

INCORPORATION OF CITIES.

CHAPTER 73.

AN ACT To Provide for the Incorporation of Cities.

Be it Enacted by the Legislative Assembly of the Territory of Dakota:

ARTICLE 1.—OF THE ORGANIZATION OF CITIES.

§ 1. HOW CITY MAY ADOPT THIS ACT.] That any city now existing in this Territory may become incorporated under this act in the manner following: Whenever one-eighth of the legal voters of such city, voting at the last preceding municipal election, shall petition the mayor and council thereof to submit the question as to whether such city shall become incorporated under this act, to a vote of the electors in such city, it shall be the duty of such mayor and council to submit such question accordingly, and to appoint a time and place, or places, at which such vote may be taken, and to designate the persons who shall act as judges at such election; but such question shall not be submitted oftener than once in two years.

§ 2 NOTICE OF ELECTION.] The mayor of such city shall give at least twenty days' notice of such election, by publishing a notice thereof in one or more newspapers within such city; but if no newspaper is published therein, then by posting at least five copies of such notice in each ward or voting precinct.

§ 3. THE BALLOT—RESULT.] The ballots to be used at such election shall be in the following form: "For city organization under general law;" or "Against city organization under general law." The judges of such election shall make returns thereof to the city council, whose duty it shall be to canvass such returns and cause the result of such canvass to be entered upon the records of such city. If a majority of the votes cast at such election shall be for city organization under general law, such city shall thenceforth be deemed to be organized under this act; and the city officers then in office shall, thereupon, exercise the powers conferred upon like officers in this act, until their successors shall be elected and qualified.

§ 4. COURTS TO TAKE JUDICIAL NOTICE OF ORGANIZATION, ETC.] All courts in this Territory shall take judicial notice of the existence of cities organized under this act, and of the change of the

organization of any city from its original organization to its organization under this act; and from the time of organization, the provisions of this act shall be applicable to such city, and all laws in conflict therewith shall no longer be applicable. But all laws or parts of laws, not inconsistent with the provisions of this act, shall continue in force and applicable to any such city, the same as if such change had not taken place.

§ 5. CORPORATE NAME—POWERS.] Cities organized under this act shall be bodies politic, and corporate, under the name and style of "City of (name)" and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, have a common seal, and change the same at pleasure, and exercise all the powers hereinafter conferred.

§ 6. RIGHTS ETC., OF OLD CORPORATION TO VEST IN NEW.] All rights and property of every kind and description, which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal incorporation, upon its becoming incorporated under the provisions of this act; but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this act, and no action or prosecution of any kind, shall be affected by such change, but the same shall stand and progress as if no change had been made; *Provided*, That when a different remedy is given by this act, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this act the same shall be deemed cumulative to the remedies before provided, and used accordingly.

§ 7. RECORD OF RESULT OF ELECTION.] The corporate authorities of any city which may become organized under this act, shall within three months after organization hereunder, cause to be filed in the office of the register of deeds, in the county in which such city is situated, a certified copy of the entry made upon the records of the city, of the canvas of the votes, showing the result of such election, whereby such city became so organized, and such register of deeds shall record the same, and such corporate authorities shall also cause a like certificate to be filed in the office of the Secretary of the Territory, who shall file the same, and keep a registry of cities organized under this act.

§ 8. PRIOR ORDINANCES, ETC., IN FORCE UNTIL, ETC.] All ordinances and resolutions in force in any city when it shall organize under this act shall continue in full force and effect until repealed or amended, notwithstanding such change of organization; and the making of such change of organization shall not be construed to effect a change in the legal identity as a corporation of such city.

ARTICLE II.—OF THE MAYOR.

§ 1. MAYOR—HIS QUALIFICATIONS.] The chief executive officer of a city shall be a mayor, who shall be a citizen of the United

States, a qualified elector, reside within the city limits, and hold his office for two years and until his successor is elected and qualified.

§ 2. VACANCY, ONE YEAR OR OVER.] Whenever a vacancy shall happen in the office of the mayor, when the unexpired term shall be one year or over from the date when the vacancy occurs, it shall be filled by an election.

§ 3. VACANCY LESS THAN [ONE] YEAR.] If the vacancy is less than one year, the city council shall elect one of its number to act as mayor, who shall possess all the rights and powers of the mayor until the next annual election, and until his successor is elected and qualified.

§ 4. MAYOR PRO TEM.] During a temporary absence or disability of the mayor, the city council shall elect one of its own number to act as mayor pro tem; who during such absence or disability shall possess the powers of mayor.

§ 5. VACANCY BY REMOVAL FROM CITY.] If the mayor at any time during the term of his office shall remove from the limits of the city, his office shall thereby become vacant.

§ 6. MAYOR TO PRESIDE—CASTING VOTE.] The mayor shall preside at all meetings of the city council but shall not vote except in case of a tie, when he shall give the casting vote.

§ 7. WHEN HE MAY REMOVE OFFICERS.] The mayor shall have power to remove any officer appointed by him, whenever he shall be of the opinion that the interests of the city demand such removal; but he shall report the reasons for such removal to the council at its next regular meeting.

§ 8. HIS POWERS TO KEEP PEACE.] He may exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace.

§ 9. RELEASE OF PRISONERS.] He may release any person imprisoned for violation of any city ordinance, and shall report such release, with the cause thereof, to the city council at its first session thereafter.

§ 10. GENERAL DUTIES.] He shall perform all such duties as are or may be prescribed by law or by the city ordinances, and shall take care that the laws and ordinances are faithfully executed.

§ 11. POWERS TO EXAMINE RECORDS, ETC.] He shall have power at all times to examine and inspect the books, records and papers of any agent, employee or officer of the city.

§ 12. MESSAGES TO COUNCIL.] The mayor shall, annually, and from time to time, give the council information relative to the affairs of the city, and shall recommend for their consideration such measures as he may deem expedient.

§ 13. TO CALL OUT MILITIA, ETC.—RIOTS.] He shall have power, when necessary, to call on every male inhabitant of the city over the age of eighteen years, to aid in enforcing the laws and ordinances, and to call out the militia to aid in suppressing riots, and other disorderly conduct, or carrying into effect any law

or ordinance subject to the authority of the Governor, as commander-in-chief of the militia.

§ 14. MISCONDUCT, ETC., OF MAYOR, OR OTHER OFFICER—PENALTY.] In case the mayor or any other municipal officer shall at any time be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, malconduct, or misfeasance in the discharge of the duties of his office, he shall be liable to indictment in any court of competent jurisdiction, and on conviction, shall be fined in a sum not exceeding \$1,000; and the court in, which such conviction shall be had shall enter an order removing such officer from office.

§ 15. REVISING ORDINANCES AFTER CHANGE OF ORGANIZATION.] He may appoint by and with the advice and consent of the city council, immediately after such change of organization, one or more competent persons to prepare and submit to the city council for their adoption or rejection an ordinance in revision of the ordinances of such city, and for the government of such city, the compensation of such reviser or revisers to be determined and fixed by the city council, and paid out of the city treasury.

§ 16. SIGN OR VETO ORDINANCES.] He shall have power to sign or veto any ordinance or resolution passed by the council.

§ 17. POLICEMEN—CHIEFS.] He shall have power to appoint any number of policemen which he and the city council may deem necessary to preserve the peace of the city, and shall appoint one of the number as chief of police, which appointment of chief shall be subject to the approval of the council.

ARTICLE III.—OF THE CITY COUNCIL.

§ 1. COUNCIL, HOW COMPOSED.] The city council shall consist of the mayor and aldermen.

§ 2. NUMBER OF ALDERMEN.] The number of aldermen shall be as follows: In cities not exceeding two thousand inhabitants, six aldermen; exceeding two thousand but not exceeding four thousand, eight aldermen; exceeding four thousand, and not exceeding ten thousand, twelve aldermen; exceeding ten thousand and not exceeding fifteen thousand, fourteen aldermen; and two additional aldermen for each ten thousand inhabitants over fifteen thousand; *Provided, however*, that in cities of over 100,000 inhabitants, there shall be elected thirty-six aldermen and no more.

§ 3. TERM OF OFFICE.] Aldermen shall hold their office for the term of two years and until their successors are elected and qualified.

§ 4. VACANCY.] If any vacancy shall occur in the office of alderman by death, resignation, removal or otherwise, such vacancy shall be filled by election.

§ 5. QUALIFICATIONS OF ALDERMAN.] No person shall be eligible to the office of alderman unless he shall be a qualified elector, and reside within the ward for which he is elected, nor shall he be

eligible if he is in arrears in the payment of any tax or other liability due to the city, nor shall he be directly or indirectly interested in any contract whatever, to which the city is a party; nor shall he be eligible if he shall have been convicted of malfeasance, bribery, or other corrupt practices or crimes; nor shall he be eligible to any office, the salary of which is payable out of the city treasury, if at the time of his appointment he shall be a member of the city council; nor shall any member of the city council at the same time hold any other office under the city government; nor shall he be either directly or indirectly, individually or as a member of a firm engaged in any business transaction (other than official) with such city through its mayor or any of its authorized boards, agents or attorneys, whereby any money is to be paid directly or indirectly out of the treasury, to such member or firm.

§ 6. COUNCIL JUDGE OF ITS MEMBERS.] The city council shall be judge of the election and qualifications of its own members.

§ 7. RULES—EXPULSIONS—BRIBERY.] It shall determine its own rules of proceeding; punish its members for disorderly conduct, and with the concurrence of two-thirds of the aldermen elect, may expel a member, but not a second time for the same offense; *Provided*, That any alderman who shall have been convicted of bribery shall thereby be deemed to have vacated his office.

§ 8. QUORUM—COMPELLING ATTENDANCE.] A majority of the aldermen elected shall constitute a quorum to do business, but a smaller number may adjourn from time to time and may compel the attendance of absentees under such penalties as may be prescribed by ordinance.

§ 9. MEETINGS.] The city council shall hold its regular meeting on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings thereof may be called.

§ 10. PRESIDENT AND VICE-PRESIDENT OF THE COUNCIL.] It shall, at its first regular meeting after the annual election in each year, proceed to elect from one of its own members, a president and vice-president, who shall hold their respective offices for the municipal year. The president of the council shall be presiding officer of the council, and shall during the absence of the mayor from the city be acting mayor, and shall possess all the powers of the mayor. In the absence or disability of the mayor and president of the council, then the vice-president shall perform the duties of the mayor and president of the council.

§ 11. OPEN DOORS—JOURNAL.] It shall sit with open doors, and shall keep a journal of its own proceedings.

§ 12. YEAS AND NAYS—RECORD VOTE REQUIRED.] The yeas and nays shall be taken upon the passage of all ordinances and on all propositions to create any liability against the city, or for the ex-

penditure or appropriation of its money and in all other cases at the request of any member, which shall be entered on the journal of its proceedings, and the concurrence of a majority of all the members elected in the city council shall be necessary to the passage of any such ordinance or proposition; *Provided*, It shall require a two-thirds vote of all the aldermen elected to sell any city or school property.

§ 13. RESCINDING VOTE—SPECIAL MEETINGS, ETC.] No vote of of the city council shall be reconsidered or rescinded at a special meeting, unless at such special meeting there be present as large a number of aldermen as were present when such vote was taken.

§ 14. WHEN REPORT LAID OVER.] Any report of a committee of the council shall be deferred for final action thereon to the next regular meeting of the council after the report is made upon the request of any two aldermen present.

§ 15. TERRITORIAL JURISDICTION.] The city council shall also have jurisdiction in and over all places within one-half mile of the city limits, for the purpose of enforcing health and quarantine ordinances, and regulations thereof.

§ 16. ORDINANCES, HOW PASSED, ETC.] All ordinances shall be read twice, and there shall be at least one week intervene between the first and second reading, and, after thus being passed by the city council, shall, before they take effect, be deposited in the office of the city auditor for the approval of the mayor; and if the mayor approves thereof, he shall sign the same, and such as he shall not approve he shall return to the council, with his objections thereto in writing, at the next regular meeting of the city council, occurring not less than five days after the passage thereof. Such veto may extend to any one or more items or appropriations contained in any ordinance making an appropriation, or to the entire ordinance; and in case the veto only extends to a part of such ordinance, the residue thereof shall take effect and be in force. But in case the mayor shall fail to return any ordinance with his objections thereto, by the time aforesaid, he shall be deemed to have approved such ordinance, and the same shall take effect accordingly; *Provided*, That upon the return of any ordinance by the mayor, the vote by which the same was passed may be reconsidered by the council; and if, after such reconsideration, two-thirds of all the members elected to the city council shall agree by yeas and nays to pass the same, it shall go into effect, notwithstanding the mayor may refuse to approve thereof. The vote to pass the same over the mayor's veto shall be taken by yeas and nays and entered on the journal; *Provided, further*, That all ordinances so passed by the council and signed by the mayor, or passed over the mayor's veto, shall be published at least once in the official newspaper of the city, and shall become operative immediately upon such publication. The city auditor shall record in a book kept for that purpose together with the affidavit of the publisher all such ordinances so passed and published; and said

book or a certified copy of the ordinance as so recorded shall be received as evidence in all courts and places without further proof; or if printed in book or pamphlet form by the authority of the city council they shall be so received; and shall be styled: "Be it ordained by the city council."

ARTICLE IV—OF THE POWERS OF THE CITY COUNCIL.

§ 1. GENERAL POWERS.] The city council shall have the following powers:

1. To control the finances and property of the corporation.
2. To appropriate money for corporate purposes only, and provide for payment of debts and expenses of the corporation.
3. To levy and collect taxes for general and special purposes on real and personal property.
4. To fix the amount, terms and manner of issuing and revoking licenses.
5. To borrow money on the credit of the corporation for corporate purposes, and issue bonds therefor, in such amounts and form, and on such conditions as it shall prescribe, but shall not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate to exceed four (4) per centum on the value of the taxable property therein, to be ascertained by the last assessment for Territorial and county taxes previous to the incurring of such indebtedness; and before or at the time of incurring any indebtedness, shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years after contracting the same; *Provided*, No bonds shall be issued by said city council under the provisions of this act either for general or special purposes unless at an election after twenty days' notice in a newspaper published in the city, stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of said city by a majority shall determine in favor of issuing said bonds.
6. To issue bonds in place of, or to supply means to meet maturing bonds, or for the consolidation or funding of the same.
7. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and public grounds and vacate the same.
8. To plant trees on the same.
9. To regulate the use of the same.
10. To prevent and remove obstructions and encroachments upon the same.
11. To provide for the lighting of the same.
12. To provide for the cleansing of the same.
13. To regulate the openings therein for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas or electric lights; *Provided*, however, That any company heretofore organized under the gen-

eral laws of this Territory or any association of persons organized or which may be hereafter organized for the purpose of manufacturing illuminating gas, or electricity to supply cities, or the inhabitants thereof, with the same, shall have the right, by consent, of the city council (subject to existing rights,) to erect gas or electric light works, and lay down pipes, or string wires on poles, in the streets or alleys of any city in this Territory, subject to such regulations as such city may by ordinance impose.

14. To regulate the use of sidewalks and all structures thereunder; and to require the owner or occupant of any premises to keep the sidewalks in front of, or along the same, free from snow and other obstructions.

15. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage or any offensive matter in, and to prevent injury to any street, avenue, alley or public ground.

16. To provide for and regulate crosswalks, curbs, and gutters.

17. To regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign-posts, awnings, telegraph or telephone poles, horse troughs, racks, posting hand bills and advertisements.

18. To regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand bills in the streets or public grounds, or upon the sidewalks.

19. To regulate and prevent the flying of flags, banners or signs across the streets or from houses.

20. To regulate traffic and sales upon the streets, sidewalks and public places.

21. To regulate the speed of horses and other animals, vehicles, cars and locomotives within the limits of the corporation.

22. To regulate the numbering of houses and lots.

23. To name and change the name of any street, avenue, alley or other public place.

24. To permit, regulate or prohibit the locating, constructing or laying a track of any horse railroad in any street, alley, or public place; but such permission shall not be for a longer time than twenty years.

25. To provide for and change the location, grade, and crossing of any railroad.

26. To require railroad companies to fence their respective railroads, or any portion of the same, and construct cattle guards, crossings of streets and public roads, and keep the same in repair within the limits of the corporation.

27. To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property; to compel such railroad to raise or lower their railroad tracks, to conform to any grade which may, at any time, be established by such city, and where such tracks run lengthwise of any such street, alley, or highway, to keep

their railroad tracks on a level with the street surface, and so that such tracks may be crossed at any place on such street, alley, or highway; to compel and require railroad companies to make and keep open, and to keep in repair ditches, drains, sewers and culverts, along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or right of way, and so that the natural or artificial drainage of adjacent property shall not be impeded.

28. To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.

29. To construct and keep in repair culverts, drains, sewers, catch basins, man-holes and cesspools, and to regulate the use thereof.

30. To license, tax, regulate, suppress and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, ticket scalpers and employment agencies, and to revoke such license at pleasure.

31. To license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, watermen, and all others pursuing like occupations, and to prescribe their compensation.

32. To license, regulate, tax and restrain runners for stages, cars, public houses, or other things or persons.

33. To license, regulate, tax or prohibit and suppress billiard, bagatelle, pigeon hole, or any other tables or implements kept or used for a similar purpose in any place of public resort, pin-alleys and ball-alleys.

34. To suppress bawdy or disorderly houses, houses of ill-fame, or assignation, within the limits of the city, and within one mile of the outer boundaries of the city; and also to suppress gaming and gambling houses, lotteries, and all fraudulent devices and practices for the purpose of gambling or obtaining money or property; and to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations.

35. To license, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license, and shall be subject to the same restrictions as required by the general laws of the Territory and shall require of all persons applying for a license hereunder, a bond in good and sufficient security and with like conditions as required by the general laws of the Territory in this regard; *Provided*, That the council may grant permits to druggists for the sale of liquors for medicinal, mechanical, sacramental and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance; *Provided, further*, That no other or further permit or license shall be required by the county in which

such city is situated to enable such person or persons so licensed, to sell or deal therein within the limits of the corporation; *Provided*, That no license shall be granted under the provisions of this act by any city in a county wherein a majority of the legal voters of said county have decided in favor of no license.

36. The council shall also have power to forbid and punish the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor to any minor, servant or insane, idiotic or distracted person, habitual drunkard, or person intoxicated.

37. To establish markets and market houses, and provide for the regulation and use thereof.

38. To provide for place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables, and all other provisions, and regulate the selling of the same.

39. To regulate the sale of bread in the city and prescribe the weight and quality of the bread in the loaf.

40. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meal and other provisions.

41. To regulate the inspection, weighing and measuring of lumber, firewood, coal, hay, and any article of merchandise.

42. To provide for the inspection and sealing of weights and measures.

43. To enforce the keeping and use of proper weights and measures by vendors.

44. To regulate the construction, repairs and use of vaults, cisterns, areas, hydrants, pumps, sewer and gutters.

45. To regulate places of amusement.

46. To prevent intoxication, fighting, quarreling, dog fights, cock fights, and all disorderly conduct.

47. To regulate partition fences and party walls.

48. To prescribe the thickness, strength, and manner of constructing stone, brick and other buildings, and construction of fire escapes therein.

49. To prescribe the limits within which wooden buildings shall not be erected or placed or repaired without permission, and to direct that all and any buildings within said limits (which shall be known as the fire limits), when the same shall have been damaged by fire, decay or otherwise, to the extent of fifty per cent. of the value, shall be torn down or removed, and to prescribe the manner of ascertaining such damage.

50. To prevent the dangerous construction and condition of chimneys, fire places, hearths, stoves, stovepipes, ovens, boilers, and apparatus used in and about any building and manufactory, and to cause the same to be removed or placed in a safe condition, where considered dangerous; to regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places, and to cause all such

buildings and inclosures as may be in a dangerous state to be put in a safe condition.

51. To erect engine houses and provide fire engines, hose carts, hooks and ladders, and other implements for prevention and extinguishment of fires, and provide for the use and management of the same by voluntary fire companies or otherwise.

52. To regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, petroleum or any of the products thereof, and other combustible or explosive material, and the use of lights in stables, shops, and other places and the building of bon fires; also to regulate and restrain the use of fireworks, fire crackers, torpedoes, Roman candles, sky rockets, and other pyrotechnic displays.

53. To provide for the inspection of steam boilers.

54. To establish and erect a city jail, house of correction, and work house for the confinement and reformation of disorderly persons, vagrants, tramps, and idle persons, and persons convicted of violating any city ordinance and make rules and regulations for the government of the same, and appoint necessary jailors and keepers.

55. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law and with the consent of the county board of commissioners, and to regulate the police of the city, and pass and enforce all necessary police ordinances.

56. To prevent and suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place.

57. To prohibit and punish cruelty to animals.

58. To restrain and punish vagrants, mendicants, and prostitutes.

59. To declare what shall be a nuisance, and to abate the same and impose fines upon parties who may create, continue, or suffer nuisances to exist.

60. To appoint a board of health and prescribe its powers and duties.

61. To erect and establish hospitals and medical dispensaries, and control and regulate the same.

62. To do all acts, make all regulations which may be necessary or expedient for the promotion of health, or the suppression of disease.

63. To establish and regulate cemeteries within or without the corporation, and acquire lands therefor by purchase or otherwise, and cause cemeteries to be removed, and prohibit their establishment within one mile of the corporation.

64. To regulate, restrain, and prohibit the running at large of horses, cattle, swine, sheep, goats, geese, and dogs, and to impose a tax or license on dogs.

65. To direct the location and regulate the management and

construction of packing houses, renderies, bone factories, slaughter houses, soap factories, foundaries, breweries, distilleries, livery stables and blacksmith shops, within, or within one mile of the limits of the corporation.

66. To prohibit any offensive or unwholsome business or establishment within, or within one mile of the limits of the corporation.

67. To compel the owner of any grocery, cellar, stable, pig sty, privy, sewer or other unwholsome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

68. To provide for the taking of the city census; but no city census shall be taken oftener than once in three years.

69. To provide for the erection and care of all public buildings necessary for the use of the city.

70. The city council shall have power by condemnation or otherwise to extend any street, alley, or highway over or across or to construct any sewer under or through any railroad track, right of way, or land of any railroad company (within the corporate limits), but where no compensation is made to such railroad company, the city shall restore such railroad track, right of way or land to its former state or in a sufficient manner not to have impaired its usefulness.

71. The city council shall have no power to grant the use of, or right to lay down any railroad tracks in any street of the city, to any steam or horse railroad company except upon a petition of the owners of the land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes.

72. To tax, license and regulate auctioneers, distillers, brewers, lumber yards, public scales, money changers and brokers.

73. To prevent and regulate the rolling of hoops, playing of ball, flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams and horses.

74. To regulate and prohibit the keeping of any lumber yard, and the placing, or piling, or selling any lumber, timber, wood or other combustible material within the fire limits of the city.

75. To provide by ordinance that all the paper, printing, stationery, blanks, fuel, and all the supplies needed for the use of the city, shall be furnished by contract, let to the lowest responsible bidder.

76. To tax, license and regulate second-hand and junk stores, and to forbid their purchasing or receiving from minors, without the written consent of their parents or guardians, any article whatever, and to prescribe punishment for any violation hereof.

77. To purchase, erect, lease, rent, manage and maintain any system or part of system of water works, hydrants, and supply of water; telegraphing fire signals, or fire apparatus that may be of

use in the prevention and extinguishment of fires and to pass all ordinances, penal or otherwise, that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected.

78. To redistrict the city into wards and describe the boundaries thereof whenever a census of the city shall show the population to be large enough to require two aldermen more than are in the council, at the time of the taking of such census.

79. To pass all ordinances, rules and make all regulations proper or necessary, to carry into effect the powers granted to cities, with such fines or penalties as the city council shall deem proper; *Provided*, No fine or penalty shall exceed one hundred (100) dollars and no imprisonment shall exceed three months, for one offense.

§ 2. ACTIONS FOR VIOLATING ORDINANCES.] All actions brought to recover any fine or to enforce any penalty, under any ordinance of any city, shall be brought in the corporate name of the city as plaintiff; and no prosecution, recovery or acquittal, for the violation of any such ordinance, shall constitute a defense to any other prosecution of the same party for any other violation of any such ordinance although the different causes of action existed at the same time, and if united would not have exceeded the jurisdiction of the court or justice of the peace.

§ 3. FINES AND LICENSES PAID TO THE CITY TREASURER.] All fines and forfeitures for the violation of ordinances, when collected, and all moneys collected for licenses or otherwise, shall be paid into the treasury of the corporation at such times and in such manner as may be prescribed by ordinance; *Provided*, That one-third of the moneys received for licensing the sale of malt, spiritous and vinous and intoxicating or fermented liquors, shall, when collected, be paid to the county treasurer to be placed to the credit of the county general fund.

§ 4. SUMMONS—AFFIDAVIT — PUNISHMENT.] In all actions for the violation of any ordinance, the first process shall be a summons; *Provided, however*, That a warrant for the arrest of the offender, may issue in the first instance upon the affidavit of any person that any such ordinance has been violated: and that the person making the complaint, has reasonable grounds to believe the party charged is guilty thereof; and any person arrested upon such warrant shall without unnecessary delay be taken before the proper officer to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed may upon the order of the court before whom the conviction is had, be committed to the county jail, city prison, work house, house of correction or other place provided by the city, for the incarceration of offenders, until such fine, penalty and cost shall be fully paid; *Provided*, That no such imprisonment shall exceed three months, for any one offense. The city council shall have power to provide by ordinance, that every person so committed, shall be required

to work for the corporation, at such labor, as his or her strength will permit, not exceeding ten hours, each working day; and for such work, the person so employed, to be allowed, exclusive of his or her board \$1.25 for each day's work, on account, of such fine and cost.

§ 5. JURISDICTION, ETC.] The city justice of the peace shall have exclusive jurisdiction in all cases arising under the provisions of this act, or any ordinance passed in pursuance thereof.

§ 6. WHO MAY SERVE PROCESS, ETC.] Any constable or sheriff of the county, may serve any process, or make any arrests authorized to be made by any city officer.

ARTICLE V.—OFFICERS, THEIR POWERS AND DUTIES.

§ 1. ELECTIVE OFFICERS.] There shall be elected in all cities organized under this act, the following officers: A mayor, two aldermen from each ward, a city treasurer, and a city justice of the peace.

§ 2. TERM OF OFFICE.] The elective officers of a city shall hold their respective offices for two years, and until their successors are elected and qualified.

§ 3. APPOINTIVE OFFICERS.] There shall be appointed by the mayor, with the approval of the city council, a city auditor, a city assessor, a city attorney, and a city engineer, and such other officers as may by the city council be deemed necessary or expedient.

§ 4. TERM OF OFFICE.] The appointive officers of a city shall hold their respective offices for two years, and until their successors are appointed and qualified.

§ 5. OATH—BOND.] All officers of any city, whether elected or appointed, shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the Organic Act of the Territory of Dakota, and that I will faithfully discharge the duties of the office of....., according to the best of my ability." Which oath or affirmation, so subscribed, shall be filed in the office of the city auditor, and all such officers, except aldermen, shall, before entering upon the duties of their respective offices, execute a bond with security, to be approved by the city council, payable to the city, in such penal sum as may by resolution or ordinance be directed, conditioned for the faithful performance of the duties of the office, and the payment of all moneys received by such officer according to law and the ordinance of said city; *Provided, however,* That in no case shall the mayor's bond be fixed at a less sum than three thousand (3,000) dollars; nor shall the treasurer's bond be fixed at less sum than the amount of the estimated tax and special assessments for the current year, which bonds shall be filed with the city auditor (ex-

cept the bond of the city auditor,) which shall be filed with the treasurer.

§ 6. COMMISSION, CERTIFICATES, DELIVERY TO SUCCESSORS.] All officers elected or appointed under this act, (except the city auditor, aldermen and mayor,) shall be commissioned by warrant, under the corporate seal, signed by the auditor and mayor or president of the city council. The mayor shall issue a certificate of appointment, under the seal of the corporation, to the auditor thereof, and any person having been an officer of the city, shall within five days after notification and request, deliver to his successor in office, all property, books and effects, of every description in his possession, belonging to the city, or appertaining to his said office; and upon his refusal to do so, shall be liable for all the damages caused thereby, and to such penalty as may by ordinance be prescribed.

§ 7. QUALIFICATION OF OFFICERS.] No person shall be eligible to any office, who is not a qualified elector of the city, and who shall not have resided therein at least nine months next preceding his election or appointment, nor shall any person be eligible to any office who is a defaulter to the corporation.

§ 8. NOT INTERESTED IN CONTRACTS, ETC.] No officer shall be directly or indirectly interested in any contract, work or business of the city, or the sale of any article, the expense, price or consideration of which is paid from the treasury, or by any assessment levied by any act or ordinance; nor in the purchase of any real estate or other property belonging to the corporation, or which shall be sold for taxes or assessments or by virtue of legal process at the suit of said corporation, mayor, etc.

§ 9. NOT TO HOLD OTHER OFFICE.] No mayor, alderman, city auditor or treasurer shall hold any other office under the city government during his term of office.

§ 10. COMPENSATION OF MAYOR.] The mayor of any city shall receive such compensation as the city council may by ordinance direct; but his compensation shall not be changed during his term of office.

§ 11. COMPENSATION OF ALDERMEN.] The aldermen may receive such compensation for their services as shall be fixed by ordinance; *Provided, however,* Such compensation shall not exceed two dollars to each alderman for each meeting of the city council actually attended by him, and no other compensation than for attendance upon such meeting shall be allowed to any alderman for any services whatsoever; such compensation shall not be changed, after it has been once established, so as to take effect as to any alderman voting for such change during his term of office.

§ 12. COMPENSATION OF OTHER OFFICERS.] All other officers may receive a salary, fees, or other compensation to be fixed by ordinance and after the same has been once fixed, such fees or compensation shall not be increased or diminished, to take effect

during the term for which any such officer was elected or appointed.

§ 13. ADMINISTERING OATHS.] The mayor and auditor of any city, shall have power to administer oaths and affirmations upon all lawful occasions.

ARTICLE VI.—CITY AUDITOR.

§ 1. DUTIES OF AUDITOR.] The city auditor shall keep his office at the place of meeting of the city council or some other place convenient thereto as the council may direct; he shall keep the corporate seal, and all the papers, and records of the city, and keep a record of the proceedings of the city council whose meetings it shall be his duty to attend, copies of all papers filed in his office, and transcript from all records of the city council certified by him under the corporate seal, shall be evidence in all courts as if the original were produced. He shall draw and countersign all orders on the treasurer in pursuance of any order or resolution of the city council, and keep a full and accurate account thereof in books provided for that purpose.

§ 2. SAME.] The city auditor shall report to the city council on the first days of March and September of each year the receipts and expenses, and financial condition of the city, which report shall be published within thirty days thereafter, in the official paper of the city, or such other paper as the council may direct. He shall make and keep a list of outstanding city bonds, to whom issued, for what purpose, when and where payable, and the rate of interest they respectively bear, and recommend such action to the city council as will secure the punctual payment of the principal and interest of such bonds. He shall report annually on or before the first day of September to the city council an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year, and the fiscal year shall commence on the first day of September.

§ 3. SAME.] He shall make, or cause to be made, estimates of the expenses of any work to be done by the city, and countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the city council, or by any city officers. And every contract made in behalf of the city, or to which the city is a party, shall be void unless signed by the auditor; the city auditor shall keep regular books of account, in which he shall enter all indebtedness of the city, and which shall at all times show the financial condition of the city, the amount of bonds, orders, certificates or other evidences of indebtedness issued by the city council, the amount of all bonds, orders, certificates or other evidences of indebtedness which have been redeemed, and the amount of each outstanding; to countersign all bonds, orders or other evidences of indebtedness of the city, and to keep accurate accounts thereof stating to whom, and for what purpose issued and the amount

thereof; to keep accounts with all receiving and disbursing officers of the city, showing the amount they have received from the different sources of revenue, and the amount which they have disbursed under the direction of the city council. He shall keep a list of all certificates issued for work or any other purpose, and before the levy by the city council of any special tax upon the property in the city, or any part thereof, shall report to the city council a schedule of all parcels, lots or parcels of land, which may be subject to the proposed special tax or assessment, and also the amount of such special tax or assessment which it may be necessary to levy on such lots or parcels of land, which said schedule shall be certified by the affidavit of the auditor, and shall be prima-facie evidence of the facts stated therein, in all cases wherein the validity of such special tax or assessment shall come in question. The city council shall, if from such reports they deem such special tax legal and just, cause the same to be levied in pursuance of the provisions of this act. If before the first day of June of any year the amount expended, or to be expended, chargeable to any city fund (adding thereto the current expenses estimated for the remainder of the fiscal year, and chargeable to such fund), shall be equal to three-fourths of the tax authorized to be raised or revenue estimated for such fund, he shall report at once the same to the city council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected be ascertained; and during the remainder of the fiscal year he shall not countersign any contract, the expenses of which shall exceed the revenue actually collected for the fund to which such expenses are properly chargeable. The auditor shall examine all reports, books, papers, vouchers and accounts of the city treasurer, and, from time to time, shall perform such other duties as the city council may direct. All claims and demands against the city, before they are allowed by the city council, shall be audited and adjusted by the auditor, and he shall keep a record of his acts and doings, and keep a book, in which he shall enter all contracts, with an index thereto; such book shall be opened to the inspection of all parties interested.

ARTICLE VII.—CITY ATTORNEY.

§ 1. DUTIES OF.] The city attorney shall perform all professional services incident to his office, and when required shall furnish opinion upon any subject submitted to him by the city council or its committees.

ARTICLE VIII.—CITY TREASURER.

§ 1. DUTIES OF.] The city treasurer shall receive all moneys belonging to the city including all taxes, license money and fines; and collect all special assessments as hereinafter provided, and keep accurate and detailed account thereof in such manner as provided in this act, or as the city council may from time to time di-

rect. He shall have a settlement with the auditor, at the end of every month, and turn over all warrants, interest coupons, bonds or other evidences of indebtedness of the city which may have been redeemed by him during the month, taking the receipt of the auditor therefor, and all such warrants, orders or other evidences of indebtedness shall be canceled by him and have written or stamped thereon the date of their payment or redemption.

§ 2. HOW MONEYS PAID OUT.] Unless otherwise ordered by the council or provided for in this act, no moneys shall be paid out by the treasurer except upon the warrant of the mayor, countersigned by the auditor, except bonds and interest coupons, which, when due, may be paid upon presentation, or in case the same are payable at some other place than the city organized under this act, then the money for their redemption shall be sent to the place where they are payable in time to meet such payment when due.

§ 3. CITY WARRANTS.] All warrants shall be paid in the order in which they are presented, and the treasurer shall note upon the back of each warrant presented to him the date of such presentation, and when payment is made, the date of such payment; *Provided*, That any warrant shall be paid by the treasurer in case a sufficient amount of money shall remain in the treasury to pay all warrants presented previous to such warrant. Any violation of the provisions of this section on the part of the treasurer shall be sufficient ground for his removal from office by the mayor and council.

§ 4. TREASURER TO KEEP SEPARATE ACCOUNTS.] The treasurer shall keep a separate account of such fund or appropriation, and the debts and credits belonging thereto.

§ 5. TREASURER TO GIVE DUPLICATE RECEIPTS.] The treasurer shall give every person paying into the city treasury a duplicate receipt therefor, specifying the date of payment, and upon what account paid; and he shall also file copies of such receipts with the auditor at the date of his monthly report.

§ 6. TREASURER PROHIBITED FROM USING CITY MONEYS—PENALTY.] The treasurer shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys; and he is hereby expressly prohibited from using either directly or indirectly the corporation money or warrants in his custody and keeping, for his own use and benefit, or that of any other person or persons whomsoever; and any violation of this provision shall subject him to immediate removal from office by the mayor and city council, and upon conviction thereof, they are hereby authorized to declare such office vacant; and the city council shall appoint a successor for the term unexpired of the officer so removed.

§ 7. TREASURER'S REPORT—WARRANT REGISTER.] The treasurer shall report to the city council at such time as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures during and since his last report, and the

state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid, and person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee of the council, at the time of making such report.

§ 8. SPECIAL ASSESSMENTS.] All moneys received on any special assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made; and said money shall be used for no other purpose whatever.

ARTICLE IX—CITY ASSESSOR AND BOARD OF EQUALIZATION—
TAX LEVY—TAXES HOW COLLECTED.

§ 1. CITY ASSESSOR—DUTIES OF.] The city assessor shall perform all duties in relation to the assessing of property for the purpose of levying of all city, county and Territorial taxes. Upon the completion of the assessment roll he shall return the same to the city auditor, who shall lay the same before the board of review or equalization at their regular meeting.

§ 2. LAWS AND REGULATIONS GOVERNING CITY ASSESSOR.] The assessor shall be governed by the same laws and regulations as county and township assessors, and shall return his assessment roll on or before the second Tuesday in June of each year. Said assessment roll shall be opened to the inspection of all persons interested until the meeting of the board of review or equalization.

§ 3. BOARD OF EQUALIZATION—MEETS WHEN.] The board of equalization shall be composed of the city council, and auditor, and shall meet on the third Tuesday of June in each year. In the absence of the mayor, the council shall elect one of its own number to preside. The city auditor shall act as clerk of said board, and keep an accurate record of all changes made in the valuation and of all other proceedings. They may adjourn from day to day until their work is completed, and a majority of the whole board shall constitute a quorum to transact business. If no quorum is present the clerk may adjourn from day to day and publicly announce the time to which the meeting is adjourned.

§ 4. DUTIES OF BOARD.] The board of equalization shall meet at the time fixed in this act at the usual place of meeting of the city council, and shall proceed to equalize and correct such assessment roll. They may change the valuation and assessment of any real and personal property upon the roll, by increasing or diminishing the assessed valuation thereof as shall be reasonable and just to render taxation uniform; *Provided*, That the valuation of any personal property, as returned by the assessor, shall not be increased more than twenty-five per cent. without first giving the owner or his agent notice of the intention of the board to so increase it; such notice shall be by personal notice served upon

the owner or his agent, or by leaving a copy at his place of business or last place of residence, and shall state the time when the board will be in session to act upon the matter.

§ 5. OTHER DUTIES.] The board of equalization must place upon and add to the assessment roll any property, real or personal, subject to taxation, which has been omitted therefrom by the owner or by the assessor, and enter the same at a valuation so that it will bear an equal and just proportion of taxation. During the session of said board any person, or his attorney or agent, feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any alleged errors in the listing or valuation of his property, whether real or personal, and the board may correct the same as they may deem just; or if the board have reason to believe that any person has failed to return to the assessor all personal property required by law to be returned, or if any person refuse to swear to the returns so made, the board shall notify the person who has so failed to make return, or refused to swear to the return in the same manner as prescribed in section four of this article, and may examine each person on oath in regard to such property; or if he refuse to appear they may fix such valuation at a sum which they shall deem just.

§ 6. DUTY OF CITY AUDITOR.] Within ten days after the completion of the equalization of the assessment as herein provided, the city auditor shall deliver the same to the county auditor of the county in which such city is situated, with the certificate that the same is correct as equalized by said board of equalization, and the same shall be accepted by the board of county commissioners of such county in lieu of all other assessment rolls for said property in said city subject to equalization.

§ 7. TAX LEVY—HOW—AND WHEN.] The city council shall at the first regular meeting in September or within ten days thereafter, levy a tax for general purposes sufficient to meet the expenses of the year, based upon estimates furnished by the city auditor or a committee of the city council, and in addition thereto an addition for the interest and sinking fund as required by this act, and such levy shall be certified forthwith to the county auditor of the county in which such city is situated, together with the amount levied by the board of education of such city, if any. This levy shall be in the form of a certain number of mills on the dollar of valuation. The auditor of such county shall extend the same upon the tax roll of the county with, and in the same manner as other taxes are extended, except that the city tax may be included in one amount and the school tax in one amount, for each person, lot or parcel of land.

§ 8. DUTY OF COUNTY TREASURER.] The county treasurer of such county shall collect and enforce the collection of the city and school tax with and in the same manner as other taxes and shall pay over to the city treasurer, on the first of every month on de-

mand, all such taxes so collected during the preceding month, retaining two per cent. of such taxes, as his commission for collecting the same, (and shall forthwith notify the city auditor of the amounts so paid over.) He shall take duplicate receipts for all such amounts so paid to the city treasurer, one of which shall be forthwith sent to the city auditor.

§ 9. MONEY PAID TO CITY TREASURER—HOW APPORTIONED.] The city treasurer and auditor shall each apportion said amounts so received by the city treasurer, and credit each fund with its proportion or share according to the levy made, by the council, and the county treasurer at the time of paying over such funds shall furnish the city treasurer and auditor with a statement of the amount collected for each year separately.

ARTICLE X—CITY JUSTICE OF THE PEACE.

§ 1. JURISDICTION OF CITY JUSTICE.] The city justice of the peace shall have exclusive jurisdiction, and it shall be his duty to hear, try and determine all offences against the ordinances of the city; and he shall have concurrent jurisdiction with other justices of the peace, in the county, in all other cases, civil and criminal; *Provided*, That all fines, penalties and forfeitures, for the violation of any city ordinance, when tried before the city justice of the peace, shall, when collected, be paid by the officer receiving the same, to the city treasurer of such city.

§ 2. WHEN JUSTICE SHALL ISSUE WARRANTS.] Whenever complaint shall be made to the city justice of the peace upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which the city justice of the peace has jurisdiction, such justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the chief of police or the sheriff or any constable of the county, or some person especially appointed by said justice for such purpose.

§ 3. JUSTICE, WHEN TO HEAR COMPLAINT.] When any person shall be brought before the said justice upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

§ 4. POSTPONEMENT OF TRIALS.] Upon good cause shown such justice may postpone the trial of the case to a day certain, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before such justice, at the time and place appointed, and then, and there answer the complaint alleged against him.

§ 5. SUMMONS OF WITNESSES.] It shall be the duty of such justice of the peace to summons all persons whose testimony may be deemed material as witnesses on the trial, and enforce their attendance by attachment if necessary; and when a trial shall be continued by said justice, he may verbally notify such witnesses, as may be present at the continuance, to attend

before him, to testify in the cause set for trial; and such verbal notice shall be as valid as a summons.

§ 6. TRIALS—HOW GOVERNED.] All trials before the said justice, for misdemeanors arising under the laws of the Territory, shall be governed by the criminal procedure applicable to justices' courts in like cases.

§ 7. CONCERNING JUDGMENT ON CONVICTION.] In all trials for offenses under the ordinances of said city, if the defendant is found guilty, said justice shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until such judgment be complied with; in no case to exceed one day for every one dollar and twenty-five cents fine and costs assessed against said defendant.

§ 8. COURT, WHEN TO BE OPEN.] Said justice shall be a conservator of the peace, and his court shall be open every day except Sunday, to hear and determine any and all cases cognizable before him; and shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday except to receive complaints, issue process, and take bail, and receive verdicts.

§ 9. CONCERNING APPEALS.] In all cases before the said justice, arising under the ordinances of the city, an appeal may be taken by the defendant to the district court of the county; but no appeal shall be allowed unless such defendant shall (in case of fine) within ten days (and in case of imprisonment) within twenty-four hours, enter into recognizance with sufficient security, to be approved by said justice, conditioned in case of fine for the payment of said fine and costs, and costs of appeal, and in case of judgment or imprisonment that he will render himself in execution thereof, if it should be determined against the appellant.

§ 10. JUSTICE NOT TO REMIT FINES.] Any person convicted before the said justice of an offense under the ordinances of the city, shall be punished by fine and imprisonment, as may be regulated by ordinance, and under no circumstances shall such justice remit fines or penalties, or payment of costs or otherwise.

§ 11. WHO TO ACT IN CASE OF DEATH OF CITY JUSTICE.] In case of vacancy in the office of city justice by death, resignation, or otherwise, the city council shall call a special election to fill such vacancy until the next annual election or until his successor is elected and qualified, and in case of temporary absence, interest or disability to perform his duties, it shall be the duty of any acting justice of the peace within the city who shall be designated by the mayor to act as city justice during such vacancy, absence or disability in the trial of causes cognizable before said justice.

§ 12. DUTY OF JUSTICE WHEN PROSECUTION MALICIOUS.] If upon any trial under the provisions of this act, it shall appear to the satisfaction of the city justice, or the jury, (in cases arising under the laws of the Territory), that the prosecution was com-

menced without probable cause, or from malicious motives, the jury or justice trying the case shall state the name of the complaining witness in the findings, and shall impose the costs of the prosecution upon him, and judgment shall be rendered against such complaining witness, that he pay such costs, and stand committed until the same are paid.

§ 13. POWER OF JUSTICE—BILL OF EXCEPTIONS—JURY.] The city justice of the peace shall have power to enforce due obedience to all orders, rules, judgments and decrees made by him, and he may fine or imprison for contempt offered to him while holding his court, or to process issued or orders made by him, in the same manner and to the same extent as provided for justices' courts. On the trial of any case in said court it shall be the duty of the city justice to sign any bill of exceptions rendered to the court during the progress of such trial; *Provided*, The truth of the matter be fairly stated, and thereupon said exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the district court on writ of error, which may be allowed by said district court, or the judge thereof, for sufficient cause, and proceedings may be stayed, as may be deemed reasonable, and the revising court shall in such proceedings take judicial notice of all the ordinances of said city. Cases before the city justice arising under the city ordinances shall be tried and determined by the justice without the intervention of a jury, except in cases where, under the provisions of the ordinances of the city, imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be twenty dollars or over, and the defendant shall demand a trial by jury before the commencement of such trial; and when a demand shall be so made it shall be the duty of said justice to write down the names of eighteen persons, residents of the city, and having the qualifications of jurors in the district court, and the defendant and the attorney for the city shall each strike off three names, or, in case the defendant shall neglect or refuse so to do, then the city justice with the attorney for the city, shall strike off such names, and the said justice shall at once issue his venire to the chief of police commanding him to summon the twelve persons whose names remain upon the list as jurors. And in all trials by jury in said court challenges shall be allowed in the same manner and for the same causes as in the district court. in cases of misdemeanor; and in case the number shall be reduced below twelve by such challenges, or any portion of said number shall fail to attend, then the chief of police, shall summon in a sufficient number of talesmen, having the qualifications of jurors to complete the panel, which shall in all cases consist of twelve jurors. If either party objects to the competency of a juror, the question thereon must be tried in a summary manner by the said justice, who may examine the juror

or other witnesses under oath. Each and every person summoned as a juror in any case shall be entitled to a fee of fifty cents, and, in case of conviction, such fees shall be taxed against the defendant as a part of the costs of the case.

§ 14. PROCEEDINGS—HOW GOVERNED.] In all cases, not herein specially provided for, the process and proceedings of said court shall be governed by the laws regulating proceedings in justices' courts in criminal cases.

§ 15. OFFICE HOURS OF JUSTICE.] Said justice shall be in attendance at his office for the transaction of business at such reasonable hours as the city council may prescribe, and complaints may be made to, and writs and process issued by them at all times in court or otherwise.

ARTICLE XI.—CITY ENGINEER.

§ 1. QUALIFICATIONS OF.] The city engineer shall be a practical surveyor and engineer. He shall keep his office in some convenient place in such city, and the council shall by ordinance prescribe his duties, and fix his compensation for services performed for the city. All surveys, profiles, plans or estimates, made by him for the city, shall be the property of the city, and shall be carefully preserved in the office of the engineer, open to inspection of all persons interested; and the same, together with all the books and papers appertaining to said office shall be delivered over by the engineer, at the expiration of his term of office, to his successor or the city council.

ARTICLE XII—CHIEF OF POLICE—POLICE OFFICERS.

§ 1. POWERS OF CHIEF OF POLICE AND POLICE OFFICERS.] The chief of police shall perform such duties as shall be prescribed by the city council for the preservation of the peace. All police officers, and watchmen of any city, shall possess within the city limits, the powers of constables, by the laws of this Territory, and it shall be their duty to execute and serve all warrants, process, commitments and all writs whatsoever issued by the city justice of the peace, for any violation of the laws of the Territory of Dakota, or of the ordinances of said city, or any provisions of this act; and also all writs and process whatsoever issued by the city justice in civil actions; and they shall have authority to pursue and arrest any person fleeing from justice, in any part of the Territory, and when performing the duties aforesaid, shall be entitled to the same fees as constables, for like service; watchmen shall have authority to arrest and detain any person guilty of any breach of the peace or any violation of the laws of the Territory, or of the ordinances of the city, and for these purposes shall possess the powers of constables, under the laws of this Territory, while on duty.

§ 2. WARRANTS.] All warrants issued by the city justice for the violation of any general law of this Territory shall run to the

sheriff or any constable of the county, or to the chief of police or any policeman of the city; but no chief of police or policeman, where he goes outside of the city to make an arrest, shall receive any fees therefor unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy, or a constable, to make the arrest might endanger an escape.

ARTICLE XIII.—ELECTIONS.

§ 1. TIME AND PLACE OF.] There shall be an annual election for elective officers herein provided, held on the first Monday in April, of each and every year, at such place or places in each ward as the council shall designate, and the polls shall be kept open continually from nine o'clock in the forenoon until four o'clock in the afternoon and no longer, and ten days previous notice shall be given by the council of the time and place of holding such election, by publication in at least two of the city papers published in said city, if two shall be published therein.

§ 2. ELECTION DISTRICTS AND PRECINCTS.] Each ward shall constitute an election district; but whenever the number of legal voters in any ward shall exceed five hundred, the council may by ordinance, divide such ward into two or more precincts for voting purposes, and whenever the number of legal voters in any two or more contiguous wards shall not exceed one hundred, as determined by the last annual election, the council may by ordinance consolidate such two or more wards into one precinct for voting purposes; *Provided*, Such ordinance shall be passed and take effect before time of giving notice of an election, and said wards and precincts shall be and are hereby made election districts for all Territorial and county elections.

§ 3. QUALIFIED VOTERS.] Every legal voter of the county in which such city is situated, who shall have been a resident of the city thirty days next preceeding a city election is declared a citizen of said city and shall be entitled to vote at all city elections; *Provided*, That the city council shall provide for the registration of all voters as required by the laws of the Territory; and no person shall be entitled to vote in any other place than the ward or precinct where he resides.

§ 4. BOARD OF ALDERMEN DIVIDED INTO TWO CLASSES.] At the first election under this act, there shall be elected the full number of aldermen to which the city shall be entitled. At the first meeting of the city council after such election, the aldermen elected shall be divided, by lot, into two classes, those of the first class shall continue in office for one year, and those of the second for two years.

§ 5. OATHS AND DUTIES OF JUDGES AND CLERKS OF ELECTIONS.] The manner of conducting and voting at elections to be held under this act, and contesting the same, the keeping of poll lists and canvassing the votes, shall be the same, as nearly as may be, as in the case of the election of county officers under the general laws

of this Territory. The judges of elections shall appoint clerks when necessary to fill vacancies, and the judges and clerks shall take the same oath and have the same powers and authority as the judges and clerks of general Territorial elections. After the closing of the polls, the ballots shall be counted and the returns made out and returned, under seal, to the city auditor, within two days after the election, and thereupon the city council shall examine and canvass the same, and declare the result of the election and cause a statement thereof to be entered on its journal.

§ 6. JUDGES OF ELECTION—HOW APPOINTED.] The city council shall at its regular meeting, next preceeding the annual election, appoint three judges for each precinct, or voting place, who shall act as judges of election for such precinct; *Provided*, That no candidate for office at such election shall act as judge or clerk.

§ 7. WHAT ELECTS—TIE—HOW DECIDED.] The person having the highest number of votes for any office, shall be declared elected. In case of a tie in the election of any city officer, it shall be determined by lot, in presence of the city council, in such manner as they shall direct, which candidate or candidates shall hold office.

§ 8. CITY AUDITOR TO NOTIFY OFFICERS ELECTED OR APPOINTED.] It shall be the duty of the city auditor within five days after the result of the election is declared, or appointment made, to notify all persons elected or appointed to office, of their election or appointment, and unless such persons shall respectively qualify in ten days after such notice, the office shall become vacant.

§ 9. NEW ELECTION ON FAILURE TO QUALIFY.] If there is a failure to elect any officer herein required to be elected, or the person elected should fail to qualify, or for any other cause that may arise, the city council may forthwith order a new election therefor, and in all cases when necessary for the purposes of this act may call special elections, appoint judges thereof, canvass the returns thereof, and provide by ordinance for the mode of conducting the same; and shall give notice of such special elections, in which shall be stated the questions to be voted upon, and cause such notices to be published for the same length of time, and in the same manner, as is required in the case of regular annual elections in such city.

§ 10. WHEN TERM OF OFFICE COMMENCES.] The term of every officer elected under this act shall commence on the third Tuesday of April of the year for which he was elected.

§ 11. BECOMING VACANT—WHEN.] Any officer removing from the city or ward for which he is elected, or any officer who shall refuse or neglect, for ten days after notice of his election or appointment, to enter upon the discharge of the duties of his office, shall be deemed to have vacated his office, and the city council shall proceed to fill the vacancy as herein prescribed.

ARTICLE XIV—FINANCE.

§ 1. FISCAL YEAR.] The fiscal year of each city organized under this act shall commence on the first day of September of each year.

§ 2. GENERAL APPROPRIATION—HOW MADE.] The city council shall at their regular meeting in September of each year, or within ten days thereafter, pass an ordinance, to be termed the annual appropriation bill, in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation; and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city, either by a petition signed by them, or at a general or special election duly called for that purpose.

§ 3. SPECIAL APPROPRIATIONS FOR IMPROVEMENTS—HOW MADE.] The city council, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill of that year, except as is herein otherwise specially provided; and no expenditure for an improvement to be paid for out of the general fund of the corporation shall exceed in any one year the amount provided for such improvement in the annual appropriation bill; *Provided, however,* That nothing herein contained shall prevent the city council from ordering, by a two-thirds vote, any improvements the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. The city council may order the mayor and finance committee to borrow a sufficient amount to provide for the expense necessary to be incurred in making any improvements, the necessity of which has arisen as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum, and interest, shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgement be obtained against the corporation, the mayor and finance committee, under the sanction of the city council, may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall in like manner be added to the amount authorized to be raised in the general tax levy of the next year, and embraced therein.

§ 4. CONTRACTS—HOW MADE.] No contract shall be hereafter made by the city council, and no expense shall be incurred by any officers of departments of the corporation, whether the object of the expenditures shall have been ordered by the city council or not, unless an appropriation shall have been previously made,

concerning such expense, except as herein otherwise expressly provided.

ARTICLE XV.—LOCAL IMPROVEMENTS—SPECIAL ASSESSMENT.

§ 1. CITY COUNCIL MAY ASSESS.] The city council shall have power to make assessments for local improvements on property adjoining or benefitted thereby, and collect the same in the manner hereinafter provided, and to fix, determine and collect penalties for nonpayment of any special assessment and taxes.

§ 2. COMMISSIONERS OF LOCAL IMPROVEMENTS—HOW APPOINTED.] The council upon ordering any improvements, to be paid for by special assessment, shall appoint three commissioners who shall be disinterested free holders and qualified voters of the city, to view the premises and assess the damages which may be occasioned by the taking of private property, or any other damage arising from the making of such improvement. Such commissioners shall be notified as soon as practicable by the city auditor, to attend at his office, at a time to be fixed by him, for the purpose of qualifying and entering upon their duties, and in case any such commissioners upon being so notified shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to the city, not exceeding fifty dollars, and shall be liable to be prosecuted therefore before the city justice, as in the case of fines imposed for the violation of an ordinance of said city, and in case one only of said commissioners shall so neglect or refuse to attend, the two remaining commissioners shall fill the vacancy, in all other cases the vacancy shall be filled by the council.

§ 3. COMMISSIONERS TO QUALIFY BEFORE CITY AUDITOR, AND REPORT.] The commissioners shall be sworn by the city auditor to discharge their duties as commissioners in the matter with impartiality and fidelity, and to make due return of their action and doings to the city council.

§ 4. DUTIES OF LOCAL IMPROVEMENT COMMISSIONERS.] The said commissioners shall with all reasonable speed, with the assistance of the city engineer of such city, cause a survey and plat of the proposed improvement, to be made and filed with the city auditor, exhibiting as far as practicable the land or parcels of property required to be taken, or which may be damaged thereby; and shall thereupon give notice by publication in the official newspaper of said city for at least ten days, to the effect that such plat has been filed, and that said commissioners will meet at a place and time designated by them in such notice, and thence proceed to view the premises and assess the damages for property to be taken, or which may be damaged by such improvement.

§ 5. SAME.] At the time and place mentioned in said notice the said commissioners shall view the premises and may hear any evidence or proof offered by the parties interested, and adjourn from day to day if necessary, for the purpose aforesaid. When this view and hearing aforesaid

shall be concluded, they shall determine and assess the amount of damages to be paid to the owner or owners of each parcel of property proposed to be taken, or which may be damaged by said improvement, and in so doing shall take into consideration the value of the property proposed to be taken, with such other damage as may be incident thereto, and also the advantages which will accrue to such owner or owners, in making such improvements, and in case the making of such improvements should require the removal of any building or otherwise injure any permanent improvements, the said commissioners shall assess the damage separately from the damages to the land upon which they are erected.

§ 6. SAME.] If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate in it less than an estate in fee, the injury or damage done to such persons, or interest, respectively may be awarded to them by the commissioners less the benefit resulting to them, from the improvement; *Provided*, That such person or persons owning such interests, or their authorized agents shall make application to said commissioners, for such division of the award, prior to the filing of their report.

§ 7. SAME.] The said commissioners having ascertained and assessed the damages aforesaid, shall make and file with the city auditor a written report to the city council of their action in the premises, embracing a schedule or assessment of the damages in each case, with a description of the land and the names of the owners if known to them, and also a statement of the costs of the proceedings.

§ 8. DUTY OF CITY AUDITOR ON REPORT OF LOCAL IMPROVEMENT COMMISSIONERS.] Upon such report being filed in the office of the city auditor, said city auditor, shall give at least ten days' notice by publication in the official newspaper of such city, to the effect that such assessment has been returned, and that the same will be confirmed by the city council, at a meeting thereof to be named in said notice, unless objections are made in writing by persons interested in any land required to be taken. The city council upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power in their discretion to confirm, revise or annul the assessment, giving due consideration to any objections interposed by parties interested; if the report be not confirmed by the city council, proceedings may be taken anew to assess the damages.

§ 9. DAMAGES FOR LOCAL IMPROVEMENTS—HOW PAID.] The damages assessed shall be paid out of the general funds of the city, and shall be paid or tendered or deposited and set apart in the city treasury to and for the use of the parties entitled thereto, within six months of the confirmation of such assessment and

report, and in case the city council should be unable to determine to whom the damages, in any particular case so awarded, should be paid, or in case of disputed claims in relation thereto, the damages in such case may be deposited by order of the city council in the district court of the county, in the same manner as moneys are paid into court, until the parties entitled thereto shall substantiate their claims thereto.

§ 10. PROCEEDINGS WHEN IMPROVEMENTS TO BE MADE—DAMAGES.] Whenever in making such improvement it shall be necessary to remove any building, or any part thereof, the commissioners shall assess the damage to the owner thereof, in case the building be taken, also the damage in case the same should be removed, and the owner thereof shall elect which assessment he will take, by a written notice, to be presented to the city council at the time of the confirmation of the assessment. And in case he or they elect to remove said building the same shall be done within thirty days after such confirmation, and shall thereupon be entitled to the amount so awarded. When such owner shall not have elected to remove such building, or shall have neglected to remove after having so elected, within the prescribed time, such buildings, or so much thereof as may be necessary, upon payment, or depositing the amount of damages so awarded, in manner aforesaid, may then be taken and appropriated, sold or disposed of as the city council may direct, and the same, or the proceeds thereof, shall belong to the city.

§ 11. PARTY AGGRIEVED MAY APPEAL—NO PLEADINGS REQUIRED.] Any person feeling himself aggrieved by the assessment may by notice in writing served on the proper officers of the city, a copy whereof, with proof of service, shall be filed in the office of the clerk of the district court of such county, within twenty days after the confirmation of said report or assessment, appeal from such assessment to the district court aforesaid, when such appeal shall be tried by the court and jury as in ordinary cases, but no pleadings shall be required, and the party appealing shall specify in the notice of appeal, the grounds of objection to such assessment, and shall not be entitled to have any other objection than those specified considered, and a transcript of such report certified by the city auditor, or the original thereof shall be prima facie evidence of the facts therein stated, and that such assessment was just and made in conformity to law. The judgment of such court therein shall be final, such appeal shall be entered and brought on for trial, and be governed by the same rules in all other respects as appeals from justices of the peace in civil actions.

§ 12. PROFILES—WHERE FILED.] Whenever any public ground, street or alley shall be laid out, widened or enlarged, under the provisions of this act, the city council shall cause an accurate survey and profile thereof to be made, and filed in the office of the city engineer, and also filed in the office of the register of deeds of the county in which such city is situated.

§ 13. PETITION TO VACATE STREETS AND ALLEYS—HOW MADE—PARTY AGGRIEVED MAY APPEAL TO DISTRICT COURT.] No public grounds, streets or alleys, or part thereof within the city shall be vacated or discontinued by the city council except upon a petition of a majority of the owners of property on the line of such public grounds, streets or alleys, resident within the city. Such petition shall set forth the facts and reasons for such vacation accompanied by a plat of such public grounds, streets or alleys proposed to be vacated, and shall be verified by the oath of at least two of the petitioners, and the consent in writing of all the owners of the property adjoining the plat to be so vacated. The city council shall thereupon, if they deem it expedient that the matter should be proceeded with, order the petition to be filed with the city auditor, who shall give notice by publication in the official newspaper of the city for four weeks, at least once in each week, to the effect that such petition has been filed as aforesaid, and stating in brief its object and that said petition will be heard and considered by the council or a committee of them, on a certain day therein specified, not less than ten days from the expiration of such publication. The city council, or such committee as may be appointed by them for the purpose, at the time and place appointed, shall investigate and consider the matter and shall hear the testimony and evidence of parties interested. The city council thereupon after hearing the same, or upon the report of such committee favoring the granting of such petition, may, by resolution passed by a two thirds vote of all the members, elect to declare such public grounds, streets, alleys or highways vacated; which said resolution before the same shall go into effect shall be published as in the case of ordinances, and thereupon a transcript of such resolution duly certified by the city auditor shall be filed for record and duly recorded, in the office of the register of deeds of the county. Any person aggrieved thereby may within twenty days after publication of such resolution, appeal to the district court of the county, under the same regulations as in the case of opening streets and alleys, and the judgment of the court therein shall be final.

§ 14. RECORDS OF CITY AUDITOR—PRIMA FACIE EVIDENCE OF MATTER THEREIN CONTAINED.] It shall be the duty of the city auditor to keep in his office a record of all proceedings taken in the matter of opening, vacating, paving, or otherwise improving streets and alleys, and after the confirmation of any report mentioned herein, in such matters, said auditor shall carefully record in such record all the proceedings taken in relation to the matters in said report, including all petitions, orders and appointments of commissioners, notices and proofs of publication thereof, and orders and resolutions of the council. And the said record, or a certified transcript thereof, or the original papers, petitions, proofs of publication, orders or resolutions on file in his office

shall be prima facie evidence of the facts therein contained in any court or place in this Territory.

§ 15. IMPROVEMENTS OF PUBLIC STREETS, ALLEYS AND GROUNDS—HOW MADE.] When the city council shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, curb, gutter, drain or otherwise improve any street, alley, avenue, lane or highway, or other public grounds within the city limits, for which a special assessment is to be levied as herein provided, the city council shall by resolution declare such work or improvement necessary to be done, and such resolution shall be published for four consecutive weeks, at least once a week, in the official newspaper of the city, and if a majority of the owners of the property liable to be assessed therefor shall not within twenty days after the expiration of such publication file with the city auditor a written protest against such improvement, then the city council shall have power to cause such improvement to be made, and to contract therefor, and to levy and collect the assessment as hereinafter provided, and all work done under this section shall be let by contract to the lowest responsible bidder therefor.

§ 16. ASSESSMENTS FOR IMPROVEMENTS—HOW MADE.] Whenever any work or improvement mentioned in the preceding section shall have been determined upon, and the contract let therefor, the city engineer shall forthwith calculate the amount to be assessed for such improvement for each lot or parcel of ground abutting or abounding upon such improvement. And in estimating the assessment he shall take the entire cost of such improvement and divide the same by the number of feet fronting or abutting upon the same, and the quotient shall be the sum to be assessed per front foot so abounding or abutting, and said estimate shall be filed with the city auditor, and shall be presented to the city council for their approval at the first meeting held thereafter. And the city auditor shall cause said estimate of the city engineer, together with a notice of the time and place when the council will meet to approve of the same, to be published in the official newspaper of the city, for at least ten days prior to the meeting of the city council, to approve the same.

§ 17. ASSESSMENTS—HOW PAID—PENALTY FOR NON-PAYMENT FOR LOCAL IMPROVEMENTS.] After said estimate provided in section sixteen shall have been so approved, the auditor shall forthwith make, or cause to be made, an assessment roll describing the property so assessed, with the name of the owner, if known, and the amount assessed to each lot, piece or parcel of ground, as approved by the city council, and attach thereto a copy of the resolution of the city council approving of the same, and certify that the same is correct, and shall file the same with the city treasurer for collection. The city treasurer shall publish said list three successive weeks, at least once in each week, in the official newspaper of the city, together with a notice that a penalty of ten per cent. will be added thereto if the same is not paid within thirty

days after the date of the first publication, stating the time when such penalty shall accrue.

§ 18. GRADE OF STREETS—HOW ESTABLISHED—RECORD TO BE KEPT BY CITY ENGINEER.] The city council may by ordinance establish the grade of all streets, alleys, and sidewalks in the city, as the convenience of the inhabitants may require, and a record of the same shall be kept together with the profile thereof in the office of the city engineer.

§ 19. SIDEWALKS—WIDTH OF—HOW ESTABLISHED—CONTRACTS FOR BUILDING—HOW MADE.] The city council shall by ordinance prescribe the width of sidewalks, and may establish different widths in different locations, and determine the kind of material of which they shall be constructed, having regard to the business and amount of travel in the vicinity of each, and to provide by ordinance for the letting of contracts for building the same.

§ 20. SIDEWALKS—HOW BUILT—HOW REPAIRED.] Whenever the city council shall deem it necessary to construct, rebuild or repair (except as hereinafter provided) any sidewalk in said city, they shall notify any and all owners and occupants of any lot or lots, or parcels of land adjoining such sidewalks, to construct, rebuild or repair the same at his or their own cost and expense, within a time designated, by the publication in the official paper of the city, once in each of the two consecutive weeks, of a notice to said owners and occupants, setting forth what work is to be done, and the character of the same, and the time within which they are required to do the same. Such notice may be general as to the owners, but must be specific as to the description of the lots or parcels of ground in front of which such sidewalks are to be built.

§ 21. THE CITY COUNCIL TO CONTRACT FOR SIDEWALKS—WHEN.] If such work is not done and the sidewalks not built, repaired or rebuilt in the manner, and within the time prescribed in said notice, the city council may order the same to be done by such person as they may contract with, and under the direction of the city engineer, at the expense of the lots and parcels of land adjoining said sidewalks, and said expense shall be assessed upon said lots and parcels of land so chargeable by the city engineer, and returned by him to the city council, and the city auditor shall cause to be published said estimate of the city engineer, together with a notice of time and place when the city council will meet to approve of the same, by one publication in the official newspaper of the city, for at least ten days prior to the meeting of the council to approve the same, and said assessment so made and returned if approved by the council shall be a lien upon said lots and parcels of land on and after such approval.

§ 22. ASSESSMENTS FOR SIDEWALKS—HOW MADE—PENALTY FOR NON-PAYMENT.] Within ten days after such assessment shall have been so approved, the city auditor shall file a certified copy of

the same in the office of the city treasurer, and thereupon said assessment shall be payable and due to said city, and if not paid within sixty days thereafter, shall have a penalty of ten per cent. added thereto.

§ 23. COUNCIL MAY PAY FOR REPAIRING SIDEWALKS—WHEN.] The city council may provide by ordinance, for repairing sidewalks where the amount of such repairs do [does] not exceed the sum of ten dollars for fifty feet of such walk, and may pay for the same out of the general fund if they shall deem it expedient.

§ 24. PENALTY FOR FAILURE TO KEEP SIDEWALK IN REPAIR—NON-RESIDENT OWNER TO BE NOTIFIED.] Any owner of real property who shall fail to keep in repair the sidewalk in front of or along such property if he reside thereon or if he does not reside thereon to repair the same forthwith when notified, shall be held liable to the city for any damage caused by such neglect.

§ 25. SALE OF REAL PROPERTY FOR SPECIAL TAXES—HOW SOLD—ADVERTISING—COSTS OF.] There shall be a sale of all real property for all due and unpaid special assessments thereon for local improvements held on the first Monday in March and the first Monday in December of each year, and whenever any special assessment for such local improvements shall have been levied as provided in this act, and shall have been due and unpaid for sixty days preceding the first days of February and November of each year, the city treasurer shall give notice of such sale by publication in the official newspaper of the city once in each of three consecutive weeks. The first publication shall not be less than twenty-three nor more than thirty days prior to the day of such sale. Such notice shall state when and for what purpose such assessment was made, and shall contain a list of the property upon which such assessment is unpaid, with the amount of such assessment including penalty and costs of advertising (which costs shall be ten cents for each tract or parcel of land) and also the day and place of sale.

§ 26. CITY TREASURER TO ADJOURN SALE—WHEN—ADJOURNMENT LIMITED.] On the day mentioned in the preceeding section, and in such notice of sale, the city treasurer or his deputy shall attend at the place designated, at ten o'clock in the forenoon of said day, and offer for sale each piece or parcel of property contained in the advertised list upon which the assessment shall remain due and unpaid, and he may adjourn the sale from day to day until the property in said list is all sold, or offered for sale; *Provided*, That such adjournment shall not extend beyond a period of three days, from the day named in the notice.

§ 27. WHO CONSIDERED THE HIGHEST BIDDER—WHAT PART OF PROPERTY SOLD.] The person offering to pay the amount due on any piece or parcel of land or city lot, for the smallest portion of the same shall be considered the highest bidder, and when such property is unplatted, such portion shall be taken from the southeast corner thereof, in form as nearly square as possible, and if a

city lot, it shall be so many feet extending the full depth of the lots, and taken from the north or east side of such lot.

§ 28. DUTY OF CITY TREASURER ON FAILURE OF BIDDER TO PAY FORTHWITH.] Should any person bidding, fail forthwith to pay the amount due, then the city treasurer may again offer the same for sale at any time before the close of the sale, or he may recover the amount of such bid by a civil action brought in the name of the city, or sell the same at private sale as hereinafter provided.

§ 29. CITY TREASURER TO KEEP RECORD OF SALE, AND REPORT SAME TO CITY AUDITOR.] The city treasurer shall keep a record of such sale in a book for that purpose, showing the description of each piece or parcel sold or offered for sale, to whom sold, date of sale, and amount sold for, if sold, and if not sold it shall be so stated, and the reason, and within ten days after the close of said public sale of property the city treasurer shall file in the office of the city auditor a return of said sale showing the land or lots sold, the name of the purchaser, and the sum paid by them, and also a copy of the notice of the sale, with a certificate of advertisement, verified by an affidavit, and such certificate shall be evidence of the regularity of the proceedings.

§ 30. CERTIFICATE OF PURCHASE—FEE.] The purchaser of any lot or tract of land sold by the city treasurer for such special assessment, shall be entitled to a certificate of purchase, describing the lot or tract so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and the assignment must be acknowledged before some officer having authority to take acknowledgements of deeds; said certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings, and the treasurer may demand and receive the sum of fifty cents for each certificate so issued.

§ 31. PRIVATE SALE OF REAL PROPERTY FOR SPECIAL TAXES—WHEN—CERTIFICATES IN DUPLICATE—WHAT TO CONTAIN.] After the sale shall have closed, and after the treasurer shall have made his return thereof to the city auditor as hereinbefore provided, if any tract, parcel or lot of land remain unsold for want of bidders, the sum for which such property was offered for sale shall draw interest at the rate of eighteen per cent. per annum until such property is sold or redeemed, and the treasurer is authorized to sell the same at private sale to any person, who will pay the amount of the assessment, penalty and costs, with interest thereon, from the time when the same was offered for sale to the time of the purchase, and to deliver to such purchaser a certificate as provided in section thirty of this article, and shall make out duplicate certificates for the amount of such purchase, one of which shall be deposited with the city auditor, and the other delivered to the purchaser, with the additional statement inserted in said certificate that said land or lots was offered at public sale for such

assessment, but not sold for want of bidders, and he shall endorse on said certificate "sold for special assessment at private sale."

§ 32. TAX DEED TO ISSUE AFTER TWO YEARS—FORM OF—MINOR MAY REDEEM—WHEN.] At the expiration of two years after the date of such sale as fixed in the notice thereof, the purchaser or assignee shall be entitled to a deed of the property so sold, which deed shall be in form substantially as follows:

TAX DEED.

WHEREAS, A. B. did on the.... day of....., A. D. 188..., produce to the undersigned, C. D., treasurer of the city of....., in the county of....., and the Territory of Dakota, a certificate of purchase in writing, bearing date the.... day of....., 188..., signed by....., who at the last mentioned date was treasurer of said city, from which it appears that.... did on the.... day of....., 188..., purchase at public auction (or at private sale) at the office of said treasurer, in the said city, the tract, parcel or lot of land lastly in this indenture described, and which said lot was sold to.... for the sum of.... dollars, being the amount due on the following tract or lot of land, returned delinquent for the non-payment of an assessment for local improvements, made on the.... day of...., 188..., including penalty, costs and charges, to-wit: (here insert the particular lot of land offered for sale) and it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the lands therein described having now expired, and the same not having been redeemed as provided by law, and the said A. B. having demanded a deed for the tract of the land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for the special assessment, penalty, and costs as above specified, and it appearing that said lands were legally liable for such assessments, and that such assessment was duly made and charged to such land on the....day of....18.... and that said lands had been legally advertised for sale for such assessments and were sold on the....day of....18....; now therefore this indenture made this....day of....18....between the city of....county of....and Territory of Dakota, by....treasurer of said city of the first part, and the said A. B. of the second part, witnesseth, that the said party of the first part for and in consideration of the premises and the sum of one dollar in hand paid hath granted, bargained and sold, and by these presents doth grant, bargain, sell and convey unto the said party of the second part and his assigns forever, the lot, tract or parcel of land mentioned in said certificate and described as follows, to-wit: (describe the land) to have and to hold said mentioned lot, tract or parcel of land with the appurtenances thereto belonging, to the said party of the second part...., heirs and assigns forever, in as full and ample a manner as the said

treasurer of said city is empowered by law to sell the same. In testimony whereof the said treasurer of said city of....has hereunto set his hand and seal on the day and year aforesaid; *Provided*, That the owner or occupant or any other person may redeem the same at any time within the two years mentioned in this section, or before the tax deed is issued therefor, by paying the amount such land sold for with costs and interest on the same, at the rate of twenty-four per cent. per annum from the date of such sale; and, *Provided, further*, That the lands or lots belonging to minors or any interest they may have in any land or lots sold for such taxes may be redeemed in the same manner at any time before such minor becomes of age and during one year thereafter.

§ 33. PART OWNER TO PAY PRO RATA, OR ACCORDING TO INTEREST IN PROPERTY.] Any person claiming a portion of any piece or parcel of land or lot sold for such special assessment, may redeem the same by paying the proportion so claimed pro rata, according to the number of feet abounding or abutting on said improvement, or if his interest be undivided he shall pay the proportion that his interest bears to the whole amount, and the conveyance shall be made for the part or proportion unredeemed.

§ 34. CERTIFICATE OF SALE SURRENDERED—WHEN DEED ISSUED—CITY TREASURER TO KEEP RECORD OF.] Upon presentation and surrender of the certificate of sale after the time of redemption shall have expired, the treasurer shall issue to the owner thereof a deed in the name of the city, as provided in section 32, of this article, which deed shall be executed under his hand and the execution shall be attested by the city auditor under the seal of the city, and such deed shall vest in the grantee an absolute estate in fee simple in such land subject however to all the claims which the Territory, county or city may have thereon for taxes, and shall be presumptive evidence of the truth of the facts therein recited, and prima facie evidence of the regularity of all the proceedings; which deed shall be acknowledged by the treasurer before some person authorized by law to take acknowledgements of deeds; and the treasurer shall make a record of the date of said deed and to whom made, and shall cancel the certificate and file the same with the city auditor.

§ 35. ERROR OR OMISSION NOT TO INVALIDATE DEED.] Any error in describing any lot or parcel of land or any omission of any tract so assessed, shall not invalidate the sale as to the lots or parcels of land correctly described, but any tract or parcel so omitted or erroneously described may be advertised and sold at the next succeeding sale.

§ 36. SALE NOT INVALIDATED—WHEN—NO PROPERTY EXEMPT FROM SPECIAL ASSESSMENT.] The sale of land or city lots or any real property for special assessment, shall not be invalid on account of such real property having been listed or charged on the assessment list, or advertised in any other name than that of the rightful owner; and no real property within the limits of the city

shall be exempt from special assessment for street, sidewalk or sewer purposes.

§ 37. TIME TO COMMENCE ACTION FOR POSSESSION LIMITED.] No action shall be commenced by the former owner or owners, of lands or lots, or by any person claiming under him or them, to recover possession of such land or lots, which has been sold and conveyed by deed for non-payment of any special assessment, or to avoid such deed unless such action shall be commenced within three years after the recording of such deed; and not until the amount of such special assessment, interest and penalties, costs and expenses and all taxes or special assessments paid on such property shall be paid or tendered by the parties commencing such action.

§ 38. CITY COUNCIL MAY ISSUE BONDS—TO WHAT AMOUNT.] For the purpose of carrying into effect and economically enforcing the provisions of this article, the city council shall have power and authority to issue the bonds of the city to an amount not exceeding one-half of one per cent. of the valuation of all property in the city, as may appear by the last tax list preceeding such issue, and such issue of bonds shall not be increased until the valuation shall have increased at least one hundred thousand dollars, over and above the valuation upon which the next preceding issue shall have been based.

§ 39. INTERNAL IMPROVEMENT BONDS.] Said bonds shall be issued in amounts of not less than five hundred dollars each with interest coupons attached, as directed by the city council, and shall draw interest at a rate not exceeding seven per cent. per annum, payable annually or semi-annually, as may be determined by the city council, and shall be termed and known as "Internal Improvement Bonds," and payable, principal and interest, either in New York City or the city issuing the same. Said bonds shall become due and payable in not [less] than twenty years from the date of issuance thereof, and shall not be sold or negotiated at a less rate than ninety-five per cent. of their face value.

§ 40. PROCEEDS OF INTERNAL IMPROVEMENT BONDS—HOW DISPOSED OF.] The proceeds of the sale of said bonds shall be kept as a special fund, separate and apart from the other funds of the city, and used solely and exclusively for the purpose of paying for work done and material furnished under the provisions of this article, and in no case shall a greater amount of this fund be used for such purposes than the amount of the assessment as approved by the city council, nor until such assessment has been fixed and approved, and all such assessments, penalties and interest, when collected, shall be credited to such fund, and remain a part of the same.

§ 41. MAYOR AND AUDITOR TO SIGN BONDS AND CONTRACTS.] All bonds of the city, and all contracts and conveyances (except tax deeds) shall be signed by the mayor and countersigned by the auditor, who shall affix the seal of the city thereto, and keep an

accurate record of all bonds issued in a book to be provided for that purpose.

ARTICLE XVI.--SEWERAGE.

§ 1. CITY COUNCIL MAY ESTABLISH AND MAINTAIN SEWERS.] The city council shall have power to establish and maintain at any time a general system of sewerage for said city, in such manner and under such regulations as the city council shall deem expedient, and to alter or change the same from time to time as said council may deem proper; *Provided, however,* That no measures shall be taken for the establishment of such system of sewerage, except upon the affirmative vote of at least two-thirds of the members of the city council.

§ 2. CONSTRUCTION, ALTERATION, AND REPAIR OF SEWERS.] The cost of construction, altering or repairing any of the sewers or improvements herein provided for, or referred to, shall be estimated by the city engineer of the city, or such other competent engineer as may be selected by the city council for such purpose, who shall draw plans and specifications therefor; and such estimate together with said plans and specifications shall be filed with the city auditor of the city, (and a copy thereof to remain in the office of the city engineer) before any bids for work thereunder are advertised for, and shall remain on file in his office, and shall be open to the inspection of all persons, until after the contract for such work shall be let.

§ 3. PROPOSALS FOR CONSTRUCTION.] The city council shall then cause proposals for said work to be advertised for in the several papers of such city for at least thirty days, which advertisement shall specify the work to be done, and shall call for bids upon a basis of cash payment for said work. Bids for such work shall be forwarded to the city auditor of such city, securely sealed, so as to prevent their being opened without detection, and shall be endorsed upon the outside thereof with a statement as to what work such proposals are for. Each bid shall be accompanied by a bond running to such city in a penal sum of at least fifty per cent. of the amount of the bid, which bond shall be executed by the bidder as principal, and by two or more good and sufficient sureties, who shall justify as such in like manner as required by the general laws of this Territory, relating to arrest and bail, which bond shall be conditioned that the bidder will well and faithfully perform the work bid for, in pursuance to the plans and specifications therefor, in case such contract be awarded to him, and further conditioned that in case of default on the part of the bidder to perform such work as provided in his contract, or in case of his failing to enter into said contract in case the same shall be awarded to him under his bid therefor, then the sum named in said bond shall be taken and held to be fixed and liquidated damages in favor of said city, and the full amount thereof may be recovered of

said bidder and his sureties on said bond in an action by the city against them on said bond. Such bids shall be opened by the city council at the expiration of the time limited in said notice for receiving the same, or at such other time as the city council may appoint therefor.

§ 4. CONTRACTS—HOW MADE.] The city council shall have the right to reject any and all bids for such work, if in their opinion the interests of the city will be best subserved by so doing; but if all such bids be not rejected the contract shall then be awarded to the lowest responsible bidder, upon the basis of cash payment therefor; *Provided*, Such bidder shall have complied with the foregoing requirements, and shall have guaranteed to the satisfaction of the city council the proper and speedy completion of said work. Such contract shall be made on the part of the council and in the name of the city, and shall be executed on the part of the city by the mayor thereof, and countersigned by the city auditor with the corporate seal of the city attached, and an attested copy thereof shall be filed in the city auditor's office; *Provided, however*, That no such contract shall be awarded, except upon a two-thirds vote of all the members of the city council, and there shall be reserved in any contract so let, the right to the city council in case of the improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or to order a reconstruction thereof, or of any part thereof, if improperly done.

§ 5. COUNCIL MAY GRANT ESTIMATES—TWENTY-FIVE PER CENT. RESERVED.] In case the contractor to whom any such contract shall be let, shall properly perform the work therein designated, the city council may from time to time in their discretion as the work progresses, [grant to such contractor an estimate of the amount already earned thereunder reserving twenty-five per cent. therefrom, which estimate so allowed shall on presentation thereof to the city treasurer and filing the same with him, authorize the city treasurer to pay the amount of such estimate less twenty-five per cent. reserve, to such contractor out of any funds then in the treasurer's hands applicable thereto.

§ 6. COUNCIL MAY ISSUE BONDS FOR—WHEN PAYABLE.] The city council for the purpose of raising funds to pay for the establishment, construction and maintenance of such system of sewerage, shall have power to issue the bonds of the city to an amount not exceeding the sum of one hundred thousand dollars, payable in not to exceed twenty years from the date thereof, drawing interest semi-annually, at the rate of not exceeding seven per cent. per annum, payable at either in New York City or the city issuing the same, and which shall be signed and executed as provided in the article on special assessments of this act; *Provided*, That at no time shall there be more than one hundred thousand dollars of such bonds outstanding and unpaid, and shall not be negotiated at less than one hundred cents on the dollar.

§ 7. SPECIAL SEWERAGE ASSESSMENT COMMITTEE—HOW APPOINTED—DUTIES, ETC.] For the purpose of paying the principal and interest of such bonds, the city council shall provide as follows:

1. The city council shall forthwith upon the letting of any contract under the provisions thereof create by appointment of three persons from among the citizens of such city, "A Special Sewerage Assessment Committee," who shall each file with the city auditor a written acceptance of such appointment, and also take and subscribe in writing an oath to faithfully and impartially discharge the duties of his position as a member of such committee, which oath shall also be filed with the city auditor, and one of such three persons shall be designated by the city council as the chairman of such committee. The city council may from time to time as occasion may require, make new appointments to such committee to fill any vacancy arising therein from death or any cause and to substitute in case of neglect or refusal to act of any person so appointed.

2. It shall be the duty of such committee to personally inspect any and all lots, parts of lots and parcels of land fronting or abutting upon the work contracted for as hereinafter set forth, or within three hundred and fifty feet of any part thereof, and thereupon assess against all such lots, parts of lots and parcels of land, which will in the opinion of such committee be specially benefitted by the construction of such system of sewerage, a special assessment of such benefit, not exceeding in any case the sum of fifty dollars for any one lot or a proportionate amount for any lesser tract of land; and for the purposes of this act the word "lot" shall be construed to mean a piece or parcel of land twenty five feet in width by one hundred and forty feet in depth, or of any other shape and containing the same number of square feet. Whenever such assessment is made and completed as to all the lots, parts of lots or parcels of land to be benefitted specially by the work under any one contract, the said committee shall make or cause to be made a complete list thereof, setting forth the several tracts so assessed, and the amount assessed against each, and cause the same to be published for three consecutive weeks in the official newspaper of the city, together with a notice of the time and place when and where such committee will meet to hear objections to such assessments. At the time and place mentioned in such notice the said committee shall meet and hear any and all objections which shall be made to any such assessment by any owner or occupant of a tract so assessed, or his or their agent or attorney, and thereupon alter or affirm the same as may in the opinion of such committee be just in the premises. The committee shall then deposit such assessment list with the city auditor, who shall forthwith cause the same to be again published for three successive weeks in the official newspaper of the city, with a notice to the persons interested

that at the next regular meeting of the city council after the expiration of the time of publication of such notice, giving the date thereof, appeals from the decision of such committee in relation thereto will be heard and determined by the city council.

3. At such meeting of the city council, any person aggrieved by the determination of such committee in regard to any such assessment, and who appeared in person or by agent or attorney before such committee as hereinbefore provided, if a resident of the city and all non-resident owners of any property so assessed, whether they appear before such committee or not, may appear before the city council and present their reasons why the action of such committee should not be affirmed by the city council, and the city council shall then hear and determine such appeals and objections if any, and may alter or affirm the action of such committee in relation thereto as to the city council may seem just in the premises; and shall thereupon cause such list when altered to conform to their action, if any such alteration be made, to be certified as correct by the city auditor and filed in his office. The city auditor shall annually, at the times he shall certify to the county auditor of such county the amount of city taxes to be levied for the current year, also certify to such county auditor a list of all lots or tracts of land assessed for sewerage purposes under the provisions of this act, with the amount to be collected for the current year, which amount shall be one-twentieth of the whole assessment as confirmed by the council, and the county auditor of such county shall extend the same upon the tax roll for the current year, and it shall be collected in the same manner as the other city taxes.

4. The said committee and the city council upon meeting at the time specified in the printed notices herein before set forth, may adjourn from day to day but not otherwise until the work of the revision of such list and the determination of said appeals are by them respectively completed; and the chairman of such committee, and the presiding officer of the city council, shall have power to administer oaths to witnesses, whom any party interested may desire to have testify in relation to matter so being considered by such committee and by the city council and in the interest of the city. The presiding officer of the city council may issue subpoenas for witnesses to testify on behalf of the city, but no appeal shall lie from the decision of the city council to any other tribunal, and no objection to any such assessment shall be considered by the city council unless the same objection shall have been first raised before said committee, except in case of non-residents as herein before provided; *Provided, however,* That this restriction shall not apply to the correction of obvious mistakes or clerical errors; and, *Provided, further,* That no lot, part of lot or parcel of land shall be specially assessed more than once for sewerage purposes.

5. The city council shall also in each year, at the same time as

may be required by law to levy other taxes, levy an annual tax upon all property, real and personal, within the city, upon the basis of the last general assessment of the city, in such amount as may be necessary, together with the proceeds of such special assessment, to provide for the payment of the annual interest on said bonds, and to create a proper sinking fund for the payment of the principal thereof, when due, and such tax shall be levied in mills, and shall be certified to the county auditor of the county, with and in the same manner as other city taxes, and shall be collected and collection enforced with and in the same manner as other city taxes.

6. The proceeds of such special assessment, and of such annual tax, when paid over to the city treasurer, shall be credited by said treasurer and the city auditor to this special fund, and be kept by the city treasurer separate and apart from all other funds, and shall be applied to no other purpose whatever than the payment of the interest upon said bonds and the payment of the principal thereof when the same shall become due; *Provided, however,* That whenever there shall be one thousand dollars or more of such funds in the hands of the city treasurer, over and above the amount which will be needed to pay the interest on said bonds for the then current year, the city council may by a two-thirds vote thereof, authorize the investment of such amount in excess of that required for the payment of interest in such security or securities as will in the opinion of the city council be safe and readily convertible into cash, and as will secure to said city on the amount so to be invested, interest at the rate of not less than six per cent. per annum; or by a like vote may authorize the negotiation and redemption before due of any such outstanding bonds, on such terms as will in the opinion of the city council best subserve the interests of the city.

§ 8. INTEREST AND PRINCIPAL OF BONDS TO BE PROMPTLY PAID WHEN DUE.] Out of the revenue thus to be derived, the interest upon said bonds shall be promptly paid when due, and the principal thereof be promptly paid at maturity of said bonds.

ARTICLE XVII—CORPORATE LIMITS.

§ 1. POWER TO EXTEND CORPORATE LIMITS.] Any city now existing in this Territory that shall become incorporated under this act, may extend its corporate limits in the manner herinafter provided.

§ 2. How.] When a majority of property owners adjacent to the corporate limits of any city now existing in this Territory, petition the mayor and city council of said city to have any of their property included within the corporate limits of said city, it shall be the duty of said city council to publish such petition in the official paper of said city four consecutive weeks, and unless a written protest signed by at least twenty-five property owners of said city be filed with the mayor of said city opposing said pro-

posed annexation within ten days after the publication of said petition, said proposed annexation shall be included and become a part of the corporation of said city.

§ 3. PLAT OF CITY TO BE RECORDED.] The mayor of any city incorporated under this act, shall cause to be filed in the office of the register of deeds, in the county wherein said city is located, a plat showing the corporate limits and boundaries of his city at the time of its incorporation under this act, and any change in said city limits made subsequent to its incorporation under this act.

ARTICLE XVIII—MISCELLANEOUS.

§ 1. POWER TO ENFORCE CHARTER BY ORDINANCE.] When by this act the power is conferred upon the city council to do and perform any act or thing, and the manner of exercising the same is not specifically pointed out, the city council may provide by ordinance the details necessary for the full exercise of such power.

§ 2. POWER OF COUNCIL TO DEFINE ADDITIONAL DUTIES FOR CITY OFFICERS.] The duties, powers and privileges of all officers of character, in any way connected with the city government, not herein defined, and the defining by this act of the duties of the city officers, shall not preclude the city council from defining by ordinance further and additional duties to be performed by any such officer.

§ 3. CITY PROPERTY EXEMPT FROM TAXATION AND SALE ON EXECUTION.] Lands, houses, moneys, debts due the city, and property and assets of every kind or description belonging to the city, shall be exempt from taxation and sale on execution.

§ 4. FINES, PENALTIES AND FORFEITURES.] All fines, penalties and forfeitures collected for offenses against the ordinances of the city, and all fines, penalties and forfeitures collected within the city for misdemeanors against the laws of the Territory, shall be paid to the officer or officers entitled by law to receive the same.

§ 5. PENALTY FOR CITY OFFICIALS INTERESTED IN CONTRACT OR WORK OF THE CITY.] Any officer of the city, or member of the city council, who shall by himself or agent become a party to, or in any way interested in any contract, work or letting under the authority of the city, or who shall, either directly or indirectly, by himself or other party, accept or receive any valuable consideration or promise for his influence or vote, shall be fined in any sum not to exceed one thousand dollars, one-half of which shall go to the informer and the balance to be paid into the city treasury, by the officer collecting or receiving the same, and the said contract shall be null and void.

ARTICLE XIX.—HOW TOWNS MAY BECOME CITIES.

§ 1. POPULATION REQUIRED, ETC.] Any incorporated town in this Territory, having a population of not less than one thousand inhabitants, may become incorporated as a city in like manner as in this act provided, but in all such cases the president and trus-

tees of such town, shall respectively, perform the same duties relative to such change of organization as is above required to be performed by the mayor and council of cities.

§ 2. ORGANIZING A CITY — PETITION — ELECTION — RESULT.] Whenever any area of contiguous territory in this Territory not exceeding four square miles, shall have resident thereon a population of not less than five hundred inhabitants, which shall not already be included within any incorporated town or city, the same may become incorporated as a city in manner following. Any fifty legal voters thereof may file in the office of the county auditor, of the county in which such inhabitants reside, a petition addressed to the board of commissioners of such county, and if the territory described in said petition, shall be in more than one county, then the petition shall be addressed to the board of commissioners of the county, where a greater part of such territory is situated; which petition shall define the boundaries of such proposed city, and state the number of inhabitants residing within such limits, and also state the name of such proposed city, and shall contain a prayer that the question be submitted to the legal voters residing within such limits, whether they will organize as a city under this act. It shall be the duty of the board of commissioners of such county to fix a time and place within the boundaries of such proposed city, at which an election may be held to determine such question; and such commissioners shall name the persons to act as judges in holding such election, and shall give notice thereof by causing ten notices to be posted in public places within such proposed city, and section three of article one of this act shall be applicable to such election; *Provided*, That the returns of such election shall be made to and canvassed by the board of county commissioners instead of the city council, and the result of such election shall be entered upon the records of such board of county commissioners. If a majority of the votes cast at such election shall be "For city organization under general law," the inhabitants of such territory described in such petition shall be deemed to be incorporated as a city under this act, and with the name stated in the petition.

§ 3. ELECTION OF OFFICERS.] It shall be the duty of the president and board of trustees of any town which shall have voted to change its organization to a city under this act, to call and give notice of an election, to elect city officers, and to designate the time and place or places of holding the same. Such notice shall be published in a newspaper, if there be one within the town, or posted in ten public places for at least twenty days before such election. Such president and trustees shall appoint the judges to hold such election, canvass the returns thereof, and cause the result to be entered upon the records of the town; and the provisions of this act, relative to the election of city officers, shall be applicable thereto; but at such election, aldermen may be elected on a general ticket.

§ 4. WHEN COUNTY COMMISSIONERS TO GIVE NOTICE OF ELECTION, ETC.] In case of cities organizing under section two of this article, the county commissioners shall call and give notice of the election, and perform the same duties relative thereto as is above required to be performed by president and trustees of such town.

§ 5. TERM OF FIRST OFFICERS.] The city officers elected under either of the preceding sections shall hold their respective offices until the succeeding regular election for such officers, respectively, and until their successors are elected and qualified as provided by this act.

§ 6. SPECIAL CHARTER NULL AND VOID—WHEN.] Whenever any city in this Territory shall adopt this act, any special charter that may have been granted to such city shall be null and void.

§ 7. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 8. This act shall take effect and be in force from and after its passage and approval.

Approved, March 11, 1887.

IRRIGATING DITCHES.

CHAPTER 74.

AN ACT Relating to Irrigation Ditches.

Be it Enacted by the Legislative Assembly of the Territory of Dakota:

§ 1. UNLAWFUL TO INTERFERE WITH DITCHES.] That it shall be unlawful, for any person or persons, to divert any of the waters from any irrigation ditch, in this Territory, or to interfere in any manner whatever with any irrigation ditch, without first having obtained the permission of the owner of such ditch, or of the person or persons lawfully in charge thereof.

§ 2. PENALTY FOR—JURISDICTION OF JUSTICE OF THE PEACE.] Any person or persons violating any of the provisions of the preceding section, shall be deemed to be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than fifty, and any justice of the peace within the county where such offense may be committed shall have the jurisdiction to try and determine all cases arising under the provisions of this act.