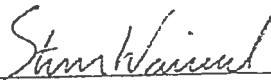
By: 
One of his attorneys

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4 6

VERIFICATION BY CERTIFICATION

I, STEVEN WAILAND, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, do certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as above that I verily believe the same to be true.



Steven Wailand

CERTIFICATE OF SERVICE

I, Diane Cohen, an attorney, certify that copies of Plaintiff's Verified Complaint and Motion, and Memorandum in Support of Motion, were served via email and facsimile delivery and deposited in the regular U.S. mail on March 30, 2013, to:

Michael J. Inman
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Diane S. Cohen
Attorney for Plaintiff

PLAINTIFF'S
EXHIBIT 1

APPENDIX

Editorial Note.—The City of Macomb was incorporated under a special charter granted by an Act of the General Assembly of the State of Illinois approved February 14, 1857. This special charter was amended or added to by an Act of the General Assembly approved February 23, 1867. In 1882 the City reorganized under "An Act To Provide For The Incorporation of Cities and Villages", passed April 10, 1872, thereby accepting the general law in lieu of its own special charter, insofar as the provisions of the special charter are in conflict with those of the general law. The Revised Cities and Villages Act of 1941 has now made further changes. Since certain of its provisions may still have some effect, it has been deemed advisable to add here the special charter of 1857 in its entirety, with the addition thereto.

SPECIAL CHARTER

AN ACT to Consolidate the Several Acts Under Which the City of Macomb Was Incorporated, and to Amend the Same.

ARTICLE I

OF BOUNDARIES, GENERAL POWERS, AND FORMATION OF WARDS

- Section 1. Boundary—Macomb declared a city.
2. Inhabitants of city incorporated—to have a common seal—to hold real estate, etc.
3. City to be divided into wards.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That all that district of country, in the county of McDonough and State of Illinois, embraced in the following limits, to-wit: The south half of section number thirty-one (31), the southwest quarter of the northeast quarter of section number (31), and the northwest quarter of section number (31), all in township number six (6) north of the base line of range two (2), west of the fourth principal meridian; and the southeast quarter of the northeast quarter of section thirty-six (36), and the southeast quarter of said section thirty-six (36), in township six (6) north of range three (3) west of the fourth principal meridian; and the northeast quarter of section number one (1), in township number five (5) north of range number three (3) west of the fourth principal meridian; and the northwest quarter of the northeast quarter of section number six (6), in township number five (5) north of range number two (2) west of the fourth principal meridian; together with such other additions of land as may be incorporated with and come under its jurisdiction, is hereby created into a city, by the name of the City of Macomb.

Sec. 2. The inhabitants of said city shall be a corporation, by the name of the City of Macomb, and by that name shall have perpetual succession, sue and be sued,

and complain and defend in any court; may make and use a common seal, and alter and change it at pleasure; may take, hold, and purchase real, personal and mixed estate as the purposes of the corporation may require, within or without the limits of the city, and may sell, lease, or dispose of the same for the benefit of the city.

Sec. 3. The City of Muncomb shall be divided into four wards, the boundaries of which shall be fixed by the City Council, and shall be by the City Council changed from time to time as they shall see fit, having regard to the number of her free white inhabitants, so that each ward shall contain, as near as may be, the same number of white male inhabitants. The City Council may create additional wards, as occasion may require, and fix the boundaries thereof.

ARTICLE II

OFFICERS—THEIR ELECTION AND APPOINTMENT.

- Section 1. Municipal government—to consist of Mayor and Aldermen—other officers to be elected or appointed, who shall perform the duties prescribed by this act, and by the City Council.
2. All officers, except Aldermen, to hold office one year—officers to be elected by ballot—Watchmen and Policemen may be appointed by the Mayor, and removed by Council, Mayor or Marshal—officers elected or appointed, to fill vacancies, to hold for unexpired term only.
 3. Each ward to be represented by two resident Aldermen, who shall hold their offices for two years; to be divided into classes when elected.
 4. Vacancy in office of Aldermen or other officers—how filled.
 5. Manner of removing persons from office.
 6. Vacancy in office of Mayor and other officers—how filled.
 7. Who authorized to hold office in the city.
 8. When any two or more persons have same number of votes, election decided by casting lots.

Section 1. The municipal government of the city shall consist of a City Council, to be composed of the Mayor and two Aldermen for each ward. The officers of the corporation shall be as follows: A City Clerk, a City Marshal, a City Treasurer, a City Attorney, a City Assessor and Collector, a City Surveyor and Engineer, and a City Supervisor, who, in addition to the duties

prescribed by this act, shall perform such other duties as may be prescribed by ordinance, and who shall be elected or appointed by the City Council, as the City Council may provide. There shall also be such other officers, servants and agents of the corporation as may be provided by ordinance, to be appointed by the City Council, and to perform such other duties as may be prescribed by ordinance.

Sec. 2. All officers elected or appointed under this act, except Aldermen, shall hold their offices for one year and until the election or appointment and qualification of their successors respectively. All other officers mentioned in this act, and not otherwise specially provided for, shall be appointed by the City Council, by ballot, on the third Monday of May of each year, or as soon thereafter as may be; but the City Council may specially authorize the appointment of watchmen and policemen by the Mayor, to continue in office during the pleasure of the City Council: Provided, the Mayor or Marshal may be authorized to remove them from office for good cause. All officers elected or appointed to fill vacancies shall hold for the unexpired term only, and until the election or appointment and qualification of their successors.

Sec. 3. The several wards of the city shall be represented in the City Council by two Aldermen from each ward, who shall be bona fide residents thereof, and hold their offices for two years after their election, and until the election and qualification of their successors. They shall be divided into two classes, consisting of one Alderman from each ward, so that one from each ward shall be annually elected. At the first meeting of the City Council after the annual election in May next, the Aldermen shall be divided into two classes, by lot; the term of office of those of the first class shall expire in one year, and those of the second class in two years: Provided, that the present Aldermen of the city, whose term of office does not expire at that time, shall be placed in the first class, and no election shall be held to supply their places. At the election in May, 1857, there shall be elected in each of the wards of the city, one Alderman, and thereafter annually one Alderman shall be elected in each of the wards of the city, to represent such ward in the City Council.

Sec. 4. If from any cause there shall not be a quorum of Aldermen, the Clerk shall appoint the time and place of holding a special election to supply such vacancies, and to appoint judges thereof if necessary. If any Alderman shall remove from the ward represented by him, his office shall thereby become vacant. If for any cause the officers herein named shall not be appointed on the second (third) Monday of May in each year, the City Council may adjourn from time to time until such appointments are made. If there should be a failure by the people to elect any officers herein required to be elected, the City Council may forthwith order a new election.

Sec. 5. Any officer elected or appointed to any office may be removed from such office by a vote of two-thirds of all the Aldermen authorized by law to be elected. But no officer shall be removed except for good cause, nor unless first furnished with the charges against him, and heard in his defense; and the City Council shall have power to compel the attendance of witnesses, and the production of papers when necessary for the purpose of determining upon the merits of the case; and if such officer shall neglect to appear and answer to such charges, then the City Council may declare the office vacant: Provided, this section shall not be deemed to apply to any officer appointed by the City Council. Such officer may be removed at any time by a vote of two-thirds as aforesaid, in their discretion, but any officer may be suspended until the disposition of the charges when preferred.

Sec. 6. Whenever any vacancy shall occur in the office of Mayor or Alderman, such vacancy shall be filled by a new election, and the City Council shall order such special election within ten days after the happening of such vacancy. Any vacancy occurring in any other office may be filled by appointment of the City Council; but no special election shall be held to fill vacancies, if more than nine months of the time has expired.

Sec. 7. All citizens of the United States, qualified to vote at any election held under this act, shall be qualified to hold any office created by this act; but no person shall be eligible to any office under this or any other act in re-

fation to said city, who is now or may hereafter be a defaulter to said city, or to the State of Illinois, or to any other city or county thereof; and any person shall be considered a defaulter who has refused or neglected, or may hereafter refuse or neglect, for thirty days after demand made, to account for and pay over to the party authorized to receive the same, any public money which may have come into his possession. And if any such person holding any such office or place within this city shall become a defaulter whilst in office, the office or place shall thereupon become vacant.

Sec. 8. When two or more candidates for election to any elective office shall have an equal number of votes for such office, the election shall be determined by the casting of lots in the presence of the City Council.

ARTICLE III.

OF ELECTIONS.

- Section 1. A General Election to be held on first Monday of May in each year—notice of election—how given.
2. Election—how contested—poll books to be returned to Clerk within three days—Council to meet, canvass polls and declare results—persons elected or appointed to office to be notified by Clerk, and they required to qualify in twenty days.
 3. What persons entitled to vote at city elections—oath to be taken by elector when challenged—what constitutes residence.
 4. No election to be held where intoxicating liquors are sold. Electors not to be arrested on civil process on election day—punishment for illegal voting.

Section 1. A general election of all the officers of the corporation required to be elected by this act, or any ordinance of the city, shall be held in each ward of the city, on the first Monday of May in each year, at such places as the City Council may appoint, and of which six days previous notice shall be given by written or printed notices in three public places in each ward, or by publication in the newspaper publishing the ordinances of the city, by the City Clerk.

Sec. 2. The manner of conducting and voting at the elections held under this act, and contesting the same, the

keeping the poll lists, canvassing of the votes and certifying the returns, shall be the same, as nearly as may be, as is now or may hereafter be provided by law at general state elections, and the appointment of judges thereof. The voting shall be by ballot, and the judges of the election shall take the same oath, and shall have the same powers and authority as the judges of the general elections. After the closing of the polls the ballots shall be counted in the manner provided by law, and the returns shall be returned, sealed, to the City Clerk within three days after election, and thereupon the City Council shall meet and canvass the same and declare the result of the election. The persons having the highest number of votes for any office shall be declared elected. It shall be the duty of the City Clerk to notify all persons elected or appointed to office of their election or appointment, and unless such persons shall qualify within twenty days thereafter, the office shall become vacant.

Sec. 3. No person shall be entitled to vote at any election under this act who is not entitled to vote at state elections, and has not been a resident of said city at least six months next preceding said election; he shall moreover be an actual resident of the ward in which he proposes to vote, or if required by any judge or qualified voter, shall take the following oath before he is permitted to vote: "I swear (or affirm) that I am of the age of twenty-one years; that I am a citizen of the United States (or was a resident of this state at the time of the adoption of the constitution), and have been a resident of this state for one year and a resident of this city six months immediately preceding this election, and am now a resident of this ward and have not voted at this election." Provided, that the voter shall be deemed a resident of the ward in which he is accustomed to lodge.

Sec. 4. No election shall be held in any grog shop or other place where intoxicating liquors are vendued by retail.

Sec. 5. The persons entitled to vote at any election held under this act, shall not be arrested on civil process, within said city, upon the day on which said election is held; and all persons illegally voting at any elec-

tion hold under this act, or the ordinances of the city, in pursuance thereof, shall be punishable according to the laws of the state.

ARTICLE IV.

POWERS AND DUTIES OF OFFICERS.

- Section 1. Oath to be taken by all officers of the city and filed with the Clerk.
2. Oath to be taken by the Mayor—Mayor to preside over meetings of Council—to see that all city officers perform their duty—and to recommend measures to the Council.
3. Mayor authorized to call on all male inhabitants of city or county to enforce laws and ordinances—to call out militia to suppress riots, etc.—penalty for refusing to obey call.
4. Authorized to require officers to exhibit books and papers, and to execute all acts required of him by this act or any ordinance.
5. Liable to indictment for malfeasance in office and may be removed.
6. To receive a salary, not exceeding \$600.
7. Authorized to administer oaths—take depositions, etc.
8. Vacancy—how filled.
9. Members of Council exempt from jury duty and street labor.
10. Duties of City Clerk—to be keeper of seal and all books and papers of the city—to attend meetings of council and keep a journal—copies certified by him to be evidence—to draw warrants on treasury—authorized to count of receipts, etc.
11. Duties of City Attorney—to furnish written opinions to Council or Mayor—same person may be Clerk and Attorney.
12. Duties of City Treasurer—to keep account of receipts and expenditures of city—money to be drawn from treasury on warrants signed by Mayor and Clerk—to specify for what purpose drawn—treasurer to report twenty days before charter election.
13. Duties of City Marshal—to perform duties prescribed by Council—to possess powers and return process.
14. Duties of City Engineer and Surveyor—to have sole power to survey in rules established by Council—to govern by the rules established by Council—to make estimates and contracts for city work.
15. Duties of Assessor and Collector—to have same power of county or town assessors—to collect taxes and assessments.

provided for that purpose. He shall also keep an accurate account of all receipts and expenditures in such manner as the City Council shall direct; and he shall have power to administer any oath required to be taken by this act.

Sec. 11. It shall be the duty of the City Attorney to perform all professional services incident to his office, and, when required, to furnish written opinions upon questions and subjects submitted to him by the Mayor or the City Council or its committees: Provided, however, that the offices of City Clerk and City Attorney may be vested in the same person.

Sec. 12. The City Treasurer shall receive all moneys belonging to the city, and shall keep an accurate account of all receipts and expenditures in such a manner as the City Council shall direct. All moneys shall be drawn from the treasury in pursuance of an order of the City Council, by a treasury warrant, signed by the Mayor or the presiding officer of the City Council and countersigned by the Clerk; such warrants shall specify for what purpose the amount therein named is to be paid. The Treasurer shall exhibit to the City Council, at least twenty days before the annual election of each year, and oftener if required, a full and detailed account of all receipts and expenditures since the date of the last annual report, and also the state of the treasury; which account shall be filed in the office of the Clerk.

Sec. 13. The City Marshal shall perform such duties as shall be prescribed by the City Council for the preservation of the public peace, the collection of license money, fines or otherwise. He shall possess the powers and the authorities of a constable at common law, and under the statutes of the state, and receive like fees, but shall not serve civil process without first entering into bond as such constable, to be approved by the county court as in other cases. He shall execute and return all process issued by any proper officer under this act or any ordinance in pursuance thereof.

Sec. 14. The City Engineer or Surveyor shall have the sole power, under the direction and control of the City Council, to survey, within the city limits, and he shall be governed by such rules and ordinances and receive such fees

and emoluments for his services as the City Council shall direct and prescribe. He shall possess the same powers in making plats and surveys within the city as is given by law to county surveyors, and the like effect and validity shall be given to his acts, and to all plats and surveys made by him, as are or may be given by law to the acts, plats and surveys of the county surveyor. He shall, when required, superintend the construction of all public works ordered by the city, make out the plats and estimates thereof and contract for the execution of the same. He shall perform all surveying and engineering ordered by the City Council; shall, under their direction, establish the grades and boundaries of streets and alleys; but such plats, estimates and contracts, grades and boundaries shall be first reported to the City Council, and approved by them, or they shall not be valid.

Sec. 15. The Assessor and Collector shall perform all duties in relation to the assessing of property for the purpose of levying the taxes imposed by the City Council. In the performance of his duties he shall have the same powers as are or may be given by law to county or town assessors, and be subject to the same liabilities. On completing the assessment lists, and having revised and corrected the same, he shall sign and return them to the City Council. He shall collect all taxes and assessments which may be levied by the City Council, and perform such other duties as may be herein prescribed or ordained by the City Council.

Sec. 16. The Supervisor shall superintend all local improvements in the city and carry into effect all orders of the City Council in relation thereto. It shall also be his duty to superintend and supervise the opening of streets and alleys, and the grading, improving and opening thereof, and the construction and repairing of bridges, culverts and sewers; to order the laying, relaying and repainting of sidewalks, when required, and upon the failure of any person to comply with such notice, to cause the same to be laid, relaid, or repaired, and apportion of the cost thereof among the persons of lots properly chargeable therewith and deliver the account thereof to the City Clerk, to be laid before the City Council; to make plans and estimates of any

16. Duties of Supervisor—to superintend all city work—to serve notices to build sidewalks, etc.—to make plans and estimates—to keep account of appropriations for work, etc.
17. City Council authorized to require other duties of officers, and to fix their compensation—may require them to give bond, which shall be filed with the Clerk.
18. City officers required to deliver books, etc., to successors—penalty for neglect.
19. All officers to be commissioned by Mayor and Clerk.

Section 1. Every person chosen or appointed to an executive, judicial or administrative office under this act shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed in the Constitution of this state and file the same, duly certified by the officer before whom it was taken, with the City Clerk.

Sec. 2. The Mayor shall, before he enters upon the duties of his office, in addition to the usual oath, swear or affirm "that he will devote so much of his time to the duties of his office as an efficient and faithful discharge thereof may require." He shall preside over the meetings of the City Council, and shall take care that the laws of this state and the ordinances of this city are duly enforced, respected and observed within this city, and that all officers of the city discharge their respective duties, and he shall cause negligence and positive violation of duty to be prosecuted and punished. He shall, from time to time, give the City Council such information, and recommend such measures, as he may deem advantageous to the city.

Sec. 3. He is hereby authorized to call on any and all white male inhabitants of city or county, over the age of eighteen years, to aid in enforcing the laws of the state or the ordinances of the city; and in case of riot to call out the militia to aid in suppressing the same or carrying into effect any law or ordinance; and any person who shall not obey such call shall forfeit to said city a fine of not less than five dollars nor more than one hundred dollars.

Sec. 4. He shall have power, whenever he shall deem it necessary, to require of any of the officers of the city an exhibit of all his books and papers; and he shall have power to execute all acts that may be required of him by this act or any ordinance made in pursuance thereof.

Sec. 5. He shall be liable to indictment in the Circuit Court of McDonough county for punishable omission of duty, willful oppression, misconduct or partiality in the discharge of the duties of his office, and upon conviction shall be subject to a fine not exceeding one hundred dollars; and the court shall have power, upon the recommendation of the jury, to add as a part of the judgment that he be removed from office.

Sec. 6. He shall receive such salary as shall be fixed by ordinance, not exceeding six hundred dollars.

Sec. 7. He shall, ex-officio, have power to administer any oath required to be taken by this act, or any law of the state; to take depositions, the acknowledgment of deeds, mortgages and all other instruments of writing, and certify the same under the seal of the city, which shall be good and valid in law.

Sec. 8. In case of vacancy in the office of Mayor, or of his being unable to perform the duties of his office by reason of temporary or continued absence or sickness, the City Council shall appoint one of its members by ballot to preside over their meetings, whose official designation shall be "Acting Mayor;" and the Alderman so appointed shall be vested with all the powers and perform all the duties of Mayor until the Mayor shall assume his office, or the vacancy shall be filled by a new election.

Sec. 9. The members of the City Council shall be ex-officio fire wardens and conservators of the peace within the city, and shall be exempt from jury duty and street labor, or the payment of street taxes during the term of office.

Sec. 10. The Clerk shall keep the corporate seal and all papers and books belonging to the city. He shall attend all meetings of the City Council and keep a full record of their proceedings on the journals; and copies of all papers duly filed in his office, and transcripts from the journals of the proceedings of the City Council, certified by him under the corporate seal, shall be evidence in all courts in like manner as if the originals were produced. He shall likewise draw all warrants on the treasury and countersign the same, and keep an accurate account thereof in a book

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- penitents.
- 18th. To prevent forestalling and regrating—to regulate the inspection of marketing.
- 19th. To regulate and license butchers.
- 20th. To establish standard weights and measures.
- 21st. To regulate the inspection of lumber and to appoint inspectors.
- 22nd. To provide the inspection and weight of hay, and measurement of wood and other fuel.
- 23rd. To regulate the inspection of provisions and liquors—to appoint weighers, gaugers and inspectors.
- 24th. To regulate the weight and quality of bread.
- 25th. To regulate the size and quality of brick.
- 26th. To create, establish and regulate the police of the city.
- 27th. To prevent and suppress riots, affrays, etc.
- 28th. To prevent horse racing, immoderate driving and cruelty to animals—to compel persons to fasten horses.
- 29th. To restrain and punish vagrants, mendicants, street beggars, and prostitutes.
- 30th. To regulate, restrain or prohibit the running at large of horses, cattle, swine, sheep, goats and geese—to regulate, and restrain dogs running at large.
- 31st. To prohibit the rolling of hoops, flying of kites, ringing of bells, blowing of horns, crying of goods, etc.
- 32nd. To abate all nuisances.
- 33rd. To promote health and suppress disease.
- 34th. To compel owners and occupants of premises to keep the same clean.
- 35th. To direct the location and regulate the management and construction of buildings, etc.
- 36th. To regulate the burial of the dead, etc.
- 37th. To provide for taking an enumeration of the inhabitants of the city.
- 38th. To erect and establish work house or house of correction in which all vagrants, etc., shall be committed.
- 39th. To authorize the taking up and education of destitute children.
- 40th. To fill up, etc., lots, cellars, etc.
- 41st. To direct and control the laying of railroad tracks—to regulate the speed of cars—to prohibit railroad companies from collecting pay for storage.
- 42nd. May pass all ordinances not inconsistent with constitution of the United States or of this state, and to enforce the same by fines, penalties and imprisonment—no fine to exceed five hundred dollars—persons convicted to stand committed till fine paid, may be required to labor on streets.

Section 1. The Mayor and Aldermen shall constitute the

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City Council of the city. The City Council shall meet at such time and place as they shall be resolution decide. The Mayor, when present, shall preside at all meetings of the City Council, and shall have only a casting vote; in his absence any one of the Aldermen may be appointed to preside. A majority of the persons elected Aldermen shall constitute a quorum.

Sec. 2. No member of the City Council shall, during the period for which he is elected, receive any compensation for his services, or be appointed to or be competent to hold any office of which the emoluments are paid from the city treasury, or paid by fees directed to be paid by any act or ordinance of the City Council, or be directly or indirectly interested in any contract, the expense or consideration whereof is to be paid under any ordinance of the City Council, or be allowed to vote in any matter in which he is directly interested, personally or pecuniarily.

Sec. 3. The City Council shall hold twelve stated meetings (one in each month) during the year, and the Mayor or any two Aldermen may call special meetings, by notice to each of the members of the Council, served personally or left at their usual places of abode. Petitions and remonstrances may be presented to the City Council, and they shall determine the rule of their own proceedings, and be the judges of the election and qualification of their own members, and shall have power to compel the attendance of absent members.

Sec. 4. The City Council shall have the control of the finances and of all the property, real, personal and mixed, belonging to the corporation, and shall likewise have power within the jurisdiction of the city, by ordinance—

First—To borrow money on the credit of the city and issue the bonds of the city therefor; but no sum of money shall be borrowed at a higher rate of interest than the rate allowed by law, nor shall a greater sum or sums be borrowed, or at any time outstanding, the interest upon the aggregate of which shall exceed the one-half of the city revenue arising from the ordinary taxes within the city for the year immediately preceding, and no bonds shall be issued or negotiated at less than par value. The appro-

work ordered in relation to streets and alleys, bridges, cut-vents or sewers; to keep full and accurate accounts, in appropriate books, for all appropriations made for work pertaining to his office, and of all disbursements thereof, specifying to whom made and to what account, and he shall render monthly accounts thereof to the City Council.

Sec. 17. The City Council shall have power, from time to time, to require further and other duties of all officers whose duties are herein specified, and prescribe the powers and duties of all officers elected or appointed to any office under this act whose duties are not herein specifically mentioned, and fix their compensation: They may also require all officers, severally, before they enter upon the duties of their respective offices, to execute a bond to the City of Alameda, in such sum and with such securities as they may approve, conditioned that they shall faithfully execute the duties of their respective offices, and account for and pay over and deliver all moneys and other properties received by them; which bond, with approval of the City Council, certified thereon by the Clerk, shall be filed in his office.

Sec. 18. If any person, having been an officer of the city, shall not, within ten days after notification and request, deliver to his successor in office all the property, books, papers and effects of every description in his possession belonging to said city, or pertaining to said office, he shall forfeit and pay, for the use of the city, fifty dollars, besides all damages caused by his refusal or neglect so to deliver. And such successor may recover possession of the books, papers and effects belonging to his office in the manner prescribed by the laws of the state.

Sec. 19. All officers elected or appointed under this act shall be commissioned by warrant, under the corporate seal, signed by the Mayor, or the presiding officer of the City Council, and Clerk.

ARTICLE V

OF THE LEGISLATIVE POWER OF THE CITY COUNCIL—ITS GENERAL POWERS AND DUTIES.

Section 1. Mayor and Aldermen to constitute Council—when to

meet—Mayor to preside and have casting vote; in his absence, an Alderman to preside—majority of Aldermen to constitute a quorum.

2. No member of Council to receive pay or to hold any other office supported by the city, or to be interested in any contracts with the city or to vote when interested.

3. Council to hold twelve meetings each year—Mayor or two Aldermen may call special meetings—petitions and remonstrances may be presented to Council—Council to determine the rule of their own proceedings and to be judges of the election and qualification of its own members.

4. Council to have control of city finances.

1st. May borrow money at legal rates but interest not to exceed one-half of yearly revenue—appropriations not to exceed city revenue—Council may apply surplus funds to payment of city debts, creation of sinking fund, to public works or contingent expenses.

2nd. To appropriate money to pay debts and expenses of city.

3rd. To make regulations to prevent introduction of contagious diseases.

4th. To make regulations concerning the general health and nuisances.

5th. To provide city with water.

6th. To have exclusive control over the streets for half a mile beyond the city.

7th. To establish and construct bridges, culverts, sewers, side and crosswalks—control water courses, etc.

8th. To provide for lighting the city with gas.

9th. To establish markets, etc.

10th. To regulate public grounds.

11th. To regulate hospitals and dispensaries.

12th. To prevent encumbering the streets, sidewalks and public grounds.

13th. To license, tax and regulate merchants, brokers and auctioneers—to license, regulate and suppress peddlers, grocers and exhibitors.

14th. To license hackmen, draymen, omnibus-drivers, porters, and others.

15th. To license and suppress billiards, pin and ball alleys, disorderly houses, tipping shops, groceries, bawdy houses and gambling houses.

16th. To authorize proper officer to grant license—license not to be granted for more than one year, nor for less than three dollars nor more than five hundred dollars—fee not to exceed one dollar—licensee to sell intoxicating liquors not to be less than fifty dollars.

17th. To restrain, regulate and prohibit the traffic in intoxicating or malt liquors—to forbid and punish the selling or giving away of the same to minors or ap-

payments of the City Council for payment of interest for improvements and for city expenses during any one fiscal year, shall not exceed the amount of the whole ordinary revenue of (the city for) the fiscal year immediately preceding; but the City Council may apply any surplus money in the treasury to the extinguishment of the city debt, or to the creation of a sinking fund for that purpose, or to the carrying on of the public works of the city, or to the contingent fund for the contingent expenses of the city.

Second—To appropriate money and provide for the payment of the debts and expenses of the city.

Third—To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose; to enforce them within the city and within five miles thereof.

Fourth—To make regulations to secure the general health and comfort of the inhabitants; to prevent, abate and remove nuisances and to punish the authors thereof by penalties, fine and imprisonment; to define and declare what shall be deemed nuisances, and authorize and direct the summary abatement thereof.

Fifth—To provide the city with waters; to make, regulate and establish public wells, pumps and cisterns by hydrants and reservoirs in the streets within the city or beyond the limits thereof; for the extinguishment of fires and the convenience of the inhabitants, and to prevent the unnecessary waste of water.

Sixth—To have the exclusive control and power over the streets, alleys and highways of the city, and for one-half mile beyond the limits of said city, and to abate and remove any encroachments or obstructions thereon; to open, alter, abolish, widen, extend, straighten, establish, regulate, grade, clean or otherwise improve, the same; to put drains and sewers therein, and prevent the incumbering thereof in any manner, and protect the same from any encroachments or injury.

Seventh—To establish, erect, construct, regulate and keep in repair bridges, culverts and sewers, sidewalks and cross ways, and regulate the construction and use of the

same, and to abate any obstructions or encroachments thereof; to establish, alter, change and straighten the chimneys of water courses and natural drains, to sewer the same, or to wall them up and cover them over, and to prevent, regulate and control the filling up, altering or changing the chimneys thereof by private persons.

Eighth—To provide for lighting the streets and erecting lamp posts and lamps therein, and regulate the lighting thereof, and from time to time create, alter or extend lamp districts; to exclusively regulate, direct and control the laying and repairing of gas pipes and gas fixtures in the streets, alleys and sidewalks.

Ninth—To establish and erect markets and markets houses and other public buildings of the city, and provide for the government and regulation thereof, and their erection and location, and to authorize their erection in the streets and avenues of the city, and the continuation of such as are already erected within the same.

Tenth—To provide for the enclosing, regulating and improving all the public grounds and cemeteries belonging to the city, and to direct and regulate the planting and preserving of ornamental and shade trees in the streets or public grounds.

Eleventh—To erect or establish one or more hospitals or dispensaries, and control and regulate the same.

Twelfth—To prevent the incumbering of the streets, alleys, sidewalks or public grounds with carriages, wagons, carts, wheelbarrows, boxes, lumber, timber, fire-wood, posts, awnings, signs or any other substance or material whatever; to compel all persons to keep the snow, ice, dirt and other rubbish from the sidewalks and street gutters in front of the premises occupied by them.

Thirteenth—To license, tax and regulate merchants, commission merchants, inn keepers, brokers, money brokers, insurance brokers and auctioneers; to impose duties upon the sale of goods at auction; to license, tax, regulate, suppress and prohibit hawkers, peddlers, pawn-brokers, grocery keepers and keepers of ordinaries, theatricians or other exhibitions, shows and amusements.

Fourteenth—To license, tax, regulate and suppress hackmen, draymen, omnibus drivers, porters, and all others pursuing like occupations, with or without vehicles, and prescribe their compensation, and to regulate and restrain rickshaws, cabs and public houses.

Fifteenth—To license, tax, regulate, prohibit and suppress billiard tables, pin alleys and ball alleys. To suppress and restrain disorderly houses, tipping shops and groceries, bawdy houses, gaming and gambling houses, lotteries and all fraudulent devices and practices, and all playing of cards, dice and other games of chance with or without betting, and to authorize the destruction of all instruments and devices used for the purpose of gaming.

Sixteenth—To authorize the proper officer of the city to grant and issue licenses, and to direct the manner of issuing and registering thereof, and the fees and charges to be paid therefor. No license shall be granted for more than one year, and not less than three dollars nor more than five hundred dollars shall be charged for any license under this act, and the fee for issuing the same shall not exceed one dollar; but no license for the sale of wines or other liquors, ardent or vitious, fermented or malt, at wholesale or retail, by grocery keepers, inn keepers or others, shall be issued for less than fifty dollars.

Seventeenth—To restrain, regulate and prohibit the selling or giving away of any intoxicating or malt liquors by any person within the city, or within one-half mile of the limits of said city, except by persons duly licensed; to forbid and punish the selling or giving away any intoxicating or malt liquors to any minor, apprentice or servant without the consent of the parent, guardian, master or mistress.

Eighteenth—To prevent, restrain and punish forestalling and regrating. To regulate the inspection and vending of fresh meats, poultry and vegetables—of butter, lard and other provisions, and the place and manner of selling fish and inspecting the same.

Nineteenth—To regulate, license and prohibit butchers, and to revoke their license for malconduct in the course of trade.

Twentieth—To establish standard weights and measures, and to regulate the weights and measures to be used within the city, in all cases not otherwise provided by law. To require all traders or dealers in merchandise or property of any description which is sold by measure or weight, to cause their measures and weights to be tested and sealed by the city sealer and to be subject to his inspection. The standard for such weights and measures shall be conformable to those established by law or ordinance.

Twenty-first—To regulate and provide for the inspecting and measuring lumber, shingles, timber, posts, slaves, heading, and all kinds of building materials, and for the measuring of all kinds of mechanical work, and appoint one or more inspectors or measurers.

Twenty-second—To provide for the inspection and weighing of hay, lime and stone-coal, and the place and manner of selling the same; to regulate the measurement of fire-wood, charcoal and other fuel to be sold or used within the city, and the place and manner of selling the same.

Twenty-third—To regulate the inspection of beef, pork, flour, meal and other provisions; salt, whiskey and other liquors to be sold in barrels and other vessels or packages; to appoint weighers, gaugers and inspectors, and prescribe their duties and regulate their fees: Provided, that nothing herein shall be so construed as to require the inspection of any articles enumerated herein which are to be shipped beyond the limits of the state, except at the request of the owner thereof or his agent.

Twenty-fourth—To regulate the weight and quality of bread to be sold or used within the city.

Twenty-fifth—To regulate the size and quality of bricks to be sold or used within the city, and the inspection thereof.

Twenty-sixth—To create, establish and regulate the police of the city; to appoint watchmen and policemen and prescribe their duties and powers.

Twenty-seventh—To prevent and suppress any riot, rout, affray, noise, disturbance or disorderly assembly, in any public or private place within the city.

Twenty-eighth.—To prohibit, prevent and suppress horse-racing, immoderate riding or driving in the streets, and to authorize persons immediately riding or driving as aforesaid to be stopped by any person; to prohibit and punish the abuse of animals; to compel persons to fasten their horses of other animals attached to vehicles or otherwise while standing or remaining in the streets.

Twenty-ninth.—To restrain and punish vagrants, mendicants, street beggars and prostitutes.

Thirtieth.—To regulate, restrain and prohibit the running at large of horses, cattle, swine, sheep, goats and geese, and to authorize the distraining, impounding and sale of the same for the costs of the proceedings and penalty in a violation of any ordinance in relation thereto; to regulate, restrain and prohibit the running at large of dogs, and to authorize their destruction when at large contrary to ordinance, and to impose penalties on the owners or keepers thereof.

Thirty-first.—To prohibit and restrain the rolling of hoops, flying of kites, or any other amusements or practices tending to annoy persons passing on the streets or sidewalks, or to frighten horses and teams; to restrain and prohibit the ringing of bells, blowing of horns or bugles, carrying of goods, and all other noises, performances and practices tending to the collecting of persons on the streets or sidewalks, by auctioneers or others, for the purpose of business, amusement or otherwise.

Thirty-second.—To abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient.

Thirty-third.—To do all acts and make all regulations which may be necessary or expedient for the promotion of health and the suppression of disease.

Thirty-fourth.—To compel the owner or occupant of any grocery, cellar, soap or tallow chandlery, blacksmith shop, tannery, stable, privy, sewer or other unwholesome or nuisance house or place, to cleanse, remove or abate the same, as may be necessary for the health, comfort and

convenience of the inhabitants.

Thirty-fifth.—To direct the location and regulate the management and construction of breweries, tanneries, blacksmith shops, foundries, livery stables and packing houses; to direct the location, and regulate the management and construction of, and restrain, abate and prohibit within the city, and to the distance of one mile from the limits thereof, distilleries, slaughtering establishments, establishments for steaming or rendering lard, tallow, offal and such other substances as may be rendered, and all other establishments or places where any noxious, offensive or unwholesome business may be carried on.

Thirty-sixth.—To regulate the burial of the dead; to establish and regulate one or more cemeteries; to regulate the registration of births and deaths; to direct the returning and keeping of bills of mortality and to impose penalties on physicians and sextons and others for any default in the premises.

Thirty-seventh.—To provide for the taking and enumeration of the inhabitants of the city.

Thirty-eighth.—To erect and establish a work-house or house of correction; make all necessary regulations therefor, and appoint all necessary keepers or assistants. In such work-house or house of correction may be confined all vagrants, stragglers, idle and disorderly persons who may be committed thereto by any proper officer, and all persons sentenced by any criminal court or magistrate in and for the city or for the county of McDonough for any assault and battery, petit larceny or other misdemeanor punishable by imprisonment in any county jail; and any person who shall fail or neglect to pay any fine, penalty or costs imposed by any ordinance of the city for any misdemeanor or breach of any ordinance of the city, may, instead of being committed to the county jail of McDonough county, be kept therein, subject to labor and confinement.

Thirty-ninth.—To authorize and direct the taking up and providing for the safe keeping and education, for such periods of time as may be deemed expedient, of all

children who are destitute of proper parental care, wandering about the streets committing mischief and growing up in mendicancy, ignorance, illness and vice.

Fortieth.—To fill up, drain, cleanse, alter, relay, repair and regulate any grounds, lots, yards, cellars, private drains, sinks and privies; direct and regulate their construction, and cause the expense thereof to be assessed and collected in the same manner as sidewalk assessments.

Forty-first.—To direct and control the laying and construction of railroad tracks, bridges, turnouts and switches in the streets and alleys, and the location of depot grounds within the city; to require that railroad tracks, bridges, turnouts and switches shall be so constructed and laid to interfere as little as possible with the ordinary travel and use of the streets and alleys; and that sufficient space shall be left on either side of said tracks for the safe and convenient passage of teams and persons; to require railroad companies to keep in repair the streets through which their tracks may run, and to construct and keep in repair suitable crossings at the intersections of the streets and alleys, and ditches, sewers and culverts, when the City Council shall deem necessary; to direct and prohibit the use, and regulate the speed of locomotive engines within the inhabited portions of the city; to prohibit and restrain railroad companies for doing storage or warehouse business or collecting pay for storage.

Forty-second.—The City Council shall have power to pass, publish, amend and repeal all ordinances, rules and police regulations not contrary to the Constitution of the United States or of this state, for the good government, peace and order of the city, and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this act in the corporation, the city government, or any department or office thereof; to enforce the observance of all such rules, ordinances and police regulations; and to punish violations thereof by fines, penalties, and imprisonment in the county jail, city prison or work-house, or both, in the discretion of the court or magistrate before whom the conviction may be had. But no fine or penalty shall exceed five hundred dollars nor the imprisonment six months, for any offense.

and such fine or penalty may be recovered, with costs, in an action of debt, in the name or for the use of the city, before any court having jurisdiction, and punishment inflicted; and any person upon whom any fine or penalty is imposed shall stand committed until the payment of the same and costs, and in default thereof may be imprisoned in the county jail, city prison or work-house, or required to labor on the streets or other public works of the city for such time and in such manner as may be provided by ordinance.

ARTICLE VI

OF TAXATION

Section 1. City Council empowered to levy and collect taxes—

- 1st. For a general fund.
- 2nd. For school purposes.
- 3rd. To pay interest on city indebtedness.
- 4th. For public improvements—may be confined to part of the city where improvement is to be made—majority of Aldermen in such part of city to vote for improvement, before it is allowed—such tax not to exceed one cent on the dollar—revenue from market to pay for cost thereof.
- 5th. For lighting the city.
- 6th. To require persons to labor on the streets.

Section I. The City Council shall have power within the city, by ordinance—

First.—To levy and collect, annually, taxes not exceeding five mills on the dollar on the assessed value of all real and personal estate and property within the city, and all personal property of the inhabitants thereof, made taxable by the laws of the state for state purposes to defray the general and contingent expenses of the city not hereinafter otherwise provided for; which taxes shall constitute the general fund.

Second.—To annually levy and collect a school tax not exceeding five mills on the dollar on all property taxable for state purposes for purchasing ground for school houses, building and repairing school houses and supporting and maintaining schools.

Third.—To levy and collect taxes, not exceeding five

mills to the dollar per annum, on all property subject to taxation, to meet the interest accruing on the debt of the city; and the City Council shall pass no ordinance or resolution incurring or creating a debt without, at the same time, making provisions for the levying of a tax sufficient to meet the payment of the interest accruing thereon when payable.

Fourth.—To annually levy and collect taxes on all property subject to taxation when required, for the erection of a city hall, markets, hospital, city prison or work-house, the purchase of market grounds, public squares or parks, or any other public improvements: Provided, The estimated cost of a city hall, work-house or market-house may be apportioned by the City Council and collected by a series of annual assessments. But the cost of market grounds, markets, public squares or other improvements, may be levied and collected upon all the real estate and other property in the natural division of the city in which they are located. No local improvement under this section shall be ordered in any division unless a majority of the Aldermen thereof shall vote in favor of the same. But no tax or taxes shall be levied in any one year under this section which shall exceed one cent to the dollar on the property assessed for any or all purposes herein specified. The revenues arising from such market or other improvements shall be applied to the liquidating the costs thereof, and taxes shall be levied and collected to make up the deficiency.

Fifth.—To levy and collect upon all property in such district as they shall, from time to time create, a tax sufficient to defray one-half of the expenses of erecting lamp posts and lamps and lighting the streets in such districts; and the tax thus collected shall be exclusively expended for such purposes in the district paying the same.

Sixth.—To require, and it is hereby made the duty of every male resident of the city over the age of twenty-one years and under the age of fifty years, to labor three days in each year upon the streets and alleys of the city; but any person may, at his option, pay in lieu thereof two dollars: Provided, The same shall be paid within ten

days after notification by the supervisor. In default of payment as aforesaid, the sum of three dollars and costs may be collected, and no set-off shall be allowed in any suit brought to collect the same.

ARTICLE VII.

OF ASSESSMENTS FOR OPENING STREETS AND ALLEYS.

- Section 1. City Council has supreme control over the streets and alleys.
2. Manner of assessing damages for opening streets—commissioners to be appointed.
 3. Commission to be sworn—to give notice of meeting—when a building on land to be taken, manner of assessing value thereof.
 4. When a building on land to be taken, manner of giving notice to owner—owner to have reasonable time to remove building.
 5. Manner of giving notice to owner—owner to have reasonable time to take building at valuation, how disposed of.
 6. If owner refuse to take building at valuation, how disposed of.
 7. Commissioners to strike balance between benefits and damages.
 8. Commissioners to advise balance between benefits and damages.
 9. When the land belongs to different persons or is leased or mortgaged, how to proceed.
 10. Commissioners to assess and apportion the cost on the equitable benefits, and to return the same to the City Council.
 11. Clerk to give notice of assessment—objections may be heard by Council—Council may confirm, annul or refer back the assessments.
 12. Council may remove commissioners.
 13. Land not to be appropriated till paid for.
 14. When the whole of any lot taken, all contracts in relation thereto discharged.
 15. When part only of lot taken, contracts in relation to be in part discharged, and assessment to be apportioned.
 16. Persons may appeal to Circuit Court—cause may be tried by jury—burden of proof on city.
 17. When no agreement to the contrary, owner and not occupant to bear assessment.
 18. Council may change manner of proceedings.
 19. When lot owned by infant, how to proceed.

Section 1. The City Council shall have power to lay out public grounds or squares, streets, alleys and highways, and to alter, widen, construct, straighten and discontinue the same. But no street, alley or highway, or any part thereof, shall be discontinued or contracted without the consent in writing of all persons owning land or lots adjoining

ing said street, alley, or highway. They shall cause all streets, alleys and highways, or squares or grounds laid out by them to be surveyed, described and recorded in a book to be kept by the Clerk, showing accurately and particularly the proposed improvement, and the real estate proposed to to be taken; and the same when opened and made shall be public highways and public squares.

Sec. 2. Whenever any street, alley, or highway, public ground or square is proposed to be laid out, opened, altered, widened or straightened by virtue hereof, and the amount of compensation cannot be agreed upon, the City Council shall give notice of their intention to appropriate and take the land necessary for the same, to the owner thereof, by publishing said notice for ten days in the newspaper publishing the ordinances of the city; at the expiration of which time they shall choose, by ballot, three disinterested freeholders, residing in the city, as commissioners, to ascertain and assess the damages and recompense due the owners of said real estate respectively, and at the same time determine what persons will be benefited by such improvement, and assess the damages and expenses thereof on the real estate benefited thereby, in proportion as nearly as may be to the benefits resulting to each. A majority of all the Aldermen authorized by law to be elected, shall be necessary to a choice of such commissioners.

Sec. 3. The commissioners shall be sworn faithfully and impartially to execute their duties to the best of their abilities before entering upon their duties; they shall give at least five days notice to all persons interested of the time and place of their meeting for the purpose of viewing and making their assessments, which notice shall be given personally, if the owners are residents and known, or by publication in the newspaper publishing the ordinances of the city, if non-residents or unknown; they shall view the premises, and in their discretion receive any legal evidence, and may, if necessary, adjourn from day to day.

Sec. 4. If there should be any buildings standing in whole or in part upon the land to be taken, the commissioners, before proceeding to make their assessment, shall first estimate and determine the whole value of such building to the owner, aside from the value of the land and the actual

injury to him in having such building taken from him; and secondly, the value of such building to him to remove.

Sec. 5. At least five days notice shall be given to the owner of such determination when known and a resident of the city, which may be given personally or in writing at his usual place of abode. If a non-resident or unknown, the notice to all persons interested shall be given by publication in the newspaper publishing the ordinances of the city. Such notice shall specify the buildings and the award of the commissioners, and shall be signed by them. It shall also require the persons interested to appear by a day to be named therein, to give notice of their election to the City Council, either to accept the award of the commissioners and allow such building to be taken with the land condemned or appropriated, or of their intention to receive such building at the value set thereon by the commissioners to remove; if the owner shall agree to remove such building, he shall have such reasonable time for that purpose as the City Council may direct.

Sec. 6. If the owner refuses to take the building at its appraised value to remove, or fail to give notice of his intention as aforesaid, within the prescribed time, the City Council shall have power to direct the sale of such building at public auction, for cash or on credit, giving five days public notice of the sale. The proceeds of the sale shall be paid to the owner or deposited to his use.

Sec. 7. The commissioners shall thereupon proceed to make their assessment and determine and appraise to the owner the value or the real estate appropriated and the injury arising from the condemnation thereof which shall be awarded to such owner as damages, after making due allowances therefrom for any benefit which such owner may derive from such improvement. In the estimate of damage to the land, the commissioners shall include the value of the buildings (if the property of the owner of the land) as estimated by them as aforesaid, less the proceeds of the sale thereof, or if taken by the owner at the value to remove, in that case they shall only include the difference between such value and the whole estimated value of such building.

Sec. 8. If the damage to such person be greater than the benefits received, or if the benefit be greater than the damages, in either case the commissioners shall strike a balance and carry the difference forward to another column, so that the assessment may show what amount is to be received or paid by such owners respectively, and the difference only shall in any case be collected of or paid to them.

Sec. 9. If the lands and buildings belonging to different persons, or if the land be subject to lease or mortgage, the injury done to such persons respectively may be awarded to them by the commissioners, less the benefit resulting to them respectively from the improvements.

Sec. 10. Having ascertained the damages and expenses of such improvement as aforesaid, the commissioners shall thereupon apportion and assess the same, together with the costs of the proceedings, upon the real estate by them deemed benefited, in proportion to the benefit resulting from the improvements, as nearly as may be, and shall describe the real estate upon which their assessment may be made; when completed the commissioners shall sign and return the same to the City Council within thirty days of their assessment.

Sec. 11. The Clerk shall give ten days notice by publication in the newspaper publishing the ordinances of the city, that such assessment has been returned, and on a day to be specified therein will be confirmed by the City Council, unless objections are made by some person interested. (Objections may be heard by the City Council, and the hearing may be adjourned from day to day. The Council shall have power, in their discretion, to confirm or annul the assessment, or refer the same back to the commissioners; if annulled, all the proceedings shall be void—if confirmed, an order of confirmation shall be entered, directing a warrant to issue for the collection hereof; if referred back to the same or other commissioners they shall proceed to make their assessment and return the same in like manner, and give like notices as herein required in like manner, first, and all parties in interest shall have like notice and rights, and the City Council shall perform like duties and have like power, in relation to any subsequent determination as are herein given in relation to the first.

Sec. 12. The City Council shall have power to remove commissioners, and from time to time appoint others in the place of such as may be removed, refuse, neglect or are unable, from any cause, to serve.

Sec. 13. The land required to be taken for the making, opening, widening, straightening or altering any street, alley or other highway or public ground or square, shall not be appropriated until the damages awarded therefor, to any owner thereof under this act, shall be paid or tendered to such owner or his agent; or in case such owner or agent cannot be found within the city, deposited to his or their credit in some safe place of deposit other than the hands of the treasurer, and then, and not before, such lands may be taken and appropriated for the purpose required in making such improvements, and such streets, alleys or other highways or public grounds may be made or opened.

Sec. 14. When the whole of any lot or parcel of land, or other premises, under lease or other contract, shall be taken for any of the purposes aforesaid by virtue of this act, all the covenants, contracts and engagements between landlord and tenant, or any other contracting parties, touching the same or any part thereof, shall, upon the confirmation of the report of the commissioners, respectively cease and be absolutely discharged.

Sec. 15. When part only of any lot, parcel of land or other premises so under lease or contract, shall be taken for any of the purposes aforesaid, by virtue of this act, all the covenants, contracts, agreements and engagements respecting the same, upon the confirmation of the report of the commissioners, shall be absolutely discharged as to that part thereof so taken, but shall remain valid as to the residue thereof, and the rents, consideration and payments reserved payable and to be paid for, or in respect to the same shall be so proportioned as that the part thereof justly and equally payable for such residue thereof and no more, shall be paid or recoverable in any respect of the same.

Sec. 16. Any person interested may appeal from any final order of the City Council for opening, altering, widening or straightening any street, alley or other highway or public ground, to the Circuit Court of McDonough county,

by notice in writing to the Mayor at any time before the expiration of twenty days after the passage of said final order. In case of appeal the City Council shall make a return within thirty days after notice thereof, and the Court shall at the next term after return filed in the office of the Clerk thereof, hear and determine such appeal, and confirm or writ of error shall lie. Upon the trial of appeals all questions involved in said proceedings, including the amount of damages, shall be open to investigation by affidavit or oral testimony adduced to the Court; or upon application of the city or any party, the amount of damages pleadings and judgment rendered accordingly; and the burden of the proof shall in all cases, be upon the city; so show that the proceedings are in conformity with this act.

Sec. 17. In all cases where there is no agreement to the contrary, the owner or landlord, and not the tenant or occupant, shall be deemed the person who shall and ought to pay and bear every assessment made for the expense of any public improvement. Where any such assessment shall be made upon or paid by an person, when, by agreement or by law, the same ought to be borne or paid by any other person, it shall be lawful for one so paying to sue for and recover of the persons bound to pay the same, the amount so paid with interest. Nothing herein contained shall, in any way, impair or affect any agreement between landlord and tenant or other person, respecting the payment of such assessments.

Sec. 18. The City Council may, by ordinance, make any changes they may deem advisable in the proceedings herein prescribed, for ascertaining the damages and injury occasioned to any person or real estate, by reason of the condemnation of such real estate, or any real estate upon which any buildings may be situated, in whole or in part, and the assessment of such damages and injury upon persons or real estate benefited by the improvement, and in all such other respects as experience may suggest.

Sec. 19. When any known owner or other person having an interest in any real estate, residing in the city or elsewhere, shall be an infant, and any proceedings shall

be had under this act, the Judge of the Circuit Court of McDonough county, the County Judge of said county, or any judge of the Supreme Court, may, upon the application of the City Council, or such infant or his next friend, appoint a guardian for such infant, taking security from such guardian for the faithful execution of such trust, and all notices and summons required by this act shall be served on such guardian.

ARTICLE VIII.

PUBLIC IMPROVEMENTS AND ASSESSMENTS THEREFOR.

Section 1. City Council empowered.—

- 1st. To grade, pave, or change streets, alleys, and walks and drains to be made and repaired.
- 2nd. To improve public grounds.
- 3rd. To collect taxes to pay for such improvements, not exceeding five mills per annum.
- 4th. To cause walks and drains to be made and repaired.
5. When owners petition, Council may levy special tax on real estate for sewers, which shall be a lien—Council may borrow money to build sewers—ordinances creating debt not to be repealed till debt paid.
6. Owners or occupants of lots to grade and fill up the same, or to build sidewalks at their own expense— if not done as directed by Council, the city to do the same and issue a warrant to collect the expense, or may maintain suit for money paid.
7. Where expense incurred in removal of nuisance, same to be taxed against real estate or the author of it.
8. Council may compel owners of lots adjoining alleys to keep same clean.

Section 1. The City Council shall have power, from time to time, to cause any street, alley or other highway to be graded, re-graded, leveled, paved or planked, and keep the same in repair and alter and change the same.

Second—To cause side and cross walks, main drains and sewers and private drains to be constructed and laid, re-laid, cleansed and repaired, and regulate the same.

Third—To grade, improve, protect and ornament any public square or other public ground now or hereafter laid out.

Fourth—The City Council shall have power to as-

sess and collect of the owners of lots or real estate on any street or other highway, or any part thereof, in the same manner as other city taxes, or in such manner as may be prescribed by ordinance, for the purpose of grading, paving or planking such street or other highway: Provided, That such tax shall not exceed five mills per annum of the value of the property assessed.

Sec. 2. That for the purpose of establishing a system of sewerage and drainage the City Council may have power to cause the city to be laid off into districts, to be drained by principal and lateral or tributary sewers or drains, having reference to a general plan of drainage, by sewers and drains, for the whole city, and number and record the same.

Sec. 3. That when a majority in number of the owners of real estate within any district shall petition the City Council for the construction of such drains or sewers in such district, the City Council shall have power to levy and collect a special tax on the real estate within the district so drained, not to exceed five mills on the dollar per annum on the assessed value thereof, for the purpose of constructing such sewers and drains; which tax shall be annually levied and collected as other city taxes by law, and shall constitute a lien on the real estate in the district in which it is assessed; and the City Council shall have power to provide for the construction and letting of such sewers and drains, or such parts thereof as they shall deem necessary, and may from time to time extend, enlarge, and alter the same, upon such terms and conditions as they shall deem necessary; and the City Council shall have power to borrow money for the construction of such sewers and drains, payable in principal and interest from the special tax collected in such districts, or the City Council may apportion the estimated cost of such drains and sewers and collect the same by a series of annual assessments. But no ordinance creating such debt, special tax or apportionment shall be repealed or altered until the debt created thereby shall have been paid.

Sec. 4. All owners or occupants of lots or lands in front of, adjoining or upon whose premises the City Council shall order and direct sidewalks or private drains,

communicating with any main drain to be constructed, graded, repaired, relaid or cleansed, or shall declare any such land or lots to be nuisances and order the same to be graded, filled up and drained or otherwise improved, shall make, grade, repair or relay such sidewalk, or make, repair or cleanse such private drain or grade, fill up, drain or otherwise improve such lot or land at their own cost and charges within the time and in the manner prescribed by ordinance or otherwise, and if not done within the time and in the manner prescribed, the City Council may cause the same to be constructed, repaired, relaid, cleansed, filled up, graded, drained or otherwise improved, and assess the expense thereof by an order to be entered in their proceedings upon the lots and lands respectively, and collect the same by warrant and sale of the premises as in other cases. A suit may also be maintained against the owner or occupant of such premises for the recovery of such expenses as for money paid and laid out to his use at his request.

Sec. 5. In all cases where expenses may be incurred in the removal of any nuisance, the City Council may cause the same to be assessed against the real estate chargeable therewith, in the same manner prescribed in the foregoing section. Such expenses may be likewise collected of the owner or occupant of such premises in a suit for money expended to his or their use; and in case the same should not be chargeable to any real estate, suit may in like manner be brought for such expenses against the author of such nuisance, if known, or any person whose duty it may be to remove or abate the same.

Sec. 6. The City Council shall have power to compel the owners of lots or lands fronting or adjoining any private or public alley to keep the same clean, and if necessary to direct the same to be paved, planked or otherwise, and the costs thereof to be assessed and collected in the same manner as sidewalk assessment.

ARTICLE IX

COLLECTION OF TAXES AND ASSESSMENTS.

Section 1. Council may prescribe form of assessment lists and duty

2. Assessor, how made and corrected—objection thereto, when assessment corrected to be filed—an order to be entered confirming same and directing warrants to issue—and thereupon tax to be levied.
3. All taxes to be a lien—personal property may be taken to pay taxes—assessors' delay of injunction, to continue a lien.
4. Clerk to issue warrant.
5. Warrant to be signed by Mayor and Clerk—to contain copy of corrected assessment list—to be delivered to collector—when—collector, how to proceed.
6. All taxes to be collected by collector—how to proceed of state collectors—to pay revenue into treasury as fast as collected—liability in case of default—Council may prescribe duties.
7. If taxes not paid premises may be sold—when—manner of proceeding.
8. Premises, how advertised for sale—proceedings at any time may be stopped by payment of taxes.
9. Sale, how conducted—two certificates to be made, how disposed of and what to contain—deeds of collector—Clerk to keep record of sales.
10. Redemptions, how made—deeds, how made—Clerk to keep abstract thereof—his fees for deeds.
11. Assignee of certificate entitled to deed.
12. When no bidder premises to be sold to the city.
13. Tax deed to be evidence of what—what must be proved to defeat tax title—who may question the same.

Section 1. The City Council shall have power, by ordinance, to prescribe the form of assessment lists, and prescribe the duties and define the powers of assessors. They may also make such rules and give such directions in relation to revising, altering or adding to the lists as they may deem proper and expedient.

Sec. 2. The annual assessment lists shall be returned by the assessor on or before the first Monday in August in each year, but the time may be extended by order of the City Council. On the return thereof the City Council shall fix a day for hearing objections thereto, and the Clerk shall give notice of the time and place of such hearing by publication in the newspaper publishing the ordinances of the city; and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections. The City Council shall have power to supply omissions in said assessment lists, and for the purpose of equalizing the same, to alter, add to, take from and otherwise correct and revise the same, or to refer the

same back to the assessor with instructions to revise and correct the same.

Sec. 3. When the assessment lists have been corrected and revised, the same shall be filed, and an order confirming the same and directing the warrant to be issued for the collection thereof shall be entered by the Clerk. The City Council shall thereupon, by an ordinance or resolution, levy such sum or sums of money as may be sufficient for the several purposes for which taxes are herein authorized to be levied, not exceeding the authorized percentage, particularly specifying the purposes for which the same are levied, and if not for general purposes, the division of the city upon which the same are laid.

Sec. 4. All taxes or assessments, general or special, levied or assessed by the City Council under this act, or any ordinance in pursuance thereof, shall be a lien upon the real estate upon which the same may be imposed, voted or assessed for two years from and after the corrected assessment lists shall be confirmed, or the passage of the order for assessment, and on personal estate, from and after the delivery of the warrant for the collection thereof until paid, and no sale or transfer shall affect the lien. Any personal property belonging to the debtor may be taken and sold for the payment of taxes, on real or personal estate, and the real estate shall be liable for the taxes on personal estate in case of removal or when the tax cannot be made out of the personal estate, in the same manner as is prescribed by the laws of this state: Provided, That in case the collection of any assessment shall be delayed by injunction or other judicial proceedings, the same shall continue a lien, unless set aside, upon the real estate, for the period of two years from and after the final disposition of such injunction or other judicial proceedings.

Sec. 5. The Clerk shall issue a warrant or warrants for taxes, rule therein separate columns, in which the tax levied shall be respectively set down opposite the name of the person or such real estate subject thereto. And each column shall be headed with the name of the tax therein set down.

Sec. 6. All warrants issued for the collection of gen-

eral or special taxes and assessments, shall be signed by the Mayor and Clerk, with the corporate seal thereto attached, and contain true and perfect copies of the corrected assessment lists, upon which the same may be issued. They shall be delivered to the collector for collection within thirty days after the filing of the corrected lists, unless further time for this purpose shall be given by the City Council. If not otherwise paid the collector shall have power to collect said taxes with interest and costs by suit in the corporate name, or by distress and sale of personal property as aforesaid, after a demand and refusal to pay the same: Provided, A notice, published by the collector for ten days in the newspaper printing the ordinances of the city, shall be deemed a demand, and a neglect to pay taxes for twenty days thereafter shall be deemed a refusal. The assessor's lists shall in all cases be evidence on the part of the city corporation.

Sec. 7. All taxes and assessments, general or special, shall be collected by the collector in the same manner and with the same power and authority as is given by law to the collectors of county and state taxes. He shall pay the same as fast as collected into the city treasury, and his duty in regard to returning warrants and settling with the city, and his liabilities, in case of default or misconduct, shall be the same as prescribed by law: Provided, The City Council shall have the power to prescribe the powers, duties and liabilities of collectors by ordinance.

Sec. 8. In case of the non-payment of any taxes or assessments levied or assessed under this act, the premises may be sold for the payment thereof at any time within two years after the confirmation of the assessment by the City Council. Before any such sale or order shall be made by the City Council, which shall be entered at large in the journals or record kept by the Clerk, directing the collector to sell, particularly describing the delinquent premises to be sold, and the assessment for which the sale shall be made, a certified copy of which order, under the corporate seal, signed by the Mayor or presiding officer and Clerk, shall be delivered to the collector, which, together with the warrant, shall constitute the process upon which such sale shall be made.

Sec. 9. The collector shall then advertise such premises in the newspaper publishing the ordinances of the city, for sale, at least thirty days from and after the first publication of such notice, describing the premises by figures or otherwise, with the name of the owner (when known) and the several amounts of the taxes and assessments thereon and costs. Said notice shall also contain the time and place of sale, and shall be published at least four times. The proceedings may be stopped at any time on the payment of the taxes or assessment and interest with expenses of advertising.

Sec. 10. All sales shall be conducted in the manner required by law, but the City Council shall have power to prescribe the manner of conducting the same. The sale shall be made for the smallest portion of ground, to be taken from the east side of the premises, for which any person will take the same and pay the taxes or assessments thereon, with interest and costs of sale. Duplicate certificates of the sale shall be made and subscribed by the collector, one of which shall be delivered to the purchaser and the other filed in the office of the Clerk; which certificates shall contain the name of the purchaser, a description of the premises sold, the amount of taxes or assessments with the interest and expenses for which the same was sold, and the time when the right to redeem will expire. The collector shall be allowed the same fees for selling as are allowed by law for similar services, or his fees may be regulated by ordinance. The Clerk shall keep a record of such sales, which shall be open for public inspection at all reasonable times.

Sec. 11. The right of redemption in all cases for (from) sales for taxes or assessments, shall exist to the owner, his heirs, creditors or assigns, to the same extent as is allowed by law in cases of sales of real estate for taxes, on the payment in specie of double the amount for which the same was sold, and all taxes accruing subsequent to the sale with interest. If the real estate of any infant, feme covert or lunatic be sold under this act, the same may be redeemed at any time within one year after such disability is removed. In case of redemption the money may be paid to the purchaser or for him to the City Clerk, who shall make a special deposit thereof with the Treasurer, taking

his receipt therefor. If not redeemed according to law, the City Council shall, upon the return of the certificate, or proof of its loss, direct a deed to be executed to the purchaser, under the corporate seal, signed by the Mayor or presiding officer of the City Council and countersigned by the Clerk, conveying to such purchaser the premises so sold and unredeemed as aforesaid. An abstract of all deeds so made and delivered shall be entered by the Clerk in the book wherein tax-sales are recorded. A fee of two dollars may be charged by the Clerk for any deed so issued.

Sec. 12. The assignee of any tax certificate of any premises sold for taxes or assessments, under authority of the city, shall be entitled to receive a deed of such premises in his own name and with the same effect as though he had been the original purchaser.

Sec. 13. If at any sale of real or personal estate for taxes or assessments, no bid shall be made for any parcel of land or any goods or chattels, the same shall be struck off to the city, and thereupon the city shall receive, in the corporate name, a certificate of the sale thereof, and shall be vested with the same rights as other purchasers at such sales.

Sec. 14. All deeds made to purchasers of lots sold for taxes or assessments, by order of the City Council shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs or assigns to the premises thereby conveyed, of the following facts:

First—That the land or lot conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed and assessed in the manner required by law.

Second—That the taxes or assessments were not paid at any time before the sale.

Third—That the land conveyed had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

First—That the land or lot was advertised for sale for the length of time and in the manner required by law.

Second—That the land was sold for taxes or assessments, as stated in the deed.

Third—That the grantee in the deed was the purchaser.

Fourth—That the sale was conducted in the manner required by law. And in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the persons claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the said title, either that the land was not subject to taxation at the date of the sale; that the taxes or assessments had been paid; that the said land had never been listed or assessed for taxation or assessment, or that the same had been redeemed according to the provisions of this act, and that such redemption was made for the use and benefit of the person having the right of redemption under the laws of the state; but no person shall be permitted to question the title acquired by the said deed without first showing that he, she or they claim title, had title to the land at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the land have been paid by such person or persons under whom he claims title as aforesaid.

ARTICLE X

FIRE DEPARTMENT

- Section. 1. Council empowered to prevent erection of wooden buildings—to declare dilapidated buildings nuisances and to remove the same—to declare wooden buildings nuisances, and to remove the same.
2. Council empowered—
- 1st. To regulate construction and cleansing of chimneys.
 - 2nd. To prohibit or remove dangerous chimneys or flues.
 - 3rd. To regulate deposit of ashes.
 - 4th. To require inhabitants to keep fire-buckets—to regulate their use—to require owners of premises to construct and keep in repair walls or cisterns.
 - 5th. To regulate manufactures deemed hazardous.
 - 6th. To regulate the use of fire-works and fire-arms.
 - 7th. To regulate the storage, keeping and conveying of combustibles—to regulate the use of lights in

- stables, etc.
- 10h. To regulate parapet and partition walls and partition fences.
- 9h. To compel the building of scuttles in roofs and stairs leading to roof.
- 10i. To keep suspicious persons away from fires—to compel all persons to aid in the extinguishing of fires and the preservation of property.
- 11h. To establish regulations concerning fires.
3. Council may procure fire engines, etc., and build houses for their preservation—Council empowered—
- 1st. To organize fire companies.
- 2nd. To appoint persons to take charge of engines, etc.
- 3rd. To prescribe duty of firemen, and to punish neglect of duty.
- 4th. To appoint engineers of fire department—their duties.
4. Members of Council and firemen exempt from military and jury duty, and the payment of street tax.

Section 1. The City Council, for the purpose of guarding against the calamities of fire, shall have power to prohibit the erection, placing or repairing of wooden buildings within the limits prescribed by them, without their permission, and direct and prescribe that all buildings within the limits prescribed shall be made or constructed of fire-proof materials; and to prohibit the rebuilding or repairing of wooden buildings within the fire limits, when the same shall have been damaged to the extent of fifty per cent of the value thereof, and to prescribe the manner of ascertaining such damages; to declare all dilapidated buildings to be nuisances, and to direct the same to be repaired, removed or abated in such manner as they shall prescribe to direct; to declare all wooden buildings within the fire limits, which they may deem dangerous to contiguous buildings or in causing or promoting fires, to be nuisances, and to require or cause the same to be removed or abated in such manner as they shall prescribe.

Sec. 2. The City Council shall have power—

First.—To regulate the construction of chimneys and flues so as to admit of chimney-sweepers or other modes of cleaning, and to compel the sweeping and cleaning of chimneys.

Second.—To prevent and prohibit the dangerous con-

struction and condition of chimneys, flues, fire-places, stovepipes, ovens or any other apparatus used in or about any buildings or manufactory, and to cause the same to be removed or placed in a secure and safe condition when considered dangerous.

Third.—To prevent the deposit of ashes in unsafe places, and to appoint one or more officers to enter into all buildings and enclosures, to examine and discover whether the same be in a dangerous state, and to remove such as may be dangerous to be put in a safe condition.

Fourth.—To require the inhabitants to provide as many fire buckets, and in such manner and time as they shall prescribe, and to regulate the use thereof in times of fire, and to require all owners and occupants of buildings to construct and keep in repair wells or cisterns upon their premises.

Fifth.—To regulate and prevent the carrying on of manufactories and works dangerous in promoting or causing fires.

Sixth.—To regulate, prevent and prohibit the use of fireworks and firearms.

Seventh.—To direct and prohibit the management of houses for the storing of gunpowder and other combustible and dangerous materials within the city; to regulate the keeping and conveying of the same, and the use of candles and other lights in stables and other like houses.

Eighth.—To regulate and prescribe the manner and order the building of parapet and partition walls and of partition fences.

Ninth.—To compel the owners and occupants of houses or other buildings to have scuttles in the roof, and stairs or ladders leading to the same.

Tenth.—To authorize the Mayor, Fire Wardens or other officers of said city, to keep away from the vicinity of any fire all idle and suspicious persons, and to compel all officers of the city, and all other persons, to aid in the extinguishment of fires and in the preservation of property ex-

posed to danger thereat, in preventing goods from being stolen.

Eleventh—And generally to establish such regulations for the prevention and extinguishment of fires as the City Council may deem expedient.

Sec. 3. The City Council may procure fire engines and all other apparatus used in the extinguishment of fires and have the charge and control of the same and provide fit and secure houses and other places for keeping and preserving the same; and shall have power—

First—To organize fire, hook, hose, ax and ladder companies.

Second—To appoint, during their pleasure, a competent number of able and respectable inhabitants of the city firemen, to take the care and management of the engines and other apparatus and implements used and provided for the extinguishment of fires.

Third—To prescribe the duties of firemen and to make rules and regulations for their government, and to impose reasonable penalties upon them for a violation of the same, and for incapacity, neglect of duty or misconduct to remove them.

Fourth—The City Council shall have power to appoint a chief and assistant engineers of the fire department, and they, with the other firemen, shall take the care and management of the engines and other apparatus and implements provided and used for the extinguishment of fires, and their powers and duties shall be prescribed and defined by the City Council.

Sec. 4. The members of the City Council and firemen shall, during their terms of service as such, be exempted from serving on juries, in the militia or working on the streets or paying any tax for the same. The name of each fireman shall be registered with the Clerk of the city, and the evidence to entitle him to the exemption provided in this section shall be the certificate of the Clerk, under the corporate seal, for the year in which the exemption is claimed.

ARTICLE XI

BOARD OF HEALTH.

- Section 1. Board of Health to consist of three or more commissioners—Mayor to be president and the City Clerk to be clerk of the board.
2. Duty of Board of Health—to visit all persons infected with contagious disease.
 3. Persons or things infected with contagion may be removed five miles beyond the limits of city—the board may destroy materials infected.
 4. Council may prescribe duties of Board and punish disobedience.
 5. Council may confer powers of Marshal and Supervisor on Board.
 6. Physicians to report to the City Clerk all cases of contagious disease, under penalty of fifty dollars.

Section 1. The Board of Health shall consist of three or more commissioners to be appointed annually by the City Council, and the Mayor or presiding officer of the City Council shall be president of the board, and the City Clerk shall be their clerk and keep minutes of its proceedings.

Sec. 2. It shall be the duty of health officers to visit every sick person who may be reported to them as hereafter provided, and to report, with all convenient speed, their opinion of the sickness of such person to the clerk of the board, and to visit and inspect all houses or places in which they may suspect any person to be confined with any pestilential or infectious disease, or to contain unsound provisions, or damaged or putrid animal or vegetable matter, or other unwholesome articles, and to make report of the state of the same with all convenient speed to the clerk of the board.

Sec. 3. All persons in the city, not residents thereof, who may be infected with any pestilential or infectious disease, or all things which, in the opinion of the board, shall be infected by or tainted with pestilential matter and ought to be removed so as not to endanger the health of the city, shall, by order of said board be removed to some proper place, not exceeding five miles beyond the limits of the city, to be provided by the board at the expense of the person to be removed, if able; and the board may order any furniture or wearing apparel to be destroyed

whenever they may deem it necessary for the health of the city by making just compensation.

Sec. 4. The City Council shall have power to prescribe the powers and duties of the Board of Health and to punish by fine or imprisonment, or both, any refusal or neglect to observe the orders and regulations of the board.

Sec. 5. The health officers may be authorized by the City Council, when the public interest requires, to exercise, for the time being, such of the powers, and perform such of the duties of Marshal or Supervisor as the City Council may, in their discretion, direct, and may be authorized to enter all houses and other places, private or public, at all times, in the discharge of any duty under this act or any ordinance.

Sec. 6. Every person practicing physic in this city who shall have a patient laboring under any malignity, infectious or pestilential disease, shall forthwith make report thereof in writing to the clerk of the board, and for neglect to do so shall be considered guilty of a misdemeanor and liable to a fine of fifty dollars, to be sued for and recovered, with costs, in an action of debt, in any court having cognizance thereof, or before any justice of the peace, for the use of the city.

ARTICLE XII

SCHOOLS AND SCHOOL FUNDS.

- Section 1. Macomb School District described and created.
2. Council to have control of school property—trustees of schools for each township to appoint commissioners—their duty—school property, how divided.
 3. When division is made, trustees to pay over to city.
 4. Council shall cause abstract of white children to be made out and delivered to County School Commissioner who shall pay City Clerk school fund.
 5. School property vested in city—Council to have entire control of schools—may convey school property.
 6. School fund not to be impaired—surplus interest to form part of fund.
 7. Council empowered—
1st. To build school houses, etc.
2nd. To buy or lease sites.

- 3rd. To furnish schools with furniture, etc.
- 4th. To maintain schools.
- 5th. To fix amount of compensation for teachers.
- 6th. To prescribe books and studies.
- 7th. To create new districts.
- 8th. Council to be school inspectors.
- 9th. General powers.

10. Council may appoint agent to take school property.
11. Agent to give bond—liable to fine and imprisonment.
12. School funds to be loaned.
13. Notes and securities, how taken.
14. The borrower to pay all expenses attending the loan.
15. Of the debts of deceased persons, amount due school fund to be first paid.
16. If default made in payment of principal or interest, suit to be brought.
17. Judgments to bear ten per cent. interest—city may purchase land sold on execution.
18. Costs not to be chargeable to school fund.
19. School agent may require additional security.
20. Council to publish statement in relation to schools.
21. School fund to be kept separate from other city funds.
22. School district may be enlarged—how.

Section 1. All that part of township No. five (5), north of range two (2), and No. five (5) north of range three (3), and No. six (6) north of range two (2), and No. six (6) north of range three (3), all west of the fourth principal meridian, lying within the corporate limits of the city of Macomb, with such other parts of said townships as may be incorporated with and come under the jurisdiction of said city, is hereby created into a common school district to be known as the Macomb School District.

Sec. 2. The school land, school fund, and all other real and personal estate of said townships, shall be divided between the said city of Macomb and the portion of the townships lying without the limits thereof, in the proportion and manner following: The trustees of schools of each of said townships shall, within three months from the passage of this act, appoint two commissioners who shall be respectable householders, one of whom shall reside in the city and the other in the township without the city, who, after being duly sworn well and truly to perform their duties, shall proceed to ascertain, as nearly as may be, the whole number of white persons under the

age of twenty-one years residing in the whole of their respective townships and the whole number residing in said city and without said city in the said townships, and thereupon the said trustees of each of said townships shall divide and apportion the aforesaid township fund and real and personal estate between said city and said townships without the city, in the proportion of and according to the number of persons aforesaid residing within the city, and without the city, in the said townships, and thereupon the said trustees of each of said townships shall divide and apportion the aforesaid township fund and real and personal estate between said city and said townships without the city, in the proportion of and according to the number of persons residing aforesaid within the city and without the city in the said townships respectively; and the said commissioners shall have power to make partition of and division of all the funds and real and personal estate belonging to the said townships, between the city and the portion of townships without the city in the proportions aforesaid, and having completed the same, shall make a full return of their proceedings to the trustees aforesaid. In case the commissioners shall refuse or neglect to perform their duties, the trustees shall appoint others in their stead, who shall be chosen, sworn, and perform like duties assigned to the first commissioners, and the trustees shall have power to fill vacancies and make appointments until the objects of this act are carried into effect.

Sec. 3. The trustees of schools of said township, shall, upon such division, partition, and return of the commissions being made, pay over and deliver to the clerk of said city of Maconb, the funds and other personal estate, and make, execute and deliver to the said city of Maconb all necessary deeds and other conveyances for the distributive share of the real estate of said township to which the said Maconb School District may be entitled according to the division and distribution aforesaid, and take receipts for the same from the clerk.

Sec. 4. It shall be the duty of the City Council to cause an abstract of the whole number of white children under the age of twenty-one years, in the Maconb School

District, to be furnished to the school commissioner of McDonough county within ten days after the same shall have been ascertained, and the school commissioner shall annually pay to the clerk of the city of Maconb the proportion of the school, college and seminary fund to which the said Maconb School District may be entitled, according to the number of persons under the age aforesaid residing in said district, taking his receipt therefor; but no abstract shall be required to be returned to the school commissioner oftener than is required by law in other school districts.

Sec. 5. The school land, school fund and other property of the Maconb School District shall be vested in the city of Maconb. The City Council shall have power at all times to do all acts and things in relation to said school land, school fund and other property which they may think proper to their safe preservation and efficient management, and sell or lease said lands and all other property which may have been or may hereafter be donated to the school fund, on such terms and at such times as the City Council may deem most advantageous, and on such sale or lease to make, execute and deliver all proper conveyances, which said conveyance shall be signed by the Mayor or presiding officer and countersigned by the Clerk, and sealed with the corporate seal; but the proceeds arising from such sales shall be added to and constitute a part of the school fund.

Sec. 6. Nothing shall be done to impair the principal of said fund or to appropriate the interest accruing from the same to any other purpose than the payment of teachers in the public schools of the district; and should there be any surplus of interest, it shall be carried to and form a part of the school fund.

Sec. 7. The City Council shall have power—

First.—To erect, hire or purchase buildings suitable for school houses, and keep the same in repair.

Second.—To buy or lease sites for school houses with the necessary ground.

Third.—To furnish schools with the necessary fixtures, furniture and apparatus.

Fourth—To maintain, support and establish schools and supply the inadequacy of the school fund for the payment of city teachers from school taxes.

Fifth—To fix the amount of compensation to be allowed to teachers.

Sixth—To prescribe the school book to be used and the studies to be taught in the different schools.

Seventh—To lay off and divide the city into smaller school districts, and from time to time alter the same or create new ones, as circumstances may require.

Eighth—The City Council shall be ex officio inspectors of schools, but they may appoint seven inspectors to be denominated "A Board of School Inspectors," also three trustees of schools in each district and to establish and prescribe the powers and duties of each.

Ninth—And generally to have and possess all the rights, powers and authorities necessary for the proper management of schools and the school funds and funds belonging to the said school district, with power to enact such ordinances as may be necessary to carry their powers and duties into effect.

Sec. 8. The City Council shall have power to appoint a school agent who shall have the custody and management of the money, securities and property belonging to the school fund of the district, subject to the direction of the City Council.

Sec. 9. The school agent, before entering upon his duties, shall give bond in such amount and with such conditions and securities as the Council may require; his compensation shall not be paid out of the school fund; and he shall be subject, for misconduct in office, to the same penalties and imprisonment as school commissioners or may be subject to by law.

Sec. 10. The school fund shall be kept loaned at interest at the rate of ten per cent per annum, payable semi-annually in advance. No loan shall be made for a longer period than five years, and all loans exceeding one hundred dollars shall be secured by unincumbered

real estate of double the value, at the least, of the sum loaned, exclusive of the value of the perishable improvements thereon; for sums less than one hundred dollars, two good securities besides the principal shall be required: Provided, The City Council shall have power to reduce the rate of interest by a vote of two-thirds of all the Aldermen elected.

Sec. 11. All notes and securities shall be taken to the city of Macon for the use of the inhabitants of said city, for school purposes; and in that name all suits, actions and every description of legal proceedings may be had.

Sec. 12. All expenses of preparing or recording of securities shall be paid exclusively by the borrower.

Sec. 13. In payment of debts of deceased persons, those due the school fund shall be paid in preference to all others, except expenses attending the last illness and funeral of the deceased, not including the physician's bill.

Sec. 14. If default be made in the payment of interest, or of principal when due, interest at the rate of fifteen per cent upon the same shall be charged from the default and may be recovered by suit or otherwise. Suit may be brought for the recovery of interest only when the principal is not due.

Sec. 15. All judgments recovered for interest or principal, or both, shall respectively bear interest at the rate of ten per cent per annum from the rendition of judgment until paid; and in case of the sale of real estate thereon the city of Macon may become the purchaser thereof for the use of the school fund, and shall be entitled to the same rights given by law to other purchasers. On redemption, ten per cent shall be paid from the time of sale.

Sec. 16. No costs made in the course of any judicial proceedings in which the city of Macon, for the use of the school fund, may be a party, shall be chargeable to the school fund.

Sec. 17. If the security money on any loan should, at

any time before the same is due, become, in the judgment of the school agent and City Council, insecure, the agent shall notify the person indebted therefor, and unless further satisfactory security shall be forthwith given by the debtor, judgment may be recovered thereon as in other cases, although no conditions to that effect be inserted in the note or other security.

Sec. 18. The Council shall annually publish at such times as may be prescribed by ordinance of the city, in the newspaper publishing the ordinances of the city, a statement of the number of the pupils instructed in the year preceding, the several branches of education pursued by them, and the receipts and expenditures of each school, specifying the sources of such receipts and the object of such expenditures.

Sec. 19. The school tax shall be paid into the city treasury and be kept a separate fund for the building of school houses and keeping the same in repair, and supporting and maintaining schools; and should there be at any time a surplus, the same may be paid over to the school fund and form a part of the same.

Sec. 20. Any person owning land, or residing around or adjacent to said city, within two miles thereof, may, with his consent, be annexed to said Macomb School District, and school tax may be levied and collected upon the lands and property of such person, subject to taxation by the city collector in the same manner as school taxes within the said district.

(See "An Act to provide for the appointment of school directors and members of the board of education in certain cases".)

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 1.

1. Council annually to publish financial statement.
2. Inhabitants of city not to pay county road tax.
3. City supervisor to notify persons to work on streets—if they refuse to work to pay fine.
4. City to support poor and pay part of circuit court expenses—not to pay county taxes except for railroad bonds—to have share of railroad stock.

5. Fines to be paid into city treasury.
6. Council may survey and pat city.
7. Taxes for local purposes to be expended in ward of persons paying same.
8. City supervisor liable to indictment for neglect of duty.
9. Council nor Mayor to remit fine except by vote of two-thirds of Aldermen.
10. No vote to be reconsidered at special meeting, unless at as large a meeting as when vote taken.
11. Burial grounds exempt from execution and attachment.
12. Ordinances imposing fine to be published three days—publication how proved.
13. Actions to recover penalties—how brought.
14. First process to be summons or warrant.
15. Police Justices may be appointed—municipal courts to be established—their jurisdiction.
16. Execution—when may issue—nature of—defendant may be imprisoned—expenses for prosecutions to be paid into city treasury.
17. Penalty for injuring public buildings, etc.—civil action may be maintained.
18. No person an incompetent judge, witness, etc., because a resident of city, in any action in which city is interested.
19. Ordinances, etc., now in force not repealed.
20. Rights and actions which have accrued, to vest in corporation.
21. Property of the city of Macomb, to vest in this corporation—officers to continue in office and to be governed by this act.
22. Ordinances printed, and published to be received without further proof.
23. Style of ordinances.
24. Additions may be made to city.
25. This act not to invalidate acts of City Council.
26. Officers of city may arrest, with or without process, for violation of ordinance, and detain person in custody until trial may be had.
27. City Council to possess all powers heretofore conferred.
28. Digest of ordinances to be published.
29. This declared a public act—when to take effect.

Section 1. The City Council shall, at least ten days before the annual election in each year, cause to be published in the newspaper publishing the ordinances of the city, a correct and full statement of the receipts and expenditures from the date of the last annual report, together with the sources from whence the former are derived and the mode of disbursement, and also a distinct statement of the whole amount assessed, received and expended in the respective wards and divisions for making and repaving streets, highways and bridges for the same period, together with such information as may be necessary to a full understanding of the financial affairs of the city.

Sec. 2. The inhabitants of the city of Macomb are hereby exempted from working on any road or highway beyond the limits of the city, and from paying the tax in lieu thereof without said limits.

Sec. 3. The supervisor shall demand the services of all persons who are required to labor on the streets and alleys of the city, at such time and place and in such manner as the City Council may direct or the supervisor shall deem necessary. He shall deliver or cause to be delivered or left at the usual place of abode or business of any person so required to labor as aforesaid, a written or printed notice, or partly written or partly printed notice, in such form as the City Council shall prescribe; which notice shall be given at least five days previous to the first day on which he or they are required to labor, requiring such person to appear at such time and place as may be designated, for the purpose of laboring upon the streets and alleys. But a similar notice, published for ten days in the newspaper publishing the ordinances of the city, by the supervisor, or posted up in three of the public places of the ward or district, shall be deemed a sufficient notice to require all persons to appear and labor as aforesaid. Upon the neglect of any person to appear and labor as aforesaid, or to pay the tax in lieu thereof, the collector shall collect from each person, in the same manner as other taxes, the sum of three dollars, with his commission for collecting the same added thereto, or the same may be recovered by suit, with costs, as in other cases.

Sec. 4. The county of McDonough shall be exempt from the support of any citizen of said city who may become a pauper, but the City Council shall provide for the support and care of all paupers belonging to said city, and pass such ordinances and regulations as they shall deem proper for the purpose thereof. The City Council shall also provide for the payment of all costs, in the circuit court of McDonough county, of the conviction of any citizen of said city for any criminal offense, and the prosecuting attorney's fees and the jailor's fees, in case the same cannot be collected from the offender. Or the City Council may provide for the payment to the county of McDonough, annually, of such sums as will be a fair

proportion of the expenses of the county, for the circuit court of said county—the amount to be ascertained and fixed by the City Council and the county court of said county, and to be apportioned equitably and justly. In consideration of the support of paupers and the payment of the expenses and costs aforesaid, all the real estate within said city and all the personal property of the inhabitants of said city, shall be exempt from all taxes for county purposes, except for the purpose of paying the interest, and finally the principal, of the bonds of McDonough county, issued, or hereafter to be issued, as subscriptions for railroad stock: Provided, that upon the final payment of any such bonds, the said city shall be entitled to a pro rata amount of the stock for which they were given with said county according to the amount paid therefor by said city.

Sec. 5. All fines, forfeitures and penalties collected for offenses committed within said city shall be paid into the treasury of said city by the officers collecting the same, and all fines and forfeitures collected of any citizen of said city for any conviction in the circuit court, shall be paid over in like manner.

Sec. 6. The City Council shall have power to cause the blocks and lots of the city to be surveyed, platted and numbered in consecutive numbers from one upwards, and to designate and number all fractional or other lots or blocks in such manner as they may prescribe by ordinance, and such plat, designation and numbers, when made and duly recorded, shall be a good and valid description of said blocks and lots, or fractional blocks and lots to establish mark and declare the boundaries and names of streets and alleys; to require that all additions hereafter made to said city, or all lands adjoining or within the same, laid out into blocks or lots, shall be laid out and platted to correspond and conform to the regular blocks, streets and alleys already laid out and established within the city.

Sec. 7. The City Council shall, in all expenditures for purposes strictly local, expend annually, in the several natural divisions of the city, such proportions, as near as may be, of the whole expenditures for like purposes during the same period, as will correspond to the several sums

contributed by each division to the general fund, that taxes shall be expended in the several wards or districts where the persons paying the same may respectively reside.

Sec. 8. The supervisor, in addition to the penalties prescribed by ordinance shall for willful neglect of duty, be liable to indictment and fine in the same manner as supervisors under the laws of the state.

Sec. 9. Neither the City Council or Mayor shall remit any fine or penalty imposed upon any person for a violation of any laws or ordinances of said city, or release from confinement, unless two-thirds of all the Aldermen elected shall vote for such release or remission; nor shall anything in this act be so construed as to oust any court of jurisdiction to abate and remove nuisances within its jurisdiction by indictment or otherwise.

Sec. 10. No vote of the City Council shall be reconsidered or rescinded at a special meeting unless the meeting be called in whole or in part for that purpose, and the Aldermen be so notified, and unless at such special meeting there be present as large a number of Aldermen as was present when the vote was taken.

Sec. 11. The cemetery lots which may be laid out and sold by the city or private persons, for private places of burial, shall, with the appurtenances, be exempt from execution and attachment.

Sec. 12. Every ordinance, regulation and by-law imposing any penalty, fine, imprisonment or forfeiture for a violation of its provisions, shall, after the passage thereof, be published three days in the newspaper publishing the ordinances of the city, and proof of such publication, by the affidavit of the printer or publisher of such newspaper, taken before any officer authorized to administer oaths, and filed with the Clerk or any other competent proof of such publication, shall be conclusive evidence of the legal publication and promulgation of such ordinance, regulation or by-law in all courts and places.

Sec. 13. All actions brought to recover any penalty or forfeiture incurred under this act, or any ordinance, by-law or police regulation made in pursuance thereof, shall

be brought in the corporate name. It shall be lawful to declare generally in debt, for such penalty, fine or forfeiture, stating the clause of this act or the by-law or ordinance under which the penalty is claimed, and to give the special matter in evidence under it.

Sec. 14. In all prosecutions for any violation of any ordinance, by-law or regulation, the first process shall be a summons, unless oath or affirmation be made for a warrant, as in other cases.

Sec. 15. The City Council shall have power to designate one or more justices of the peace in said city, who shall have jurisdiction in any action for the recovery of any fine, penalty or forfeiture under this act, or any ordinance, by-law or police regulation, anything in the laws of this state to the contrary notwithstanding. Such justices shall have power to impose fines and penalties, not exceeding the amount authorized by the Constitution of the state. There shall be such local court of civil and criminal jurisdiction as may be established by the general assembly in the cities of the state, in accordance with the Constitution of the state. Such court shall have jurisdiction over all cases arising under this act, or any ordinance of said city in pursuance thereof, and such other civil and criminal jurisdiction as may be provided by law.

Sec. 16. Execution may be issued immediately on rendition of judgment. If the defendant has no goods or chattels or real estate within the county of McDonough, whereof the judgment can be collected, the executive shall require the defendant to be confined in the county jail, work-house or city prison for a term not exceeding six months, in the discretion of the court rendering judgment, and all persons who may be committed under this section shall be confined one day for each one dollar of such judgment and costs. All expenses incurred in prosecution for the recovery of any fine, penalty or forfeiture, when collected, shall be paid into the city treasury.

Sec. 17. Any person who shall injure or destroy any bridge or public building, or other property belonging to the city, or shall cause or procure the same to be injured or destroyed, shall be subject to a penalty not exceeding

AMENDMENT

An Act to Authorize the City of Macomb to Elect Supervisors and Other Officers.

- Section 1. Limits.
2. Overseer of poor.
 3. Taxes.
 4. Election precinct.
 5. Supervisor and assistant.
 6. City officers.
 7. Election of police magistrate.
 8. Vacancies.

Section 1. Be it Enacted by the People of the State of Illinois, represented in the General Assembly, That after the taking effect of this act, the territory now or hereafter to be embraced within the limits of the City of Macomb, in McDonough county, in this state, shall not, for township purposes, be included within the jurisdiction either of the townships or Scotland, Chalmers, Emmet or Macomb.

Sec. 2. At the annual election of city officers in said city, there shall be elected one overseer of the poor for said city, who shall have the same powers, rights and privileges, and perform the same duties as overseers of the poor in townships in counties acting under township organization, but the accounts of such overseers of said city, instead of being audited by the township auditor, shall be audited by the common council of said city, and certified by them to the Board of Supervisors of said county, who shall cause an order to be drawn on the treasurer of said county for the payment thereof.

Sec. 3. The real and personal property, subject to taxation within said city, shall be assessed by the city assessor, and all state and county taxes within the same shall be collected by the tax collector of said city, in the same manner and for the same compensation as assessments and collection of taxes are made in other townships in said county; said collector being required to give like bond as said township collector, which bond may be ap-

proved by either of the supervisors of said city.

Sec. 4. Said city is hereby declared to be an election precinct for all general or special state or county elections, and the judges and clerks of such elections shall be appointed by the common council of said city, and said common council shall have power to divide said city into election precincts, but not exceeding one for each ward.

Sec. 5. At each annual election for city officers in said city, there shall be elected by the qualified voters thereof, one supervisor and one assistant supervisor for said city, each of whom shall possess all rights, powers and privileges of supervisors of the several townships in said county, and the common council of said city may divide said city into two districts, each of which shall be entitled to elect one supervisor, but in forming districts no ward shall be divided.

Sec. 6. No justice of the peace, constable or notary public shall be ousted of his office in consequence of the passage of this act, but in case of the death, resignation or removal of any justice of the peace (police magistrate excepted), constable or notary public in said city, the vacancy occasioned by such death, resignation or removal, shall not be filled, unless such vacancy shall diminish the number of like officers to which said city shall be entitled: Provided, said city shall be entitled to as many justices of the peace as towns now are, or hereafter may be.

Sec. 7. At each election of police magistrates and city justices of the peace in said city, there shall be elected the like number of constables.

Sec. 8. The City Council shall have power to appoint, to fill all vacancies in the office of supervisor, assistant supervisor and overseer of the poor.

Sec. 9. This act shall take effect and be in force from and after its passage.

Approved February 23, 1867.

five hundred dollars for such offense, to be recovered by the city in an action of debt, and may be imprisoned not exceeding six months, in the discretion of the court before whom such conviction may be had, and such person shall also be liable in a civil action at the suit of the city for the damages occasioned by such injury or destruction.

Sec. 18. No person shall be an incompetent juror, justice, witness or juror, by reason of his being an inhabitant or freeholder in the city of Macon, in any action or proceeding in which said city may be a party in interest.

Sec. 19. All ordinances, regulations and resolutions now in force in the city of Macon, and not inconsistent with this act, shall remain in force under this act until altered, modified or repealed by the City Council after this act shall take effect.

Sec. 20. All rights, actions, fines, penalties and forfeitures, in suit or otherwise, which have accrued under the several acts consolidated herein, shall be vested in and prosecuted by the corporation hereby created.

Sec. 21. All property, real, personal or mixed, belonging to the city of Macon, is hereby vested in the corporation created by this act, and the officers of said corporation now in office shall respectively continue in the same until superseded in conformity to the provisions hereof, but shall be governed by this act, which shall take effect from and after its passage.

Sec. 22. All ordinances of the city, when printed and published by authority of the City Council, shall be received in all courts and places without further proof.

Sec. 23. The style of all ordinances shall be, "Be it Ordained by the City Council of the City of Macon."

Sec. 24. Any tract of land adjoining said city which may be laid off into blocks or lots, and duly platted according to law, and any tract of land adjoining the city, with the consent of the owner thereof, shall and may be annexed to said city, and form a part thereof.

Sec. 25. This act shall not invalidate any legal act

done by the City Council of the city of Macon, or by its officers, nor divest their successors under this act of any right of property or otherwise, or liability which may have accrued to or been created by said corporation prior to the passage of this act.

Sec. 26. All officers of the city created conservators of the peace by this act, or authorized by any ordinance, shall have power to arrest or cause to be arrested, without process, all persons who shall break the peace or threaten to break the peace, or be found violating any ordinance of the city, commit for examination, and, if necessary, detain such person in custody over night, or the Sabbath, in the watch-house or other safe place, until they can be brought before a magistrate, and shall have and exercise such other powers as conservators of the peace in the City Council may prescribe.

Sec. 27. Nothing in this act contained shall be so construed as to deprive the City Council of said city of any powers or authority conferred upon the same, by the acts under which said city was incorporated; but the City Council shall possess all the powers and authority heretofore conferred upon the same except so far as such powers and authority are expressly modified or repealed by this act, or the acts heretofore mentioned.

Sec. 28. There shall be a digest of ordinances of the city, which are of a general nature, published in one year after the passage of this act, and a like digest within every period of five years thereafter.

Sec. 29. This act shall be deemed a public act, and may be read in evidence without proof, and judicial notice shall be taken thereof in all courts and places, and shall take effect from and after its passage.

SAM'L HOLMES,

Speaker of the House of Representatives.

JOHN WOOD,

Speaker of the Senate.

Approved, Feb. 14th, 1857.

WM. H. BISSELL,

Governor.

PLAINTIFF'S GROUP
EXHIBIT 2



Diane Cohen <dcohen@libertyjusticecenter.org>

Fwd: Election Inquiry

1 message

Steve Wailand <wailandforalderman@gmail.com>
To: dcohen@libertyjusticecenter.org

Fri, Mar 29, 2013 at 12:50 AM

----- Forwarded message -----

From: **Kristen Petrie** <kpetrie@cityofmacomb.com>
Date: Fri, Mar 8, 2013 at 9:12 AM
Subject: Election Inquiry
To: wailandforalderman@gmail.com

Mr. Wailand:

I have had an opportunity to review the situation you are inquiring about and I have surmised that questions and requests for written explanation should be directed to the County Clerk of McDonough County. The certification of the election was issued by the County Clerk and the City does not participate in this action. It would not be appropriate for the City to issue written or verbal statements explaining or discussing the decision of the County Clerk.

Very Truly Yours,

Kristen L. G. Petrie

Kristen L. G. Petrie,
City Attorney,
City of Macomb

232 East Jackson Street

P.O. Box 377

Macomb, IL 61455

Phone: (309) 833-4373

kpetrie@cityofmacomb.com

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Diane Cohen <dcohen@libertyjusticecenter.org>

Fwd: Election

1 message

Steve Wailand <wailandforalderman@gmail.com>
To: dcohen@libertyjusticecenter.org

Fri, Mar 29, 2013 at 12:50 AM

----- Forwarded message -----

From: **Steve Wailand** <wailandforalderman@gmail.com>
Date: Wed, Mar 6, 2013 at 12:46 PM
Subject: RE: Election
To: Kristen Petrie <kpetrie@cityofmacomb.com>

Is it possible to receive it by tomorrow afternoon or Friday morning? I understand that things are hectic now, but I would like to have that information as soon as possible. Time is of the essence with things such as this and I don't feel that is unreasonable to receive a statement within 24-36 hours. However, if you think that it is, let me know.

Steve Wailand

On Mar 6, 2013 10:47 AM, "Kristen Petrie" <kpetrie@cityofmacomb.com> wrote:

Mr. Wailand:

Yes, I remember meeting with you. Hope all is well with Spring Break fast approaching for you. I will work on a written opinion this week and will hopefully have something for you by early next week. Unfortunately, this week is a little crowded with some lingering issues that are on a deadline and a few meetings, but I feel confident I can have something together by the start or just within the early part of next week. Please advise if this is a problem. Thank you.

Very Truly Yours,

Kristen L. G. Petrie

Kristen L. G. Petrie,

City Attorney,

City of Macomb

232 East Jackson Street

P.O. Box 377

Macomb, IL 61455

Phone: (309) 833-4373

kpetrie@cityofmacomb.com

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From: Kristen Petrie [mailto:kpetrieattorney@live.com]
Sent: Wednesday, March 06, 2013 10:38 AM
To: kpetrie@cityofmacomb.com
Subject: FW: Election

Date: Wed, 6 Mar 2013 10:23:11 -0600
Subject: Election
From: wailandforalderman@gmail.com
To: Kpetrieattorney@live.com

Ms. Petrie,

This is Steve Wailand, candidate for Ward 2 Alderman in Macomb. You may remember me coming to speak with you and Mel last Wednesday regarding the election standards, etc. I have talked with Mel since then and she explained what she had found. However, I would like to have a written statement declaring what the city's decision in this matter is and the reasoning behind it. This would help me greatly, especially in understanding the situation. From what I understand, the city attorney would handle this. So, what I am asking is would you be able to speak with Mel and prepare a statement?

Thanks in advance,
Steve Wailand

**PLAINTIFF'S
GROUP EXHIBIT 3**

Black's Law Dictionary (9th ed. 2009), majority

MAJORITY

majority. (16c) 1. The status of one who has attained the age (usu. 18) at which one is entitled to full civic rights and considered legally capable of handling one's own affairs. See AGE OF MAJORITY. Cf. MINORITY (1). [Cases: Infants 1.] 2. A number that is more than half of a total; a group of more than 50 percent <the candidate received 50.4 percent of the votes — barely a majority>. • A majority always refers to more than half of some defined or assumed set. In parliamentary law, that set may be all the members or some subset, such as all members present or all members voting on a particular question. A “majority” without further qualification usu. means a simple majority. See *simple majority*. Cf. PLURALITY; MINORITY (2); HALF PLUS ONE. *absolute majority.* A majority of all those who are entitled to vote in a particular election, regardless of how many voters actually cast ballots. See QUORUM. [Cases: Elections 126(6), 215.]

constitutional majority. See *majority of all the members*.

extraordinary majority. See *supermajority*.

majority of all the members. A majority of all the actual members, disregarding vacancies. — Also termed *constitutional majority*; *majority of the entire membership*; *majority of the membership*.

majority of all the memberships. A majority of all the possible memberships, including vacancies. — Also termed *majority of the fixed membership*.

majority of the entire membership. See *majority of all the members*.

majority of the fixed membership. See *majority of all the memberships*.

majority of the membership. See *majority of all the members*.

ordinary majority. See *simple majority*.

plural majority. See PLURALITY.

simple majority. A numerical majority of those actually voting. • Absent members, members who are present but do not vote, blanks, and abstentions are not counted — Also termed *ordinary majority*. [Cases: Elections 126(6), 215.]

supermajority. A fixed proportion greater than half (often two-thirds or a percentage greater than 50%), required for a measure to pass. • Such a majority is needed for certain extraordinary actions, such as ratifying a constitutional amendment or approving a fundamental corporate change. — Also termed *extraordinary majority*.

veto-proof majority. A legislative majority large enough that it can override an executive veto.

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HALF PLUS ONE, Black's Law Dictionary (9th ed. 2009), half plus one

Black's Law Dictionary (9th ed. 2009), half plus one

HALF PLUS ONE

half plus one. *Parliamentary law.* A common but inexact (and often inaccurate) approximation for a majority. • For a body with 100 members, a majority is indeed half plus one, or 51. But for a body with an odd number of members, “half plus one” would not be a whole number. So “a simple majority” is a better choice for designating majority rule. — Also termed *50 percent plus one*. See MAJORITY (2).

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Black's Law Dictionary, 9th Edition
1st Edition

Black's Law Dictionary, 9th Edition
2009 Edition

**CAMBRIDGE DICTIONARY OF AMERICAN
ENGLISH (2d ed. 1999)**

to maintain a minimum balance account.

maintain /v [T] to keep a road, machine in good condition ○ A large road is well maintained.

maintenance /n [U] ○ Bridges require regular maintenance.

maintain /v [T] to express belief that something is true ○ She maintains (that) she's being honest in telling the truth.

maize /n [U] corn

majestic /adj (of something) having the quality of causing you to feel great admiration or respect for it because of its size, grandeur ○ We flew over the majestic Sierrita mountains.

maize /n [U] ○ A whale passed by the boat.

major /n [C] a title used to speak of a king or queen or other ruler with a high rank ○ Her Majesty, the Empress of Japan

major /adj [not gradable] more important, bigger, or more serious than others of the same type ○ Fresh fruits are a major source of vitamin C. ○ We awaited major new developments in the peace talks. ○ Compare MINOR.

major /n [C] a military officer of the highest rank, above a CAPTAIN

major /adj (of music) based on a series of notes in which there is a whole tone (a sound difference) between each note except between the third and fourth notes and the seventh and eighth notes ○ a major scale ○ a major key

major /n [C] the most important subject that a college or university student is studying, or the student studying that subject ○ an English major

major /v with a major object to study something as your main subject in college or a university ○ She majored in earth sciences at Arizona State.

majority /n [U] 1 more than half of a total number or amount; the larger part of something ○ A majority of the people voted against the bill to raise school taxes. 2 A majority is also the difference in the number of votes in an election between the winning person or group and the one that has the second highest number: [C] The Republicans won by a small majority. ○ Compare MINORITY

major league /n [C] an organized group of sports teams that have the best players, who are paid for playing ○ He's happy to finally be playing in the major leagues. ○ (fig.) She hired a major-league attorney (= one who is highly paid and considered to be among the best).

make /v [T] past made to bring something into existence, esp. using a par-

ticular substance or material; produce ○ Does that company make computers? ○ Butter is made from cream. ○ My wedding ring is made of gold ○ He made us some coffee.

* make /n [C] a particular product, or the name of the company that made it ○ What make of air conditioner do you recommend? maker /n [C] ○ The makers of music videos show a fantasy world. † Usage: do or make? at DO <CAUSE TO HAPPEN>

* <CAUSE> /v [T] past made to cause something ○ The kids made a mess in the kitchen. ○ Don't make any noise. † Study Pages: Get, Have, and Other Verbs Used to Mean "Cause"

* <CAUSE TO BE> /v [T] past made to cause something to be, become, or appear in a particular way ○ If you open some windows, you'll make it cooler. ○ He said something that made her angry. ○ We can sit closer together and make room (= provide space) for one more. ○ We're making our attic into a spare bedroom.

* <PERFORM> /v [T] past made 1 to perform an action ○ I've got to make a (phone) call to Ricardo. ○ We must make a decision by tomorrow. ○ Someone has made a mistake. ○ Latisha is making progress in her reading. ○ Can I make a suggestion? ○ We might as well make use of the car, since we've got it for the whole weekend. 2 To make the bed is to put sheets and covers on a bed so that someone can sleep in it, or to straighten them after it has been slept in. † Study Pages: Do: Verbs Meaning "Perform"

* <FORCE> /v [T] past made to force someone or something to do something ○ He said the police made him sign a confession, and declared he was innocent.

USAGE

make

Remember that if you use make with the meaning "cause something" or "force someone to do something" then you need to use the pattern make + object + infinitive without to:

They made him clean the house.

They made him to clean the house.

The exception to this rule is when make is in the passive, when you must use to with the infinitive.

The prisoners were made to clean out their cells.

<BE OR BECOME> /v [L] past made to be or become something, esp. by having the necessary characteristics ○ I don't think he will ever make a good lawyer. ○ Hector and Wanda make a delightful couple. ○ He worked really hard, but he didn't make the team (= was not chosen to be a member of it).

makings /pl n ○ I think the plan has (all) the makings of a disaster (= is likely to be one).

<TOTAL> /v [L] past made to add up to (a total) ○ 6 and 6 make 12.

**MERRIAM-WEBSTER'S COLLEGIATE
DICTIONARY (11TH ed. 1998)**

**THE AMERICAN HERITAGE DICTIONARY OF
THE ENGLISH LANGUAGE (11TH ed. 2011)**

tion and is not an auxiliary verb. In the sentence, *The bird*
 is the main verb
 The lower yard on a mainmast.
 A city of west-central Germany at the confluence of the
 Main Rivers west-southwest of Frankfurt. Built on the site of a
 founded in the 1st century BC, it is an important industrial
 city Johann Gutenberg established a printing industry
 15th century
 (mä'zə-nēt', -sə) *n.* Chiefly British 1. A small house.
 occupying two or more floors of a larger building and
 own entrance from outside. [French *maisonnette*, dimin-
 house, dwelling < Old French < Latin *mānsiō*, *mānsiōn-*;
ma (*mā*) *n.*, pl. *ma* *t*ais A cocktail made with rum, curaçao,
 [Tahitian *maimai*, good.]
 (mä'trə dé', mä'tər) *n.*, pl. *ma*-tré d's (déz') *Informal*
 (mä'trə dō-tél') *n.*, pl. *ma*-trés d'hô-tel (mä'trə
 1. A major-domo. 2. A sauce of melted butter,
 lemon juice, salt, and pepper. [French *maitre d'hôtel*;
 de, of + *hôtel*, house.]
n. 1. See corn¹ (sense 1). 2. A light yellow to moderate
 [Spanish *matz* < Arawakan *mahiz*, *mahis*.] —*maize* *adj.*
 or *MAJ* *abbr.* major
 (mə-jes'tik) also *ma*-jes-ti-cal (-ti-kəl) *adj.* Impressive or
 dignified or inspiring way. See Synonyms at *grand*. —*ma*-
 (mä'jē stē) *n.*, pl. *-ties* 1a. Sovereign power, dignity, or
 majesty of the royal couple. b. Supreme authority or power:
 law. 2a. A royal personage. b. Majesty Used with *His*,
 a title and form of address for a sovereign. 3. Magnifi-
 cence: the majesty of the Rockies. [Middle English *mageste*,
 French *majeste* < Latin *māiestās*; see *meg-* in App. I.]
MAJGen *abbr.* major general
 (mə-jöl'i ka, -yöl') *n.* 1. Tin-glazed earthenware that is
 glazed and decorated, especially an earthenware of this type
 2. Pottery made in imitation of this earthenware. [Ital.
 Medieval Latin *Maiolica*, Majorca (where it was made),
 Latin *Maiōrica*.]
adj. 1. Greater than others in importance or rank: a
 Great in scope or effect: a major improvement. 3. Great
 or extent the major portion of the population. 4. Re-
 attention or concern, very serious: a major illness. 5. Law
 as having reached the age of adulthood. 6. Of or
 field of academic study in which a student specializes.
 signifying a scale or mode having half steps between the
 sixth and the seventh and eighth degrees. b. Equivalent to
 between the tonic note and the second or third or sixth
 of a major scale or mode: a major interval. c. Based
 on a major key ♣ *n.* 1a. A commissioned rank in the
 Army, Air Force, or Marine Corps that is above captain and below
 major. b. One who holds this rank. 2. One that is superior
 in rank, or ability: an oil producing country considered as one
 3. Law One recognized by the law as having reached the
 age of majority. 4a. A field of study chosen as an academic specialty.
 specializing in such studies: a linguistics major. 5. Logic
 term. b. A major term. 6. Music a. A major scale, key,
 or mode. b. A chord containing a major third between the first
 and a minor third between the second and third notes.
 the major leagues ♣ *intr.v.* -jored, -jor-ing, -jors To
 study in a major. *majoring in mathematics*. [Middle
 Latin *māior*; see *meg-* in App. I.]
 John Roy Born 1943. British banker and politician
 minister (1990–1997). During his administration he
 introduced anti-inflationary budget discipline, and negotia-
 tion with Northern Ireland
 the longer of the two lines about which an ellipse is
 drawn that passes through both foci of an ellipse.
 (mä-jör-ka, -jör') also *Ma*-jör-ca (mä-jör'kä, -lyör')
 in the western Mediterranean Sea off the east-central
 coast of Spain. The largest of the Balearic Islands, it was the center
 of the Phoenician kingdom from 1276 until 1343. Tourism is its major
 industry. —*Ma*-jör-ca *adj.* & *n.*
 (mä-jör-dō'mō) *n.*, pl. *-mos* 1. The head steward or
 steward of a sovereign or great noble. 2. A steward or
 steward who makes arrangements or directs affairs for another.
 or Spanish *mayordomo*, both < Medieval Latin
maior, chief; see *meg-* in App. I + Latin *domūs*,
 house; see *dem-* in App. I.]
 (mä-jör-tē) *n.* 1. A female dancer who twirls a baton,
 and sometimes with a marching band. 2. A drum
 major
 1. A commissioned rank in the US Army, Air
 Force, or Marine Corps that is above brigadier general and below lieuten-
 ant general. 2. One who holds this rank.
 (mä-jör-tē) *n.* *Abbr.* MHC A group
 of surface histocompatibility antigens and are the
 major histocompatibility complex.
 (mä-jör-i-tär'ē-ən, -jör') *adj.* Of, relating to, or
 based on a political principle: "a naively
 based on the principle of simple majoritarian democracy" (Saturday
 Review) of majoritarianism.

ma-jor-i-tar-i-an-ism (mə-jör'i-tär'ē-ə-niz'əm, -jör'-) *n.* Rule by simple numerical majority in an organized group.
ma-jor-i-ty (mə-jör'i-tē, -jör'-) *n.*, pl. *-ties* 1. The greater number or part; a number more than half of the total. 2. The amount by which the greater number of votes cast, as in an election, exceeds the total number of remaining votes. 3. The political party, group, or faction having the most power by virtue of its larger representation or electoral strength. 4. Law The age at which a person is recognized as an adult by the law. 5. The military rank, commission, or office of a major. [French *majorité* < Medieval Latin *māioritās* < Latin *māior*, greater; see *meg-* in App. I.]

USAGE NOTE When *majority* refers to a particular number of votes, it takes a singular verb: *Her majority was five votes. His majority has been growing by 5 percent every year.* When it refers to a group of persons or things that are in the majority, it may take either a singular or plural verb, depending on whether the group is considered as a whole or as a set of people considered individually. So we say *The majority elects (not elect) the candidate it wants (not they want)*, since the election is accomplished by the group as a whole; but *The majority of the voters live (not lives) in the city*, since living in the city is something that each voter does individually. • *Majority* is often preceded by *great* (but not by *greater*) in expressing emphatically the sense of "most of": *The great majority approved.* The phrase *greater majority* is appropriate only when considering two majorities: *He won by a greater majority in this election than in the last.*

majority leader *n.* The leader of the majority party in a legislature, as in the US Senate or House of Representatives.
majority rule *n.* A doctrine by which a numerical majority of an organized group holds the power to make decisions binding on all in the group.

major league *n.* 1. Either of the two principal groups of professional baseball teams in the United States. 2. A league of principal importance in other professional sports, such as basketball, football, or ice hockey.
ma-jor-league (mä'jör-lēg') *adj.* 1. Sports Of or relating to a major league: *major-league baseball.* 2. Informal Prominent or important: *a major-league ballet company.* 3. Informal Impressive, as in extent or quantity: *"a destination for major-league wooing"* (Bryan Miller).
ma-jor-lea-guer (mä'jör-lēg'gər) *n.* Sports A member of a major-league team, especially a major league baseball player.

ma-jor-ly (mä'jör-lē) *adv.* Slang To a great or an intense degree, extremely or intensely: *"I always think how funny it is we get along so good—us being majorly different"* (Patricia Baird Green). *"We were voted Cutest Couple—even though we never majorly made out"* (Alex Sanchez).

major medical *n.* Insurance that covers all or most of the medical bills engendered by major or prolonged illnesses above a set amount.
major order *n.* Ecclesiastical A principal order of the clergy, especially the rank of bishop, priest, or deacon, in the Roman Catholic, Eastern Orthodox, and Anglican Churches. Also called *holy order*.

major party *n.* A political party having enough strength to gain control of a government with comparative regularity.
major premise *n.* The premise containing the major term in a syllogism.

Major Prophets *pl.n.* Bible The Hebrew prophets Isaiah, Jeremiah, and Ezekiel.

major scale *n.* Music A diatonic scale having half steps between the third and fourth and the seventh and eighth degrees and whole steps between the other adjacent degrees.
major suit *n.* Games A suit of superior scoring value, either spades or hearts in bridge.

major term *n.* The term of a syllogism that forms the predicate of the conclusion.
major tranquilizer *n.* See antipsychotic drug.

Ma-ju-ro (mä-jöör'ō) The capital of the Marshall Islands, an atoll of the southern Ratak Chain.

ma-jus-cule (mä-jüs'kyool, mäj'ə-skyool') *n.* A large letter, either capital or uncial, used in writing or printing. [French < Latin *māiusculus*, somewhat larger, diminutive of *māior*, greater; see *meg-* in App. I.] —*ma*-jus-cule, *ma*-jus-cu-lar (mä-jüs'kyə-lär) *adj.*

Ma-kah (mä-kä') *n.*, pl. *Makah* or *-kahs* 1. A member of a Native American people inhabiting the Cape Flattery area of northwest Washington. 2. The Wakashan language of the Makah.

Mak-a-lu (mük'ə-lōō') A mountain, 8,463 m (27,765 ft) high, in the Himalaya Mountains of northeast Nepal. It was first scaled in 1955.

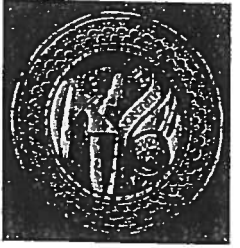
mak-ar (mä'kär, mä'-) *n.* Chiefly Scots A poet. [Middle English, variant of *maker*, *maker*, poet.]

Ma-kar-i-os III (mä-kär'ē-əs, -ös', mä-kär'ē-ös) Originally Mikhail Khristodolou Mouskos. 1913–1977. Cypriot prelate and politician. Archbishop of the Orthodox Church of Cyprus (1950–1977), he supported the political unification of Cyprus and Greece and was the first president of independent Cyprus (1959–1977).

Ma-kas-sar or **Ma-ka-sar** (mä-käs'sər) See Ujung Pandang.

Makassar Strait A strait between Borneo and Sulawesi connecting the Java Sea with the Celebes Sea.

make (mäk) *v.* made (mäd), *mak-ing*, *makes* —*tr.* 1. To cause to exist or happen; bring about; create: *made problems for us; making a commotion.* 2. To bring into existence by shaping, modifying, or putting together material; construct: *make a dress; made a stone wall.* 3. To form by assembling individuals or constituents: *We made a temporary information center using savvy volunteers.* 4. To change from one form or function to another: *make clay into bricks.* 5a. To cause to be or become: *made her position clear, a decision that made him happy.* b. To cause to assume a specified function or role: *made her treasurer; made Austin his boss.*



majolica
 c. 1490–1525 Italian
 majolica dish



major scale
 C major scale

ä	pat	oi	boy
ä	pay	ou	out
är	care	ōō	took
ä	father	ōōr	lure
ë	pét	ōō	boot
ë	be	ū	cut
i	pit	ūr	urge
i	bite	th	thin
ir	pier	th	this
ō	pōt	zh	vision
ō	toe	ə	about
ō	paw		item
ōr	core		

Stress marks: / (primary); ' (secondary), as in dictionary (dīk'shə-nēr'ē)

**THE NEW SHORTER OXFORD ENGLISH
DICTIONARY (4TH ed. 1993)**

opinions held by Georg Major (1502-74), a German Protestant, who maintained that good works are necessary for salvation.

Majorist *n.* a follower of Georg Major L19
Majoristic *a.* pertaining to Majorism or to the Majorists M19

Majorism /'meɪdʒərɪz(ə)m/ *n.* L20. [f. John Major (see below) + -ISM.] The political and economic policies of the British Conservative politician John Major (b. 1943), who became Prime Minister in 1990.

majoritarian /mə'dʒɔːrɪ'etəriən/ *a.* & *n.* E20. [f. next + -ARIAN.] (A person) governed by or believing in decision by a majority; (a person) supporting the majority party.

majoritarianism *n.* belief in, or the existence of, rule or decisions by a majority M20.

majority /mə'dʒɔːrɪti/ *n.* M16. [Fr. *majorité*, in branch I f. med.L *majoritas*, f. as MAJOR *a.*, in branch II f. as MAJOR *n.*: see -ITY.] 1 † The state or fact of being greater; superiority; pre-eminence. M16-E18. 2 The state of being of full age. M16. 3 The greater number or part; a number which is more than half the whole number; *spec.* the larger party voting together in a deliberative assembly or electoral body. L17. 4 The number by which the votes cast for one party etc. exceed those for the next in rank. M18. 2 L. STRACHEY A few days before her eighteenth birthday—the date of her majority. *Listener* It is sad that, as it approaches its majority, this organisation should have run into deep waters 3 BYRON The majority in council were against you F. H. A. SCRIVENER Nor in the vast majority of instances does it exist. N. CHOMSKY The large majority of its population... is Khmer... but there are substantial Chinese and Vietnamese minorities J. NAGENDA These friends, the majority of whom had been at school with him 4 J. MCCARTHY A majority of forty-six was given for the resolution. V. BRITAIN Mr Harris won the election with a comfortable majority.

115 The rank or office of a major. L18.

5 R. CAPELL This redoubtable sapper, risen from the ranks to a majority, is a type such as makes empires.

Phrases: absolute majority: see ABSOLUTE *a.* 8. in the majority belonging to or constituting the majority. silent majority: see SILENT *a.* the great majority: see GREAT *a.* the majority *spec.* the dead, join the majority, die the vast majority: see VAST *a.* 5

Comb: majority carrier *Electronics* in a semiconductor, a charge carrier (electron or hole) of the kind carrying the greater proportion of the current; majority rule the principle that the greater number should exercise greater power; majority verdict a verdict given by more than half of a jury, but not unanimous.

majuscule /'mɑːdʒəskjuːl/ *a.* & *n.* E18. [Fr., f. I. *majuscula* (*littera*) dim. of *major*: see MAJOR *a.*, -CULE.] *A. adj.* 1 *Typogr.* Of a letter: capital. *rare.* E18. 2 *Palaeogr.* Of a letter: large (whether capital or uncial); pertaining to, of, or written in large lettering; designating or pertaining to a script having every letter bounded by the same two (imaginary) lines. M19. B n. 1 *Typogr.* A capital letter. *rare.* E19. 2 *Palaeogr.* A large letter, whether capital or uncial; (a manuscript in) large lettering or majuscule script. M19.

majuscular /mə'dʒəskjuːlə/ *a.* † (*a.* *gen.* large; (*b.*) of the nature of a majuscule; written in majuscules: E19.

makable /'meɪkəb(ə)l/ *a.* LME. [f. MAKE *v.* + -ABLE.] That can be made.

makai /mə'kaɪ/ *adv.* & *a.* M20. [Haw., f. *ma* toward + *kai* the sea.] In Hawaii: in the direction of the sea, seaward.

makan /'mɑːkən/ *n.* E20. [Cf. Malay *makan* to eat, *makanan* food.] In Malaysia, food.

makar /'mɑːkə/ *n.* Sc. LME. [Var. of MAKER.] = MAKER. Now only, a poet writing in Scots.

makara /'mɑːkərə/ *n.* L19. [Skt: cf. MUGGER *n.* 2.] A crocodile, variously represented in Indian art; the equivalent of Capricorn in the signs of the zodiac.

Makasar *a.* & *n.* see MACASSAR.

Makasarese /məkəsə'reɪz/ *n.* & *a.* Also (*arch.*) **Macassar**-. L19. [f. *Makasar* (see MACASSAR) + -ESE.] *A. n.* Pl. same. A member of a Malay people of Makasar in the island of Sulawesi (Celebes), Indonesia. Also, the language of this

people. L19. *B. adj.* Of or pertaining to the Makasarese or their language. M20

make /meɪk/ *n.* *obs. exc. dial.* [OE *gemaca* corresp. to OS *gimaco* fellow, equal, OHG *gimahho*, f. WGmc: rel. to MATCH *n.* 1] 1 An (or one's) equal, a match; (one's) like. OE. 2 An animal's, esp. a bird's, breeding-partner, a mate; a person's husband or wife, a person's lover or mistress. OE. 3 A companion. ME.

make /meɪk/ *n.* ME. [f. the vb.] 1 The manner in which a thing (natural or manufactured) is made; style of construction, kind of composition; build of body; (particular) origin or type of manufacture, a brand. ME. b Of an immaterial thing: form, fashion; sort, character, nature; *dial.* a kind, a sort, a species. M17. c Mental or moral constitution, disposition, or character. L17. † 2 Doing, action; *esp.* (Sc.) manner of action or behaviour. LME-M16. 3a The action or process of making or manufacture. Now *rare.* M18. b An amount manufactured; the quantity produced. M19. 4 The action of making profit or of advancing oneself. Only in *on the make* below. *slang.* M19. 5 The act of making electrical contact; the position or condition in which contact is made. L19. 6 *Bridge.* A declaration. E20. 7 A (sexual) conquest. *slang.* M20. 8 An identification or profile of, or information about, a person or thing from police records, fingerprints, etc. *slang.* M20.

1 H. MARTINEAU Look at his delicate hands and slight make. J. CARY He was crowned by a helmet of French make. E. BRUTON A stone which is near the ideal is said to be of good make or fine make. *Motor Sport* They confine their purchases to one make of car or commercial vehicle 8 N. THORNBURG Let me give you a short make on our witness here N. MAILER 'What's your make on Pangborn?' Corporate lawyer Sharp.

Phrases: make and mend the action of making and repairing clothes; *Naut.* a period set apart for repairing clothes, a period of leisure, a half-holiday on the make *slang* (a) intent on profit or advancement; (b) intent on winning someone's affections, seeking sexual pleasure; (c) improving, advancing, getting better. put the make on *N. Amer. slang* make sexual advances towards

make /meɪk/ *n.* *arch. slang & dial.* M16. [Origin unkn. Cf. MAG *n.* 2.] A halppenny

make /meɪk/ *v.* Pa. t. & ppl. made /meɪd/. [OE *macian* = OFris. *makia*, OS *makon* (Du *maken*), OHG *mahhōn* (G *machen*), f. WGmc, f. Gmc base meaning 'fitting'. Rel to MATCH *n.* 1] 1 *v. t.* Produce by combination of parts or ingredients, by giving a certain form to matter, by extraction, or by modification of some other substance; construct, frame, fashion. (Foll. by *of*, *out of*, *with*.) OE. b *v. t. spec.* Produce (an article of food or drink) by culinary or other operations; put together and set afloat materials for (a fire); set apart and prepare the site for (a garden, park, road, etc.). OE. c *v. t.* & †i. Compose, write as the author (a book, a poem, verses, etc.), †a letter, †a work of a specified title; draw up (a legal document, esp. one's will). ME. d *v. t.* Produce an article (*for*). Freq. in *make or mend*. M19. 2 *v. t.* Cause the material or physical existence of; produce by action, bring about (a condition of things, a state of feeling); inflict (a wound); produce (a hole, a mark, a sound, etc.); create or take part in the creation of (a sound recording, film, etc.). OE. †b Foll. by double obj. (orig. dat. of the person) or *to*, *unto*: cause to happen to or fall to the lot of; cause to experience. OE-E18. c *Gram.* Of a word: form (a certain case, tense, etc.) in a specified manner; change into (a specified form) when inflected. OE. d Establish (a rule, an ordinance); enact (a law); impose (a rate). Formerly also, found, institute (a religious order etc.); arrange, fix the time and place for (a match), institute (games). OE. e Prepare or provide (a meal, a feast) for guests; give (a dinner etc.). *arch.* OE. f Give rise to; have as a result or consequence; be the cause of. ME. g Bring (a crop etc.) to maturity, grow. US. E18. h *Electr.* Complete, close, (a circuit). Opp. *break*. M19. 3 *v. t.* Create by election, appointment, or ordination;

appoint (an officer), ordain (a priest etc.). OE. b *gen.* Cause a person or persons to become (what is specified by the object). ME. c Fix (a price). Now only *Comm.* LME. †d Translate, render. E16-E17. e *Naut.* Promote in rank. L18. 4 *v. t.* Form by collection of individuals, get together (in early use *spec.* a party, a force, troops). ME. 5 *v. t.* Foll. by *of* or (esp. in physical sense) *out of*: cause what is denoted by the object of the prep. to become what is denoted by the object of the vb; create (one thing) *of* or *out of* another; regard what is denoted by the object of the prep. as being what is denoted by the object of the vb, arrive at (a particular amount or quantity) as the result of calculation or estimation, assign (a meaning) to a statement, expression, representation, etc., or (a cause, motive, or reason) for actions or phenomena, (freq. with interrog. or indef. pron. as object). ME. †b *v. t.* Foll. by *of*: (a) esteem (*well, ill*); (b) value highly, treat with great consideration. LME-E19. 6 *v. t.* Produce from one's body or organically (now *spec.* urine, water, formerly also fruit, blossom); (now *dial.*) give birth to, beget. ME. 7 *v. t.* Amount to; (of the latest item in an enumeration) bring up the sum to (a certain amount); be sufficient to constitute, be the essential criterion of, (in proverbial or quasi-proverbial uses, mainly in neg. contexts); avail (now *rare*) *for*, *against* (an opinion or a disputant). L16-E18. 8 *v. t.* a Gain, acquire, or earn (money, reputation, etc.) by labour, business, etc. (foll. by *of*, *out of*); *slang & dial.* steal, acquire, manage to get; be sold for or fetch (a certain price). ME. b In *Cards*, win or take (a trick), play to advantage (a certain card), win the number of tricks that fulfils (a contract). M16. c In various games, secure a score of, score (a point, a run, etc.); (passing into sense 2f) play so as to enable another to score (a goal etc.). M16. 9 *v. t.* Form within the mind; give conceptual existence or recognition to; entertain (a doubt, scruple, question, etc.) in the mind; formulate mentally. LME. b Formulate and set out (a case, a legal title, etc.). M19. 10 *v. t.* Count as, have the position of, form, (a part or unit in an aggregate, a particular member in a series). LME. 11 *v. t.* Be the material or components of, constitute, be made or converted into, serve for; admit of being made into; (of a person) become by development or training, (with obj.) a *n.* qualified by *good, bad, etc.*) perform (*well, ill, etc.*) the part or function of. LME. 12 *v. t. Naut.* Descry or discern (as) from the top of a mast or tower; come in sight of. M16.

1 R. PECOCK God that made the world and alle things that ben in it. GOLDSMITH As birds sometimes are seen to make their nests. A. URE The patent plan of Mr William Onions of making cast steel. P. MORTIMER The factory made many things beside rope mats. b L. HELLMAN That night I was making her saffron rice. S. HARVESTER Who can make tea with a bloody bag like a lavender sachet? c C. C. F. GREVILLE In 1810 the king made another will. P. KAVANAGH I make a lot of ballads. *Punch* He has made only a couple of dozen short stories. 2a R. H. MOTTRAM The shell had fallen... and made a hole the size of the midden at home. J. RHYS They made a hell of a row for a week. G. PRIESTLAND The car was sold to make room in the garage for rabbits. R. ELLMANN Miles... made a small sketch of Wilde. *make a commotion, a fuss, an impression, a noise, a sensation, a stir, etc.* f V. WOOLF One word of affection... would have made all the difference. DAY LEWIS It made a stanza in my poem, 'The Innocent'. I. MURDOCH He would have liked a coal-fire now, only it made so much work. 3b LD MACAULAY He... tried... to make as few enemies as possible. J. HUXLEY Oxford, where we had so naturally made many friends. 5 H. JAMES I didn't know at first quite what to make of it. D. H. LAWRENCE Of her own kerchief she made a pad for the wound. M. BRADBURY For the mass of men... you can't make a silk purse out of a sow's ear. M. WARNOCK Jean Smith who made sense of my manuscript. T. TANNER Too much has perhaps been made of the notion that the English novel... obsessed with... class *make a habit of, a practice of, etc.* *make an example of, an exhibition of oneself, a fool of (oneself), etc.*

**ROBERTS RULES OF ORDER:
“WHAT CONSTITUTES A MAJORITY”**

Question 4:**In determining the result of a vote, what constitutes a majority?****Answer:**

The word “majority” in this context means, simply, *more than half*. The use of any other definition, such as 50 percent plus one, is apt to cause problems. Suppose in voting on a motion 17 votes are cast, 9 in favor and 8 opposed. Fifty percent of the votes cast is 8 1/2, so that 50 percent plus one would be 9 1/2. Under such an erroneous definition of a majority, one might say that the motion was not adopted because it did not receive 50 percent plus one of the votes cast, although it was, quite clearly, passed by a majority vote. [RONR (11th ed.), p. 400; see also p. 66 of RONRIB.]

ATTACHMENT 3

2. The Court orders Defendant Michael Inman, Mayor of the City of Macomb, to issue a certification of the election of Steven Wailand to the office of Second Ward Alderman for the City of Macomb, as required by 65 ILCS 5/3.1-55-5.

3. The Court orders Defendant Melanie Falk, City Clerk of the City of Macomb, to notify Steven Wailand of his election to the office of Second Ward Alderman for the City of Macomb, as required by Article III, Section 2, of the City of Macomb's Special Charter.

4. Defendants Falk and DeJaynes are permanently enjoined from holding the supplemental election scheduled for April 9, 2013.

5. The Court orders Defendant Gretchen DeJaynes, County Clerk of the McDonough County, Illinois, to issue a certificate of election to Plaintiff Steven Wailand for the office of Second Ward Alderman for the City of Macomb, as required by the Illinois Election Code.

5. The Court declares that Defendants' nullification of Steven Wailand's election to the office of Second Ward Alderman for the City of Macomb in the February 26, 2013, election would deprive Plaintiff of his right to vote without due process of law.

6. The Court declares that Defendants' nullification of Steven Wailand's election to the office of Second Ward Alderman of the City of Macomb in the February 26, 2013, election would deprive him of the right to the office to which he was elected and therefore deprive him of a property interest without due process of law.

7. Defendants are permanently enjoined from applying Macomb Municipal Code Section 2-3(5) in a manner that is inconsistent with the definition of "majority" as "more than half."

It is so ordered.

Dated this _____ day of _____, 2013.

Circuit Court Judge