

§ 5887. WHEN SALE MADE. POSTPONEMENT.] All sales under this article shall be commenced between the hours of twelve o'clock noon and four o'clock in the afternoon of the day specified in the notice within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed one week by public announcement at the time of postponement when there are no bidders, or when the amount offered is grossly inadequate, or upon request of the mortgagor; provided, that when any mortgage on crops contains a stipulation to that effect, it may be foreclosed by a sale of such crop, when harvested, in any usual market therefor, at any time, in the usual manner, at the market price thereof, in such market and without the notice hereinbefore provided; and the usual and reasonable charges for such sale and for the transportation of such grain to such market, shall be deemed proper expenses in such foreclosure.

Approved February 17, 1905.

CITIES.

CHAPTER 62.

[H. B. No. 222—Ryan.]

NEW CHARTER FOR CITIES.

AN ACT for the Organization and Government of Cities, and to Provide for the Limitation of Actions to Vacate Special Assessments Heretofore Made.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

ARTICLE I.—ORGANIZATION OF CITIES.

§ 1. HOW CITIES MAY ADOPT THIS ACT.] Any city in this state, and any incorporated town or village therein, having a population of not less than five hundred inhabitants, may become incorporated, under this act, as a city in the manner following: Whenever one-twentieth of the legal voters of such city, or one-tenth of the legal voters of such incorporated town or village, voting at the last preceding general state election, shall petition the mayor and council of such city, or the president and trustees of such incorporated town or village, to submit the question as to whether such city, incorporated town or village, shall become incorporated under this act, to a vote of the electors in such city, town or village, it shall be the duty of such mayor and council of such city, or president and trustees of such incorporated town or village, 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 and clerks 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 and president of such incorporated town or village shall give at least twenty days' notice of such election by publishing a notice thereof in one or more newspapers within such city, incorporated town or village, but if no newspaper is published therein, then by posting at least five copies of such notice in each ward or voting precinct of such city, town or village, if divided into wards and precincts; if not, then within such city, town or village.

§ 3. FORM OF BALLOTS.] The ballots to be used at such election shall be in the following form:

“For city organization under general law, .

The electors to designate their choice by inserting the words “yes” or “no” within such square. The judges of such election shall make returns thereof to the city council of such city, or trustees of such incorporated town or village, 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, town or village. 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, village or town officers then in office, shall thereupon exercise the powers conferred upon like officials by this act, until their successors shall be elected and qualified.

§ 4. ORGANIZATION OF UNORGANIZED TERRITORY.] Whenever any area of contiguous territory in this state not exceeding four square miles shall have residing 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 the 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 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 3 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 chapter, and with the name stated in the petition.

§ 5. DUTY OF MAYOR AND COUNCIL ON CHANGE OF ORGANIZATION.] It shall be the duty of the mayor and city council of any city, or the president and board of trustees of any town or village, 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 designate the time and places of holding the same. Such notice shall be published in a newspaper if there is one within the town or village, or if not, then posted in ten public places therein for at least twenty days before such election. The mayor and city council, or president and trustees, as the case may be, shall appoint the judges and clerks to hold such election, canvass the returns thereof, and cause the result to be entered upon the records of the city, town or village; 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; provided, however, in case of cities organizing under section 4 of this act, 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 the mayor and city council or president and trustees of such cities, towns and villages.

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

§ 7. SPECIAL CHARTER.] Whenever any city in this state shall organize under this act any special charter that may have been granted to such city shall be null and void.

§ 8. COURTS TAKE JUDICIAL NOTICE.] All courts in this state 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 herewith 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 be applicable to any such city the same as if such change had not taken place.

§ 9. BODIES CORPORATE.] 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 cor-

porate purposes, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred.

§ 10. VESTED RIGHTS.] 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 corporation upon its being 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.

§ 11. FILING AND RECORDING PROCEEDINGS.] 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, as to the canvass 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 state, who shall file the same and keep a registry of cities organized under this act.

§ 12. LEGAL IDENTITY OF CITIES NOT CHANGED.] All ordinances and resolutions in force in any city at the date of its organization under this act shall continue in full force and effect until repealed or amended, notwithstanding such change of organization, and such change of organization shall not change the legal identity of such city as a corporation.

ARTICLE 2—THE MAYOR.

§ 13. MAYOR.] The chief executive officer of the city is the mayor, who shall be a qualified elector within the city, and who shall hold his office for two years and until his successor is elected and qualified.

§ 14. VACANCY.] Whenever a vacancy occurs in the office of mayor and the unexpired term is one year or more from the date such vacancy occurs, it shall be filled by an election.

§ 15. VACANCY.] 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 a mayor is elected and qualified.

§ 16. REMOVAL.] If the mayor at any time during his term of office removes from the city, his office shall thereby become vacant.

§ 17. DUTIES.] 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.

§ 18. POWER OF REMOVAL.] 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 regular meeting.

§ 19. PEACE OFFICER.] He may exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace.

§ 20. 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.

§ 21. ENFORCEMENT OF ORDINANCES.] 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.

§ 22. INSPECTION OF RECORDS.] 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.

§ 23. 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 its consideration such measures as he may deem expedient.

§ 24. POWER TO KEEP THE PEACE.] He shall have power when necessary to call on each 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 to carry into effect any law or ordinance, subject to the authority of the governor as commander in chief of the militia.

§ 25. REMOVAL.] 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 be prosecuted criminally in any court of competent jurisdiction, and on conviction shall be fined in a sum not exceeding one thousand dollars, and the court in which such conviction shall be had shall enter an order removing such officer from office.

§ 26. REVISING ORDINANCE.] He may appoint, by and with the advice and consent of the city council, one or more competent persons, to prepare and submit to the city council for its adoption or rejection, an ordinance for the revision of the ordinances of such city for the government of such city. The city attorney shall be appointed as one of the persons to prepare and submit such revision, and the compensation of such revisor or revisors, including the city attorney, shall be determined and fixed by the city council and paid out of the city treasury. Such revision may be passed as a single ordinance, and be

published in pamphlet or book form and shall then be valid and effective without publication in a newspaper.

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

§ 28. APPOINTMENT OF POLICEMEN AND CHIEF.] 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 3—CITY COUNCIL.

§ 29. CITY COUNCIL.] The city council shall be composed of the mayor and aldermen.

§ 30. NUMBER OF ALDERMEN.] The number of aldermen shall be as follows: In cities of six hundred inhabitants or less, four aldermen who shall be elected at large; exceeding six hundred but not exceeding two thousand inhabitants, six aldermen; exceeding two thousand but not exceeding four thousand, eight aldermen; exceeding four thousand but not exceeding ten thousand, twelve aldermen; exceeding ten thousand but not exceeding fifteen thousand, fourteen; and two additional aldermen for each ten thousand inhabitants over fifteen thousand; provided, that in cities of over one hundred thousand inhabitants there shall be elected thirty-six aldermen and no more, the population to be determined by the last census; provided, however, if an official census has been taken by the federal government within one year it shall govern.

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

§ 32. VACANCIES.] If a vacancy occurs in the office of alderman by death, resignation or otherwise, within six months prior to the next city election, the board of aldermen shall appoint a person to fill such vacancy from the ward from which the alderman previously holding was elected, or appointed; if earlier then such vacancy shall be filled by election.

§ 33. QUALIFICATIONS.] No person shall be eligible to the office of alderman who is not a qualified elector of and resident within the ward for which he is elected; provided, that in cities where aldermen are elected at large, he shall be a qualified elector of and resident within such city, 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 eligible if he is 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 either directly or indirectly,

individually, or as a member of a firm engage 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.

§ 34. COUNCIL JUDGE OF ELECTION AND QUALIFICATION OF MEMBERS.] The city council shall be judge of the election and qualifications of its own members.

§ 35. RULES OF PROCEDURE.] It shall determine its rules of procedure, 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.

§ 36. QUORUM.] 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.

§ 37. REGULAR MEETINGS.] The city council shall hold its regular meetings on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings may be called. The first meeting for organization shall be held on the third Tuesday in April of each year.

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

§ 39. MEETINGS AND RECORD OF PROCEEDINGS.] It shall sit with open doors and shall keep a journal of its proceedings.

§ 40. PASSAGE OF ORDINANCES.] 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 expenditure or appropriation of 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 shall be necessary to the passage of any such ordinance or proposition. It shall require a two-thirds vote of all the aldermen elected to sell any city or school property; provided, all ordinances or amendments thereto which have been heretofore adopted and published by any of the cities of this state where the yeas and nays were not taken on the passage thereof,

or were not entered on the journal of its proceedings, as provided by section 2143 of the revised codes, and by section 880, compiled laws, or where at least one week has not intervened between the first and second reading of said ordinance, as provided by section 2147, revised codes, and by section 884, compiled laws, are hereby declared to be hereafter in full force and valid without re-enactment or republication; and all ordinances adopted by any of the cities of this state, which were not authorized by any of the authority conferred by said chapter, but which would be authorized under the provisions of this act, are hereby declared to be in full force and effect, the same as if re-adopted and republished after the adoption of this act.

§ 41. RECONSIDERATION OF VOTE.] No vote of the city council shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of aldermen as were present when such vote was taken.

§ 42. ACTION ON REPORTS.] 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.

§ 43. JURISDICTION.] The city council shall 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.

§ 44. PROCEDURE IN PASSING ORDINANCES.] All ordinances shall be read twice and the second reading shall not be had in less than one week after such first reading, and after such first reading, before their final passage such ordinances may be amended and shall then be put upon their second reading and final passage, and if 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 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 in the journal. All ordi-

nances passed by the council and approved 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 for that purpose, together with the affidavit of the publisher, all ordinances so passed and published; and such 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. All ordinances shall be styled, "Be it Ordained by the City Council."

§ 45. PUBLICATION BY POSTING.] Whenever any ordinance, notice or other instrument is required to be published, in any city where no newspaper is published, all such publication and notice may be given and made by posting, in five public places within said city, for the period for which such publication is to be made; and all ordinances and notices so posted shall have the same force and effect as if published in a newspaper in said city, and such posting shall be proven by affidavit filed in the auditor's office.

§ 46. OFFICIAL NEWSPAPER.] The city council shall annually, by resolution, at its first meeting in May or as soon thereafter as practicable, designate some newspaper published in the city as the official newspaper of the city.

ARTICLE 4.—POWERS OF THE CITY COUNCIL.

§ 47. GENERAL POWERS OF CITY COUNCIL.] The city council shall have power:

1. To control the finances and property of the corporation.
2. To appropriate money for corporate purposes only, and provide for the 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 credits of the corporation for corporation purposes, and to issue bonds therefor, in such amounts and form, and on such conditions as it shall prescribe, but no such city shall become indebted in any manner or for any purpose to an amount, including existing indebtedness, exceeding five per cent of the taxable property therein, as determined by the last preceding city assessment; provided, that any incorporated city may, by a two-thirds vote at any special or general election increase such indebtedness to an amount equal to three per cent of such assessed valuation beyond said five per cent limit and may issue bonds therefor; provided, further, that any city, when authorized by a majority vote at a general or special election, may become indebted in any amount not exceeding four per cent of such assessed value without regard to the existing indebtedness of such city for the purpose of constructing or purchasing water works for

the purpose of furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, but for no other purpose whatever, and such city may issue bonds therefor ; provided, further, that no bonds issued under the provisions of this section shall be sold for less than their par value, and the city issuing such bonds shall, at or before the time of issuing the same or incurring the indebtedness for which the same are to be issued, provide for the collection of a direct annual tax sufficient to pay the interest on such debt or such bonds when it falls due, and to pay and discharge the principal thereof when the same becomes due, and such provisions for the collection of such annual tax shall be irrepealable until such debt is paid ; provided, further, that none of the hereinbefore mentioned bonds shall be issued either for special or general purposes, except as by law otherwise provided, 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 such city shall, by a majority vote, determine in favor of issuing such bonds ; provided, further, that no bonds issued under the provision of this act shall be issued for a longer period than twenty years.

6. To issue bonds in place of or to supply means to meet maturing bonds or for the consolidation or funding of the same [or] for the consolidation or funding of any floating indebtedness of such city.

7. To lay out, establish, open, alter, widen, 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, and to provide for the furnishment of lights to the inhabitants of the city.

12. To provide for the cleaning 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 general laws of this state 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 the 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 state, subject to such regulations as such city may by ordinance prescribe.

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 or other obstruction.

15. To regulate and prevent the throwing or depositing of ashes,

offal, dirt, garbage or any other 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, signposts, 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 of a track of any horse or other street railway in any street, alley or public place; but such permission shall not be for a longer time than fifty 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 railroads to raise or lower their tracks to conform to any grade which may at any time be established by such city, and where such tracks run lengthwise of such street, alley or highway, to keep their 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 tracks, so that filthy and 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, catchbasins, manholes 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 agen-

cies, and to revoke such license at pleasure ; provided, however, that the provision of this section with reference to hawkers and peddlers shall not apply to persons selling or offering for sale the products raised or grown on lands within this state.

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, pigeonhole, 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 license, tax and regulate plumbers and the business of plumbing, and to provide the manner in which plumbing shall be done, and for the inspection thereof, and the manner in which the connections thereof with the sewers and water mains of the city may be made.

35. To establish markets and market houses and to provide for the regulation and use thereof.

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

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

38. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meat and other provisions, and to license and regulate the sale of milk, provide for the inspection of the same, and of all dairies and premises wherever situated from which any milk is offered for sale in such city, and to prohibit the sale of impure or diseased milk.

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

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

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

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

43. To regulate places of amusements.

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

45. To regulate partition fences and party walls.

46. To prescribe the thickness, strength and manner of constructing stone, brick and other buildings and the construction of fire escapes therein, and to provide for the inspection of all buildings within the city limits.

47. 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 and to provide for the removal of any structure or building erected contrary to such prescription, and to declare each day's continuance of such structure or building a separate offense, and prescribe penalties therefor; and define fire proof material and by ordinance provide for issuing building permits, and appointment of building inspectors.

48. To prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers and apparatus used in and about any building or manufactory, and to cause the same to be removed or placed in a safe condition when 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 enclosures as may be in a dangerous state to be put in a safe condition.

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

50. To regulate and prevent the storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, 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 bonfires; also to regulate and restrain the use of fireworks, firecrackers, torpedoes, roman candles, skyrockets and other pyrotechnic displays.

51. To provide for the inspection of steam boilers.

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

53. 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 board of county commissioners; and to regulate the police of the city, and pass and enforce all necessary police ordinances.

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

55. To prohibit and punish cruelty to animals.

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

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

58. To erect and establish hospitals and medical dispensaries, and control and regulate the same, and provide and enforce quarantine regulations against all contagious and infectious diseases.

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

60. 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.

61. To regulate, restrain and prevent the running at large of horses, mules, cattle, swine, sheep, goats and geese; and to provide for the establishment and maintenance of public pounds for the impounding of any such stock running at large, or tethered in any street in the city, in violation of its ordinances, and establish procedure for the impounding and discharging of stock so impounded and make the expenses thereof and fines imposed for the violation of ordinances passed under this subdivision, a lien upon such stock and provide for the sale thereof to satisfy such liens.

62. To license, regulate or prohibit the running at large of dogs, and injuries and annoyances therefrom, and to authorize their summary destruction when at large contrary to any such prohibition or regulation.

63. To direct the location and regulate the management and construction of packing houses, renderies, bone factories, slaughter houses, soap factories, foundries, livery stables and blacksmith shops within, or within one mile of the limits of the corporation.

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

65. To compel the owner of any grocery, cellar, stable, pigsty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

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

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

68. To extend, by condemnation or otherwise, any street, alley, or highway, over or across, or to construct any sewer under or through any railroad tracks, right of way or land of any railroad company, within the corporate limits.

69. The city council shall have power to grant the use of, or right to lay down any railroad tracks in any street of the city to any railway company.

70. To tax, license and regulate auctioneers, lumber yards, public scales, money changers and brokers.

71. 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 or horses.

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

73. 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.

74. 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 the violation thereof.

75. To purchase, erect, lease, rent, manage and maintain any system or part of system of waterworks, 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.

76. To redistrict the city into wards and prescribe 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 making such census.

77. To adopt such other ordinances, not repugnant to the constitution and laws of the state, as the general welfare of the city may demand.

78. To pass all ordinances, rules and make all regulations proper or necessary to carry into effect the powers granted cities, with such fines, penalties or forfeitures as the city council shall deem proper; provided, that no fine or penalty shall exceed one hundred dollars and no imprisonment shall exceed three months for one offense.

§ 48. 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.

§ 49. POWER OF COUNCIL TO DEFINE ADDITIONAL DUTIES FOR CITY OFFICERS.] The duties, powers and privileges of all officers of every character in any way connected with the city government, not herein defined, shall be defined by the city council, 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.

§ 50. ACTIONS FOR VIOLATING ORDINANCES.] All actions brought to recover any fine or to enforce any penalty under or punish any violation of 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 person for any other violation of any such ordinance, although the different causes of action existed at

the same time, and if united would not exceed the jurisdiction of the court or justice of the peace.

§ 51. 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 city treasury at such time and in such manner as may be prescribed by ordinance.

§ 52. SUMMONS. AFFIDAVIT. PUNISHMENT.] In all actions for the violation of any ordinance the first process shall be a summons; provided, that a warrant for the arrest of the offender may issue in the first instance upon the sworn complaint of any person that any such ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty thereof; and any person arrested under this 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, workhouse, house of correction or other place provided by the city for the incarceration of offenders, until such fine, penalty and costs 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 each person so committed shall be required to work for the city at such labor as his strength will permit, not exceeding ten hours each working day; and for such work the person so employed shall be allowed, exclusive of his board, one dollar and twenty-five cents for each day's work on account of such fine and costs.

§ 53. JURISDICTION OF POLICE MAGISTRATE.] The police magistrate shall have exclusive jurisdiction in all cases arising under the provisions of this chapter or any ordinance passed in pursuance thereof.

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

ARTICLE 5—POWERS AND DUTIES OF OFFICERS.

§ 55. ELECTION OF OFFICERS.] There shall be elected in each city organized under this act the following officers: A mayor, two aldermen from each ward, a city treasurer, a police magistrate and a city justice of the peace; provided, that in the cities of six hundred inhabitants or less there shall be elected four aldermen at large; provided, that at the first election held hereafter in the cities heretofore organized under this act in which the number of aldermen is reduced to four, there shall be elected four aldermen who shall be divided into classes as provided in section 30 of this act.

§ 56. 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.

§ 57. 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.

§ 58. ADDITIONAL ASSESSORS.] The mayor of any city incorporated under the provisions of this act and containing a population of five thousand inhabitants may appoint one or two additional city assessors; provided, that the city council shall by resolution declare their appointment necessary.

§ 59. 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.

§ 60. 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 constitution of the state of North Dakota, and that I will faithfully discharge the duties of the office of, according to the best of my ability.

Such oath or affirmation so subscribed shall be filed in the office of the city auditor; and all such officers, except the mayor and aldermen, shall before entering upon the duties of their respective offices execute a bond with sureties 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 ordinances of said city; provided, that in no case shall the treasurer's bond be fixed at a 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, except the bond of the city auditor, which shall be filed with the city treasurer.

§ 61. CERTIFICATE OF APPOINTMENT. DELIVERY OF BOOKS TO SUCCESSOR.] 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 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.

§ 62. 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.

§ 63. OFFICER NOT TO BE INTERESTED IN CONTRACTS.] 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 any process at the suit of the corporation, mayor or other person.

§ 64. 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.

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

§ 66. COMPENSATION OF ALDERMEN.] The aldermen may receive such compensation for their services as shall be fixed by ordinance; provided, that 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 meetings, 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.

§ 67. POLICE MAGISTRATE. COMPENSATION OF OTHER OFFICERS NOT DIMINISHED DURING TERM.] 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 diminished to take effect during the term for which any such officer was elected or appointed; provided, that in any city incorporated under the general laws of the state and in which the police magistrate thereof is allowed and paid a salary, such police magistrate shall not be entitled to receive fees of any kind or in any amount whatever from such city, and such police magistrate shall be entitled to, and it shall be his duty to collect in all criminal actions and in all actions instituted under any ordinance of the city, the same fees that are now allowed by law to justices of the peace, and all fees collected by him in criminal actions, and in actions instituted under any ordinance of the city, shall be by him paid over to the city treasurer at the end of each month, and he shall at the same time make and file with the city auditor a report in writing under oath, showing an account of all fees collected by him during the preceding month in such actions, and showing the actions in which the same were collected. The police magistrate shall, before entering upon the discharge of his duties, give to the city a bond in such amount as the city council may prescribe, not less than five hundred dollars, conditioned that he will faithfully discharge the duties of his office and pay over all moneys that may come into his hands belonging to the city, and such police magistrate shall not be entitled to receive, nor shall his salary be paid to him until he has fully complied with the provisions of this section.

§ 68. MAY ADMINISTER OATHS.] The mayor and auditor of each city shall have power to administer oaths and affirmations.

ARTICLE 6—CITY AUDITOR.

§ 69. TO ATTEND MEETINGS OF COUNCIL AND KEEP RECORDS, ETC.] The city auditor shall keep his office at the place of meeting of the city council or such other place convenient thereto as the council may direct. He shall keep the corporate seal and all 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 transcripts of all records of the city council certified by him under the corporate seal, shall be competent evidence in all courts. He shall draw and countersign all orders on the treasury 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, and shall present to the city council for its consideration all communications, claims and other matters filed in his office for that purpose at their next meeting after the same are so filed.

§ 70. REPORTS BY.] 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.

§ 71. GENERAL DUTIES OF.] He shall countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the city council, or of any city officer; and each contract made in behalf of the city or to which the city is a party shall be void unless countersigned 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. He shall countersign all bonds, orders or other evidences of indebtedness of the city, and keep accurate account thereof stating to whom and for what purpose issued and the amount thereof. He shall 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. 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 the same at once to the city council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected is ascertained; and during the remainder of the fiscal year he shall not countersign any contract, the expense 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 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 filed with the auditor and shall be audited and adjusted by the proper committee of the city council. The auditor shall keep a record of his acts and doings, and keep a book in which he shall enter all contracts, with an index thereto, which book shall be open to the inspection of all persons interested.

ARTICLE 7—CLAIMS FOR INJURIES.

§ 72. CLAIMS FOR DAMAGES.] All claims against cities for damages or injuries alleged to have arisen from the defective, unsafe, dangerous or obstructed condition of any street, crosswalk, sidewalk, culvert or bridge of any city, or from the negligence of the city authorities in respect to any such street, crosswalk, sidewalk, culvert or bridge shall, within thirty days from the happening of such injury, be filed in the office of the city auditor, signed and properly verified by the claimant, describing the time, place, cause and extent of the damage or injury, and the amount of damages claimed therefor, and upon the trial of an action for the recovery of damages by reason of such injury, the claimant shall not be permitted to prove any different time, place, cause or manner or extent of the injury complained of, or any greater amount of damages. In case it appears by the affidavit of a reputable physician which shall be prima facie evidence of the fact that the person injured was, by the injury complained of, rendered mentally incapable of making such statement during the time herein provided, such statement may be made within thirty days after such complainant becomes competent to make the same, but such affidavit may be controverted on the trial of an action for such damages, and in case of the death of the person injured prior to his becoming competent to make such statement, the same may be made within thirty days after his death, by any person having knowledge of the facts, and the person making such statement shall set forth therein specifically the facts relating to such injury as aforesaid, of which he has personal knowledge, and shall positively verify such statement and shall verify the facts therein stated of which he has no personal knowledge, to the best of his knowledge, information and belief.

§ 73. NO ACTION UNLESS CLAIM FILED.] No action shall be maintained against any city as aforesaid for injury to person or property, unless it appears that the claim for which the action was brought was filed in the office of the city auditor as aforesaid, with an abstract of the facts out of which the cause of action arose, duly verified by the claimant, and that the city council did not, within sixty days thereafter audit and allow the same, and such abstract of facts must be signed and verified as provided in the preceding section, and all provisions of such section with reference to such verification shall be applicable to such abstract of facts, and no action shall be maintained unless the plaintiff therein shall plead and prove the filing of such claim and abstract as hereinbefore provided.

§ 74. LIMITATION OF ACTIONS.] No action shall be maintained upon any claim mentioned in section 72, unless the same shall be brought within six months after the filing of the claim therefor, in the office of the city auditor as hereinbefore provided.

ARTICLE 8.—CITY ATTORNEY.

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

ARTICLE 9.—CITY TREASURER.

§ 76. DUTIES OF. VACANCIES, HOW FILLED. SALARY.] The city treasurer shall receive all moneys belonging to the city, including all taxes, license money, fines and special assessments, and keep accurate and detailed accounts thereof, in the manner provided in this act, or as the city council may from time to time direct. He shall have a settlement with the auditor at the end of each 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 cancelled by him, and have written or stamped thereon the date of their payment or redemption. When, for any cause, a vacancy occurs in the office of the city treasurer, the same shall be filled by appointment, which shall be made by the mayor, by and with the consent of the city council, and the person so appointed, by lawfully qualifying for such office, shall be entitled to hold the same until his successor is elected and qualified. Such successor must be elected at the next succeeding regular city election. The salary of the city treasurer shall be fixed by the mayor and city council within their respective cities.

§ 77. FUNDS. HOW DISBURSED.] Under no circumstances shall any money be paid out or disbursed by the city treasurer, except upon the warrant of the mayor, countersigned by the city auditor; but this provision shall not prevent the payment of city bonds and

interest coupons or either when due, and presented for payment, and the city treasurer shall pay said last mentioned obligations on presentation at maturity, and in case they are payable without the city issuing them, then and in that event the money for their payment shall be by the city treasurer remitted to such place of payment in time to reach that point on or before the date of maturity of said obligations.

§ 78. WARRANTS, HOW PAID.] All warrants shall be paid in the order in which they are presented, from the fund upon which they are drawn, and the treasurer shall note on the back of each warrant presented to him the date of such presentation and, when payment is made, the date of such payment, and in case any warrant is not paid for want of funds, the city treasurer shall so state on such warrant and the same shall thereupon bear interest until paid.

§ 79. CITY TREASURER TO KEEP SEPARATE ACCOUNT OF EACH PARTICULAR CITY FUND.] The city treasurer shall keep a separate and accurate account of each city fund, which shall show the debits and credits of said fund in chronological order.

§ 80. TREASURER TO GIVE DUPLICATE RECEIPTS.] The city treasurer shall give to each person paying money into the city treasury a duplicate receipt therefor, specifying the date and amount of payment, and upon what account paid, and he shall at least once a month file with the city auditor his duplicate of such receipt.

§ 81. TREASURER PROHIBITED FROM USING CITY MONEYS. PENALTY. OFFICE DECLARED VACANT.] The city treasurer shall keep the city's moneys paid to or received by him, separate from his or others' moneys; and under no circumstances shall it be lawful for him to directly or indirectly use the corporation's money or warrants, or other obligations, in his custody and keeping, for his own use and benefit or that of any other person or persons whomsoever. Upon conviction of a violation of this provision the same shall work a forfeiture of his office and said office shall become vacant.

§ 82. TREASURER'S REPORT. WARRANT REGISTER.] He 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.

§ 83. MONEYS RECEIVED FROM 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 improvements for which the assessment was made; and said money shall be used for no other purpose whatever.

ARTICLE IO.—CITY ASSESSOR AND BOARD OF EQUALIZATION.

§ 84. TERM OF OFFICE OF CITY ASSESSOR. DUTIES. COMPENSATION.] The city assessor shall perform all duties necessary for the assessing of property within the city limits for the purpose of levying city, county, school and state taxes. Upon the completion of the assessment roll he shall return it to the city auditor within the time in this act provided and said auditor shall deliver the same to the city board of equalization at its regular meeting first thereafter held.

§ 85. ASSESSOR'S APPOINTMENT. ASSESSMENT ROLL.] The assessor shall be appointed at the first meeting of the city council in September in each odd numbered year, and shall be governed by the same laws and regulations as county and township assessors, except that he may list any real estate or personal property for assessment on or after the first day of January in the year in which the same is subject to assessment, and for that purpose the county auditor shall furnish him with assessment books prior to said first day of January; and he shall, on the first day of April in each year commence the assessment of property assessable for such year, and shall return his assessment roll to the city auditor on or before the first day of June in each year. Such assessment roll shall be open to the inspection of all persons interested until the meeting of the city board of equalization.

§ 86. BOARD OF EQUALIZATION. MEETING. COMPENSATION.] The board of equalization shall be composed of the mayor and city council, and the auditor who shall act as clerk to the same, and shall meet on the second 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 keep an accurate record of all changes made in the valuation and of all other proceedings. It may adjourn from day to day until its 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; the compensation of the board shall be three dollars per day while in actual session.

§ 87. DUTIES OF THE BOARD.] The board of equalization shall meet at the usual place of meeting of the city council, and shall proceed to equalize and correct such assessment roll. It may change the valuation and assessment of any real or 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 so to 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.

§ 88. OTHER DUTIES. TAX NOT TO BE ABATED OR REDUCED.] 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 it may deem just; or, if the board has 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 refuses 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 the last section, and may examine each person under oath in regard to his property; or if he refuses to appear, it may fix such valuation at a sum which it may deem just. After the adjournment of said board of equalization in each year, neither it nor the city council shall change or alter, or recommend the changing or alteration of any assessment or assessments to the county commissioners, or otherwise; and neither said city council nor said board of equalization shall reduce or rebate or authorize the reduction or abatement, or rebatement of any taxes levied upon such assessments for any cause, excepting that the property assessed was not subject to taxation at the time such assessment was levied.

§ 89. 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 his 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, and the board of equalization of such county may increase or diminish the valuation therein placed on any class of property, so as to make such valuation uniform with the valuation of the same class of property throughout such county, but no individual assessment shall be otherwise changed, and a failure of any county or city board of equalization to hold its meetings, shall not vitiate or invalidate any assessment or tax except as to the excess of valuation, or tax thereon, shown to have been unjustly made or levied.

ARTICLE II.—POLICE MAGISTRATE AND CITY JUSTICE OF THE PEACE.

§ 90. JURISDICTION OF POLICE MAGISTRATE.] The police magistrate shall have exclusive jurisdiction of, and it shall be his duty to hear, try and determine all offenses against the ordinances of the

city; and he shall have concurrent jurisdiction with the justices of the peace of the county in all other actions, civil and criminal. All fines, penalties and forfeitures for the violation of any city ordinance shall, when collected, be paid by the officer receiving the same to the city treasurer of such city.

§ 91. WHEN MAGISTRATE SHALL ISSUE WARRANTS.] Whenever complaint shall be made to the police magistrate upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which the police magistrate has jurisdiction, such magistrate 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 specially appointed by said magistrate for such purpose.

§ 92. MAGISTRATE, WHEN TO HEAR COMPLAINT.] When any person shall be brought before such magistrate upon a warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

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

§ 94. TO SUMMON WITNESSES.] It shall be the duty of such magistrate to subpoena 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 magistrate he may verbally notify such witnesses as may be present to attend before him at the time to which the action is continued to testify therein and such verbal notice shall be as valid as a subpoena.

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

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

§ 97. COURT OPEN EVERY DAY EXCEPT SUNDAY.] Said magistrate shall be a conservator of 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 persons 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.

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

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

§ 100. CITY JUSTICE OF THE PEACE. JURISDICTION.] The city justice of the peace shall have the same jurisdiction as justices of the peace [within said county in all civil and criminal actions, and] within the jurisdiction hereby conferred the power of said justice as a committing magistrate, and in trial of actions shall be the same as is now or may hereafter be provided by law for justices of the peace, and the process and proceedings of said court shall be governed by the laws regulating proceedings in justices' courts; and in all cases tried in said court, an appeal may be taken to the district court in the same manner and upon the same conditions as provided by law in cases of appeal from justices of the peace, and on such appeal the district court shall have the same powers as in such cases.

§ 101. VACANCY.] In case of a vacancy in the office of police magistrate or city justice of the peace by death, resignation or otherwise, the same shall be filled by an appointment by the mayor, to be confirmed by the council, and such appointees shall qualify as in other cases and hold their offices until the next annual city election and until their successors are elected and qualified, and in case of the temporary absence, interest or disability of such magistrate it shall be the duty of the city justice of the peace to act as police magistrate during such vacancy, absence or disability in the trial of causes cognizable before said police magistrate.

§ 102. DUTY OF MAGISTRATE WHEN PROSECUTION IS MALICIOUS.] If upon any trial under the provisions of this article it shall appear to the satisfaction of the police magistrate or the jury in cases arising under the laws of the state, that the prosecution was commenced without probable cause, or from malicious motives, the jury or magistrate trying the action 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.

§ 103. POWER OF MAGISTRATE. JURY.] The police magistrate shall have power to enforce due obedience to all orders and judgments 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 in justices' courts. Appeals may be taken to the district court from all decisions of said court in the same manner as is provided for taking appeals from justices' courts, and the district court shall, on such appeals, take judicial notice of all the ordinances of said city. Actions before the police magistrate arising under the city ordinances shall be tried and determined by the magistrate 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 over twenty dollars, and the defendant shall demand a trial by jury before the commencement of said trial; and when a demand shall be so made it shall be the duty of said magistrate 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 to do so then the police magistrate, with the attorney for the city, shall strike off such names, and the magistrate 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 should fail to attend, then the chief of police shall summon 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 magistrate, who may examine the juror or other witnesses under oath. Each 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.

§ 104. 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.

§ 105. OFFICE HOURS OF MAGISTRATE.] Said magistrate 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 him, at all times in court or otherwise.

ARTICLE 12.—CITY ENGINEER.

§ 106. QUALIFICATIONS.] 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 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 to the city council.

ARTICLE 13.—POLICE OFFICERS.

§ 107. POWERS OF.] 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 state, and it shall be their duty to execute and serve all warrants, process, commitments and all writs whatsoever issued by the police magistrate, or city justice of the peace, for any violation of the laws of the state, or of the ordinances of said city, or any provision of this act; and also all writs and process whatsoever issued by said justices in civil actions; and they shall have authority to pursue and arrest any person fleeing from justice in any part of the state; 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 state, or of the ordinances of the city, and for these purposes shall possess the powers of constables under the laws of this state while on duty.

§ 108. WARRANTS.] All warrants issued by the police magistrate or city justice, for the violation of any general law of this state 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, when 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 14.—ELECTIONS.

§ 109. TIME AND PLACE OF ELECTION.] There shall be an annual election for elective officers herein provided, held on the first Monday in April of each year, at such place or places in each ward as the council shall designate; except in cities where aldermen are elected at large, the council shall designate one polling place only. The polls shall be kept open continually from eight o'clock in the forenoon until five 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.

§ 110. ELECTION DISTRICTS AND PRECINCTS.] Each city in which aldermen are elected at large shall constitute an election district, and in all other cities each ward shall constitute an election district; but whenever the number of legal voters in any ward shall exceed three 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, that such ordinance shall be passed and take effect before the time of giving notice of an election; and such wards and precincts shall constitute election districts for all state and county elections.

§ 111. QUALIFIED VOTERS.] Every legal voter of the county in which such city is situated, who shall have been a resident of the city ninety days next preceding 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 state, and no person shall be entitled to vote in any other place than the ward or precinct where he resides.

§ 112. EFFECT OF ELECTION.] This act shall in no case affect the term of office of any officer heretofore elected or appointed in any city, but all such officers shall hold their offices during the term for which they were originally elected or appointed.

§ 113. OATH AND DUTIES OF JUDGES AND CLERKS OF ELECTION.] 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 state. The judges of election 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 state 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.

§ 114. 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 the presence of the city council, in such manner as it shall direct, which candidate or candidates shall hold office.

§ 115. 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 within ten days after such notice, the office shall become vacant.

§ 116. NEW ELECTION ON FAILURE TO QUALIFY.] If there is a failure to elect an 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, 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, unless herein otherwise provided.

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

§ 118. WHEN OFFICE DEEMED VACANT.] 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 15.—FINANCE.

§ 119. FISCAL YEAR.] The fiscal year of each city organized under the general laws of this state shall commence on the first day of September of each year.

§ 120. APPROPRIATION FOR GENERAL EXPENSES. HOW MADE.] The city council shall, at its regular meeting in September or within ten days thereafter, pass an ordinance to be termed the annual appropriation bill, in which it may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, during the ensuing fiscal year, and such ordinance shall specify the purpose for which such appropriations are made, and the amount appropriated for each purpose, and the city council may, in addition to such specific appropriations, appropriate a sum not exceeding five per cent of the total amount so specifically appropriated for general purposes in such appropriation bill, for contingent expenses not otherwise provided for. No further appropriations shall be made for any of the expenses or liabilities of such fiscal year, unless the provisions to make such appropriation has been first sanctioned by a majority of the legal voters of such city, either by a petition signed by them or by special election called for that purpose. Any balance of any appropriation for general purposes, remaining unexpended at the close of the fiscal year, shall be deemed

a part of the general fund of the city, and shall be reappropriated to such general purposes as the city council may deem best.

§ 121. SPECIAL APPROPRIATION FOR IMPROVEMENTS. HOW MADE.] Neither 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 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, that nothing herein contained shall prevent the city council from ordering by a two-thirds vote, any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made, and the expense of such improvement may be paid wholly or in part from the appropriation for contingent expenses, or whenever the city shall not have reached its constitutional debt limit, 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 improvement, the necessity of which has arisen, as is last above mentioned, for a space of time not exceeding the close of the 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.

§ 122. CONTRACTS PRIOR TO APPROPRIATION FORBIDDEN.] No contract shall be made by the city council and no expense shall be incurred by any officer or department of the corporation, whether the object of the expenditure 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 provided; provided, however, that the city council is authorized to enter into contracts with persons, associations or corporations for the furnishing of water for fire protection to the city, and in case such contract shall extend over a term of years, then and in that case it shall not be necessary that an appropriation shall have been previously made concerning such expense, except sufficient to cover the amounts payable under such contract for the first year thereof; provided, further, that such contract shall not be made for a longer period than twenty years.

§ 123. TAX LEVY, HOW AND WHEN MADE.] The city council shall, at its first regular meeting in September, or within ten days thereafter, levy a tax for general purposes sufficient to meet the expenses of the fiscal year, and not exceeding twenty mills on the dollar of the assessed valuation of property in the city, based upon, and itemized as in the annual appropriation bill for the year, and in addition thereto, shall levy a tax for interest and sinking fund as required by this act, and also a sufficient tax for the payment of any final judgment that may have been recovered against the city, and such levy shall be forthwith, and not later than September twentieth, certified by the city auditor, with any levy made by the board of edu-

cation of such city for school purposes, to the auditor of the county in which such city is situated. Such levy shall be made in specific amounts, and the county auditor of such county shall extend the same upon the tax lists of the county for the current year, in the same manner and with the same effect as other taxes are extended, except that the city taxes may be included in one amount, and the school taxes in one amount, for each person or lot, or parcel of land. The levy herein provided for may be made at the same meeting at which the annual appropriation bill is finally passed, and the provisions of law fixing the time at or within which any act or proceeding in the assessment or levy of any taxes shall be done or taken, shall be deemed and held to be directory and not mandatory.

§ 124. COUNTY TREASURER TO COLLECT TAXES AND PAY OVER TO CITY 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 demand, all such taxes so collected during the preceding month, with interest and penalties collected thereon, and shall forthwith notify the city auditor of the amount 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.

§ 125. MONEY PAID TO THE CITY TREASURER, HOW PROPORTIONED.] The city treasurer and auditor shall each proportion 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 city [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, and the same shall be credited to the proper fund for the year for which it was collected. All money received by the city treasurer for licenses, license or occupation taxes and fines shall be credited to, and become a part of the contingent fund of the city, and shall be used for the payment of such liabilities and necessary expenses of the city as are not otherwise specially provided for in the annual appropriation bill.

§ 125½. PROVISIONS NOT APPLICABLE TO CITIES OPERATING UNDER GENERAL LAW.] The provisions of sections 2454, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2495, 2497 and 2498, revised codes, and section 2494, revised codes, as amended by chapter 160, laws of 1903, and section 2496, revised codes, as amended by chapter 149, laws of 1901, do not apply to any city organized under the general laws of the state for the incorporation of cities, and when any of the provisions of this act are inconsistent with any of the provisions of the revised codes, or of any other law heretofore enacted, the provisions of this act shall be deemed to supersede all others.

ARTICLE 16.—OPENING OF STREETS, ALLEYS, ETC.

§ 126. SURVEYS.] Whenever the city council shall deem it necessary to open, lay out, widen or enlarge any street or alley or public

place within the city, it shall cause an accurate survey and plat of the same to be made by the city engineer, with an estimate of the probable cost of the improvement, and the city engineer shall file the same in the office of the city auditor, and retain a copy in his office.

§ 127. [TAKING PRIVATE PROPERTY.] Whenever it shall be necessary to take private property in order to open, lay out, widen or enlarge any street or alley or any public place in any city, the same shall be done by purchase, or under the provisions of the code of civil procedure providing for the exercise of the right of eminent domain; and, whenever any judgment for damages to property so taken for any such improvement shall be entered, the city council shall cause special assessments to be levied upon the property benefited thereby to pay such judgment; provided, that not more than one-fourth thereof may be paid by the levy of a general tax upon all taxable property in the city.

§ 128. [FIXING GRADES.] 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 a profile thereof in the office of the city engineer; provided, that after the grade of any street has been established as provided in this section, the city shall, if it change the grade, be liable to the abutting property owners for any damage they may sustain by reason of any permanent improvements having been made by them to conform to the grade as first established.

§ 129. [VACATION OF STREETS AND ALLEYS. PETITION TO VACATE STREETS AND ALLEYS, HOW MADE. PARTY AGGRIEVED MAY APPEAL TO DISTRICT COURT.] No public grounds, streets, or alleys, or parts thereof, over, under or through which shall have been constructed lengthwise sewers or water mains by the city, or water mains, gas, steam or other pipes, or telephone or telegraph lines by the city's grantees of the right of way therefor, shall be vacated and no other public grounds, streets or alleys, or parts 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 of publication in the official newspaper of the city for four weeks, at least once 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 thereof on a certain day therein specified, not less than thirty days after the first publication of such notice. The city council or such

committee as may be appointed by it for the purpose, at the time and place appointed, shall investigate and consider the matter, and shall hear the testimony and evidence of persons 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 of the members elect, declare such public grounds, streets or alleys or highways vacated; which 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, and shall have the effect to convey to the abutting property owners all the right and title of the city to the property so vacated. 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. All expenses incurred in vacating any such public grounds, streets or alleys, must be paid by the petitioners, who shall deposit with the city treasurer such sum as may be necessary therefor before any such expense is incurred, and the amount so to be deposited shall be determined by the city council, and any part thereof not used for such expenses shall be returned.

ARTICLE 17—SIDEWALKS.

§ 130. SPECIFICATIONS FOR SIDEWALKS.] The city council shall by ordinance prescribe the width of sidewalks and may establish different widths in different locations, and shall determine and prescribe the kind and quality of material of which, and the manner in which, they shall be constructed, having regard to the business and amount of travel in the vicinity of each, and such ordinance shall be specific, and all contracts for the construction of sidewalks shall be let with reference to the same.

§ 130½. NOTICE TO BUILD OR REPAIR.] Whenever the city council shall deem it necessary to construct, rebuild or repair, except as hereinafter provided, any sidewalk in the city, it shall notify each owner and occupant of any lot or parcel of land adjoining such sidewalk, to construct, rebuild or repair the same at his own expense, and subject to the approval of the street commissioner, within the time designated in such notice, by the publication in the official paper of the city twice, once in each week for two successive weeks, of a notice to said owner or occupant, setting forth what work is to be done, and the character of the same as specified in the ordinance provided for in the preceding section, and the time within which he is required to do the same. Such notice may be general as to the owner, but must be specific as to the description of the lot or parcel of ground in front of which such sidewalk is to be built, and a copy thereof shall also be served in the manner provided in section 133 of this act.

§ 131. BUILDING BY CITY.] If such work is not done and the

sidewalk is not built, repaired or rebuilt, in the manner and within the time prescribed in said notice, the city council shall order the same to be done by such person as they may have contracted with therefor, under the direction of the city engineer, or street commissioner in cities having no city engineer, at the expense of the lot or parcel of land adjoining such sidewalk, and such expense, including the expenses of all notices in connection with such work and the assessment therefor, and any other expense incurred for such work, shall be assessed upon the lot or parcel of land properly chargeable therewith, by the city engineer, or by the street commissioner in cities having no city engineer; and such assessment shall be returned by him, and filed in the office of the city auditor, and the city auditor shall cause to be published the said assessment, together with a notice of the time and place when and where the city council will meet to approve the same, and said notice shall be published once in the official newspaper of the city at least ten days prior to the meeting of the city council to approve such assessment.

§ 132. LETTING CONTRACTS FOR SIDEWALKS.] The city auditor shall, on or before the fifteenth day of March in each year, advertise in the official newspaper of the city twice, once in each week for two consecutive weeks, for bids for the construction of the various kinds of sidewalks in the city during the ensuing year, in accordance with the specifications of the ordinance provided for in section 130 of this act, and such bid shall be received and opened and if accompanied by a check and bond as hereinafter provided, such contract shall be awarded to the lowest bidder, at the regular meeting of the city council in April and contracts may be awarded to different bidders for the different kinds of sidewalks required.

§ 133. REPAIRS.] Whenever the necessary repair of sidewalks will not, in the judgment of the street commissioner, exceed in cost the sum of five dollars for each twenty-five feet in front of land belonging to the same owner, he shall notify the city auditor thereof, and the city auditor shall forthwith prepare a notice in writing, which may be general as to the owner of the lot or parcel of land, but describing it specifically, requiring him to repair such sidewalk to the satisfaction of the street commissioner, within a time to be fixed in such notice not exceeding three days. The auditor shall deliver such notice to the street commissioner, who shall forthwith serve it by delivering a copy thereof to the occupant or owner of the parcel of land, if the same is occupied, or by leaving such notice at the dwelling house upon such lot or parcel of land with some person over the age of fourteen years residing therein, or if such lot or parcel of land is not occupied, by posting a copy of such notice in a conspicuous place thereon or immediately in front thereof, and if such sidewalk is not so repaired within the time fixed in such notice, the street commissioner shall, as soon as practicable, repair the same and certify the cost thereof, with his return of service of such notice to the city auditor; and the cost of such repairs shall be paid out of the "sidewalk special assessment fund."

§ 134. DUTY OF AUDITOR.] The city auditor shall keep in his office a book called "sidewalk repair special assessment book," and shall enter such cost so certified by the street commissioner therein, as a special assessment, against the lot or parcel of land adjoining such sidewalk, with the name of the owner, if known to him; and at its regular meeting in August of each year, the city council shall review all assessments, and hear all complaints against the same, and approve the same as finally adjusted.

§ 135. SIDEWALK SPECIAL ASSESSMENT FUND.] All money collected from special assessments for building or repairing sidewalks shall be kept in a fund to be called "sidewalk special assessment fund," and warrants shall be drawn on such fund for the payment of the costs of building and repairing all sidewalks, and the city shall in no case be liable on any contract for the building or repairing of sidewalks for any sum whatever, to be paid by money raised by general taxation.

ARTICLE 18—SEWERS, PAVING AND WATER MAINS.

§ 136. SYSTEM OF SEWERAGE.] The city council shall have power to establish and maintain at any time a general system of sewerage for the 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 the council shall deem proper; provided, that no action shall be taken for the establishment of such system of sewerage except upon the affirmative vote of two-thirds of the members of the city council; provided further that when such system of sewerage is established all measures necessary for the construction of sewers, as a part of such system may be taken by a vote of the majority of the city council; provided, further, that when it shall be necessary to conduct the sewerage of the city beyond the city limits, the council shall have power, by purchase or condemnation proceedings, to acquire private property over which to construct such sewer; and the cost thereof and of building such sewer over the same shall be included in the cost of such system of sewerage, and in the special assessment levied therefor; and provided, further, that any city may empty or discharge its sewerage into any river, but where a dam on such river is located within the corporate limits of any city, the sewerage shall, in all cases, be discharged below such dam.

§ 137. TO CREATE IMPROVEMENT DISTRICTS.] Any city shall have power to create sewer, paving and water main districts within the limits of such city, which shall be consecutively numbered.

§ 138. SIZE AND FORM OF SEWER DISTRICTS.] Such sewer districts shall be of such size and form as the city council, after consultation with the city engineer, shall decide most practicable for the purpose of the drainage of such portion of such city as may be included in the respective districts as established by the city council.

§ 139. FORM OF PAVING DISTRICTS.] Such paving districts shall be in compact form as nearly as practicable, and include all streets within their respective boundaries, and nothing in this article con-

tained shall be construed as authorizing and empowering the city council to create one street, by length, as a district, except when it shall be necessary to repave any street which shall not, when originally paved, have been included in any paving district.

§ 140. WATER MAIN DISTRICTS.] Such water main districts shall be of such size and number as the city council, after consultation with the city engineer, shall decide most practicable for the purpose of furnishing water to such portions of the city as may be included in the respective water main districts as formed by the city council.

§ 141. POWER TO IMPROVE STREETS.] All cities shall have power to grade, curb, pave, repave, gravel, macadamize or gutter any street, highway, avenue, alley or public place in such city, and to extend, improve, enlarge, relay or replace the water mains and hydrants of such city, and to lay new or additional water mains therein, and to defray the expenses of all such work as hereinafter provided.

§ 142. PLANS, SPECIFICATIONS AND ESTIMATES.] When the city council shall deem it necessary to construct or alter any sewer or to open, widen, extend, pave, repave, macadamize or curb any street, alley, avenue, lane, highway, or other public grounds, within the city limits, or to extend, relay or replace any water mains, the city council shall direct the city engineer, or in case the city has no competent city engineer, shall employ a competent engineer, to prepare plans and specifications, for such work, including the grading of the street, if not already established, and all details of the work to be done, and make an estimate of its probable cost, which plans, specifications and estimates shall be approved by resolution of the city council, which approval shall be deemed to establish the grade of the street as shown in such plans and specifications, if the grade of the street has not previously been established by ordinance. In case the improvement shall consist in paving or repaving any street, alley or public place, the city council may require such plans, specifications and estimates to be made of such different kinds of pavement as they may deem advisable. Such plans, specifications and estimates shall be the property of the city and be filed in the office of the city auditor and remain on file in his office subject to the inspection of all persons. The city engineer shall retain a copy of such plans, specifications and estimates, and file the same in his office and shall furnish to any person applying therefor copies of the same, and may charge and receive for such copies at the rate of one dollar an hour for the time necessarily employed in making the same.

§ 143. RESOLUTION DECLARING WORK NECESSARY.] After the plans, specifications and estimates mentioned in the preceding section shall have been filed in the office of the city auditor, and approved as provided in the preceding section, the city council shall by resolution declare such work or improvement (except the construction or alteration of sewers), necessary to be done, according to such plans and specifications, as filed in the office of the city auditor; and in case of paving, such resolution shall designate the kind of pavement proposed

to be constructed and refer intelligently to the plans, specifications and estimates therefor; which resolution shall be published twice, once in each week for two consecutive weeks, in the official newspaper of the city, and if a majority of the owners of property, liable to be specially assessed therefor, shall not, within thirty-five days after the first publication of such resolution, 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 according to such plans and specifications, and to contract therefor, and to levy and collect assessments therefor as hereinafter provided and all such work shall be let by contract to the lowest bidder therefor.

§ 144. PAVING. COUNCIL MAY TAKE FURTHER PROCEEDINGS.] In case the improvement designated in such resolution consists in paving or repaving any street, alley or other public place, and a majority of the owners of property liable to be especially assessed therefor shall protest against the same, that fact shall not prevent the city council from taking the proceedings designated in the two preceding sections to pave such streets, alleys or public places, with pavement of a kind different from that designated in such resolution.

§ 145. DUTY OF COUNCIL.] The city council shall then cause proposals for said work to be advertised for in the official paper of such city twice, once in each week for two successive weeks, which advertisement shall specify the work to be done, according to the plans and specifications therefor on file in the auditor's office, and shall call for bids therefor upon a basis of cash payment for said work, and state the time within which such bids will be received, and within which such work is to be completed. 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 have endorsed upon the outside thereof a statement of what work such proposals are for. Such bids shall be opened by the city council at the expiration of the time limited in said advertisement for receiving the same, which shall not be less than fifteen days after the first publication of said advertisement, or at such other time as the city council may appoint therefor, and if accompanied by the check and bond hereinafter provided for, shall be considered, and if not accompanied by such check and bond, shall be rejected.

§ 146. BIDS.] Each bid for any work to be done under the provisions of this act shall be accompanied by a certified check, in case of sidewalks for the sum of fifty dollars, and in the case of other work for the sum of five hundred dollars, endorsed or payable to the mayor, as a guarantee that the bidder will enter into a contract for the performance of such work in case such contract is awarded to him, and in case any bidder to whom such contract shall be awarded, fails or refuses to enter into such contract when requested so to do, such check accompanying his bid shall be retained by the city, and be deemed to be liquidated damages for such failure, and shall be delivered to the city treasurer and credited by him to the fund from which the consideration for such work is payable.

§ 147. BONDS.] Each bid for any such work shall also be accompanied by a bond running to the city, in case of sidewalks for a sum of five hundred dollars, and in all other cases a sum equal to the amount of such bid, executed by such bidder, and a surety company as surety or by two freeholders of the state, who shall justify as required in arrest and bail, and the aggregate of such justification shall equal the amount of such bond, and such bond shall be conditioned, that in case such bid is accepted, and such contract awarded to such bidder, he will well and faithfully perform the work bid for in accordance with the terms of, and within the time provided for in such contract, and pursuant to the plans and specifications for such work on file in the auditor's office, and pay for all labor and material used in such work, and that in case of default on the part of such bidder to perform such work as provided in his contract, the sum named in said bond shall be taken and held to be fixed and liquidated damages in favor of said city; and that the full amount thereof may be recovered from such bidder and his sureties, in an action by the city against them on such bond. Such bond shall be approved by the city council and filed in the office of the city auditor, and shall thereupon be and remain in full force and effect. Upon the award of the contract the checks of all unsuccessful bidders shall be returned to them, and upon the filing of such bond the check of the successful bidder shall be returned to him.

§ 148. COUNCIL MAY REJECT BIDS.] The city council shall have the right to reject any and all bids for work to be done under this act, if, in its opinion the interests of the city will be best subserved by so doing, and readvertise for further bids, but if all such bids are not rejected the contract shall then be awarded to the lowest bidder upon the basis of cash payment therefor; provided, such bidder shall have complied with the foregoing requirements and furnished the bond hereinbefore provided for.

§ 149. CONTRACTS.] All contracts entered into for any work provided for in this act, shall be entered into in the name of the city, and shall be executed on the part of the city, by the mayor thereof, and countersigned by the auditor with the corporate seal of the city affixed, and when signed by the contractor shall be filed in the office of the city auditor. Such contract shall require the work to be done thereunder, to be done pursuant to the plans and specifications therefor on file in the office of the city auditor, or in case of sidewalks, pursuant to the specifications of the ordinance provided for by section 130 and subject to the approval of the city engineer, who shall personally supervise and inspect such work during its progress, and there shall be reserved in each contract the right of 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 order a reconstruction of said work on any part thereof improperly done.

Each contract so entered into shall state the time on or before which such work must be completed, and must state from what fund the amount to be paid thereon by the city is to be paid, and that the consideration of such contract is payable only in warrants drawn on such fund, and that such city assumes and incurs no general liability under such contract.

§ 150. CONTRACTOR, HOW PAID.] 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 its discretion, as the work progresses, pay to such contractor upon an estimate made by the city engineer of the amount already earned thereunder, eighty-five per cent of the amount shown by such estimate to have been so earned, in warrants drawn on the fund from which the same is to be paid.

§ 151. SPECIAL ASSESSMENT FUNDS. WARRANTS.] All special assessments levied under the provisions of this act shall constitute a fund for the payment of the cost of the improvement for the payment of which they are levied, and shall be diverted to no other purpose, and those for payment of sewer improvements shall be designated respectively "Sewer District No. Fund," and such fund shall be numbered according to the number of the sewer district in which it is raised. Those collected for paving improvements shall be designated as "Paving District No. Fund," and such fund shall be numbered according to the paving district in which it is raised; and those levied for the payment of water mains shall be known as "Water Main District No. Fund," and such fund shall be numbered according to the number of the water main district in which it is raised, and in anticipation of the levy and collection of such special assessments the city may, at any time after the making of a contract for any such improvements, issue warrants on such funds, payable at specified times, and in such amounts as, in the judgment of the city council, the taxes and assessments will provide for, which warrants shall bear interest at the rate of not to exceed seven per cent per annum, payable annually, and may have coupons attached representing each year's interest. Such warrants shall state upon their face for what purpose they are issued, and the fund from which they are payable, and shall be signed by the mayor, and countersigned by the city auditor under the seal of the city, and be in denominations of not more than one thousand dollars each. Such warrants may be used in making payments on contracts for making such improvements or may be sold for cash, at not less than the par value thereof, and the proceeds thereof credited to such fund, and used for paying for such improvements. It shall be the duty of the city treasurer to pay such warrants and interest coupons as they mature and are presented for payment, out of the district funds on which they are drawn, and to cancel the same when paid.

§ 152. ERRORS AND MISTAKES.] In case errors or mistakes in making an assessment, in respect to the total cost of such improve-

ments, or otherwise, occur, or in case of any deficiency in any assessment or otherwise, the city council shall have power, and it shall be their duty from time to time, to cause additional assessments to be made in the manner hereinafter provided, to supply such deficiencies, or correct such errors or mistakes; the total of such assessments not to exceed the benefit to such property, and any such assessment shall be a lien upon the lots and lands on which it is levied as herein provided for the original assessments, and shall be payable in the same manner, and in the same installments, and shall draw interest at the same rate, and shall be enforced in the same manner as herein provided with respect to the original assessment.

§ 153. REASSESSMENT.] In all cases where any assessment, or any part thereof, as to any lot, lots or parcels of land assessed under any of the provisions of this act, or of any law of any city prior to this act, for any cause whatever, whether jurisdictional or otherwise, shall be set aside, or declared void by any court, the city council shall, without unnecessary delay, cause a reassessment or new assessment to defray the expense of such improvement to be made, whether such improvement was made under this act or under any law of any city prior to this act, and such reassessment or new assessment shall be made as nearly as may be, as herein provided for making the assessment therefor in the first instance; and may bear interest from the date of the approval of such assessment so set aside, and when the same shall have been made and confirmed by the city council, it shall be enforced and collected in the same manner that other assessments are enforced and collected under this act, and in all cases where judgment shall hereafter be refused or denied by any court for the collection or enforcement of any special assessment, or where any court shall hereafter set aside or declare void any assessment upon any lot or parcel of land for any cause, the said lot or parcel of land may be reassessed or newly assessed from time to time, until each separate lot, piece or parcel of land has paid its proportionate part of the costs and expenses of such improvement, as near as may be; provided, that when any special assessment shall be declared void, or set aside by judgment of the supreme court, for a cause affecting other like assessments, all assessments so affected may be vacated by resolution of the city council, and thereupon a reassessment of the property affected thereby shall be made as herein provided, and may bear interest as hereinbefore provided.

§ 154. ERROR OR OMISSION SHALL NOT VITIATE.] No error or omission which may be made in the proceedings of the city council, or of any officer of said city in referring, reporting upon, ordering or otherwise acting concerning any local improvement provided for in this act, or in making or certifying any assessment, shall vitiate or in any way affect any such assessment, but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced.

§ 155. ACTION TO AVOID TAX JUDGMENT.] Whenever any action or proceeding shall be commenced and maintained before any court to prevent or restrain the collection of any special assessment or part thereof, made or levied by the officers of any city for any purpose authorized by law, and whenever any action or proceeding shall be commenced and maintained as aforesaid to vacate or set aside any sale of real estate for such special assessment, or to cancel any tax certificate or deed given under such sale, and such assessment shall be held to be void by reason of noncompliance with this act, the court shall determine the true and just amount which the property attempted to be so assessed by said special assessment should pay, to make the same uniform with other special assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the party liable for such special assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which a special assessment shall have been levied, of equal force and effect as the lien of special assessments, and the lien of such special judgment shall be enforced by the court in such action; provided, that no action for either of said purposes shall be maintained unless it is commenced within six months after such special assessment is approved, and in case of such assessment heretofore approved, within six months after this act takes effect.

§ 156. PAYMENT OF DEFICIENCY.] Whenever all special assessments levied for a specific improvement shall have been collected and applied in payment of the warrants issued for such improvement, and a deficiency remains, the city council shall levy a tax upon all the taxable property in the city for the payment of such deficiency, and in case of a balance of such special assessments remaining unexpended, it may be used for repairs of such improvement.

§ 157. SEWER ASSESSMENTS EXTENDED TWENTY YEARS.] The special assessments herein provided for the payment of the cost of constructing any sewer shall be payable in equal annual amounts extending over a period not exceeding twenty years, and shall bear interest at a rate not to exceed seven per cent per annum on the total amount of such assessments remaining from time to time unpaid.

§ 158. WATER MAIN ASSESSMENTS EXTENDED TEN YEARS.] The special assessments herein provided for the payment of the cost of any water mains shall be payable in equal annual amounts, extending over a period of not exceeding ten years, and shall bear interest at a rate not to exceed seven per cent per annum on the total amount of such assessments remaining from time to time unpaid.

§ 159. PAVING ASSESSMENTS EXTENDED TEN TO THIRTY YEARS.] The special assessments herein provided for the payment of the cost of paving and repaving shall be payable in equal annual amounts, and in case such paving shall be made on a perishable foundation of wood,

such amounts shall be extended over a period not to exceed ten years, and in case such pavement shall be constructed with a concrete or other permanent foundation, such amount shall be extended over a period not exceeding twenty years; provided, that whenever the city council shall determine to pave upon such permanent foundation, otherwise than with ordinary wooden pavement, such amounts may, in the discretion of the city council, be extended over a period not to exceed thirty years, and the said assessment shall bear interest at the rate of not exceeding seven per cent per annum on the total amount thereof remaining from time to time unpaid, and the rate to be fixed by the city council.

§ 160. SIDEWALK ASSESSMENTS.] All special assessments for sidewalks and for the expense of opening, widening or extending streets shall be payable in a single amount.

§ 161. CERTAIN ASSESSMENTS COLLECTED BY SUIT.] Whenever by reason of the exemption of any real property from special assessments, or when any real property cannot be specially assessed as herein provided, in any improvement district, by reason of the title thereof being in the United States, or from other cause, and such real property would otherwise be assessable for any improvements provided for herein, an assessment may be levied against such property and collected from the owner, or person enjoying the beneficial use of such property, by suit in any court in this state.

§ 162. SPECIAL ASSESSMENTS DUE. INTEREST.] All special assessments levied under the provisions of this act shall become due and payable ten days after the same shall have been approved by the city council, and shall thereafter bear interest at the rate of seven per cent per annum.

§ 163. PAYMENT OF ONE-FIFTH BY GENERAL TAXATION.] Any city which shall have power under the debt limit provision of the constitution to create valid obligations, may, at its election, provide for the payment of not exceeding one-fifth of the cost of any work hereinbefore provided for, other than sidewalks, and opening and widening of streets, by general taxation of all taxable property in such city, and may contract with reference thereto, and make appropriations and levy taxes therefor, in installments annually, and extending over the same period as provided for special assessments for the same improvement, and such appropriation and tax levy shall state the specific improvement for which such tax is levied and the district in which such improvement is made, and when such tax is collected and paid over to the city treasurer, he shall credit it to the district fund for which it was so levied.

§ 164. SPECIAL ASSESSMENT COMMISSION.] The mayor of each city shall, as soon as practicable after this act takes effect, appoint a commission, to be composed of three reputable residents and freeholders of the city, to be known as the "Special Assessment Commission." Such commission shall hold their offices for the terms of two, four and six years respectively, such terms to be designated by

the mayor in making such appointment, and thereafter the mayor shall, in each odd numbered year at the first meeting of the city council in April, or as soon thereafter as practicable, appoint one member of such commission to fill the vacancy occasioned by the expiration of such term, who shall hold his office six years, and vacancies occurring in said commission by removal, resignation or death shall be filled by like appointment, to be made as soon as practicable after such vacancy occurs. All such appointments herein provided for shall be subject to the confirmation of the city council. Each member of such commission shall, upon his appointment and confirmation as aforesaid, file with the city auditor a written acceptance of such appointment, and shall take and subscribe the oath provided by section 60 of this act, which oath shall be filed with the city auditor; and the member of such commission having the shortest time to serve, shall act as chairman thereof, and no member of such commission shall hold any other city [office] during the term for which he is so appointed. The city engineer, city auditor and city attorney shall each at all times give to such commission such information, advice or assistance as he may be requested by such commission to give. Each member of such commission shall receive as compensation for his services while actually engaged in the duties of such commission, the sum of five dollars per day. Any member of such commission may be removed by the mayor, with the consent of the majority of the members of the city council, for neglect or refusal to perform the duties of his office or for misconduct in office.

§ 165. NOTICE TO COMMISSION.] Whenever the work for which a special assessment shall be required to be made by such commission, shall have been completed, and approved by the city engineer, and the total cost of such work shall have been ascertained as near as practicable, the city auditor shall notify the chairman of such commission of the completion of such work, and shall certify to him the items of the total cost thereof, to be paid by special assessments, so far as the same have been ascertained, and the chairman of such commission shall thereupon immediately call a meeting of such commission, and such commission shall thereupon as expeditiously as possible proceed to make and return such special assessment as hereinafter provided.

§ 166. SPECIAL ASSESSMENTS, HOW MADE. REVIEW.] It shall be the duty of such commission, whenever required under the provisions of this act to make any special assessment, to personally inspect any and all lots and parcels of land which may be subject to such special assessment and determine from such inspection the particular lots and parcels of land which will, in the opinion of such commission, be especially benefitted by the construction of the work for which such assessment is to be made, and thereupon determine the amount in which each of said lots and parcels of land will be especially benefitted by the construction of the work for which such special assessment is to be made, and thereupon assess against each of such lots and parcels of land, such sum, not exceeding such benefits, as

shall be necessary to pay its just proportion of the total cost of such work, or such part thereof as is to be paid by special assessment, including all expenses incurred in making such assessment, and publishing necessary notices with reference thereto, including the per diem of such commission; and such commission shall thereupon make or cause to be made a complete list of such benefits and assessments, setting forth each lot or tract of land assessed, and the amount such lot is benefitted by the improvement, and the amount assessed against each, and shall attach to said list a certificate signed by a majority of the members of such commission, certifying that the same is a true and correct assessment of the property therein described to the best of their judgment, and stating the several items of expense included in such assessment, and shall thereupon cause the same to be published twice, once in each week for two consecutive weeks, in the official newspaper of the city, together with a notice of the time and place when and where such commission will meet to hear objections which may be made to any such assessment, by any person interested therein, or his agent or attorney, which time shall not be less than fifteen days after the first publication of such notice; and such commission may thereupon alter the same as may in their opinion be just or as may be necessary to correct any errors therein, and they may increase or diminish any such assessment as may be just and as is necessary to make the aggregate of all such assessments equal to the total special assessment to be made for the cost of the work for which they are made; provided, that no assessment shall exceed the benefits to the parcel of land assessed, as determined by the commission. Such commission shall thereupon confirm such list and attach thereto their further certificate certifying that the same is correct as confirmed by them. Such commission shall thereupon file such assessment list in the city auditor's office. The city auditor shall thereupon publish once, in the official newspaper of the city, a notice stating that such assessment list, describing it, has been confirmed by the special assessment commission, and filed in his office, and is open to public inspection, and shall state in said notice the time and place when and where the city council will act upon such assessment list; and in case such notice shall have been given more than fifteen days prior to the next regular meeting of the city council, such assessment list shall be acted upon by such council, at its next regular meeting; and, in case such notice shall not have been published more than fifteen days prior to the first regular meeting of the council thereafter, such assessment list shall be acted upon by the city council at its second regular meeting, after the publication of such notice, and any person aggrieved may appeal from the action of said commission by filing with the city auditor prior to the meeting at which the city council will act on such assessment, a written notice of such appeal, and stating therein the grounds upon which the same are based.

§ 167. HEARING OF APPEALS FROM COMMISSION.] At the regular meeting of the city council at which such assessment list is to be acted

upon, any person aggrieved by the determination of such commission in regard to any such assessment, and who has appealed therefrom, as hereinbefore provided, may appear before the city council and present their reasons why the action of such commission should not be confirmed by the city council, and the city council shall then hear and determine such appeals and objections, if any, and may alter and increase or diminish any of such assessments as they may deem just; provided, that the aggregate amount of all such assessments as returned by the commission shall not be changed; and provided, further, that no assessment as so adjusted shall exceed the benefits to the parcel of land on which it is assessed as determined by the assessment commission, and shall thereupon confirm such assessment list, and the city auditor shall thereupon attach to such list his certificate that the same is correct as confirmed by the city council, and shall thereupon file such assessment list in his office; and such assessment with interest and penalties accruing thereon shall be and remain a paramount lien upon the property upon which such assessment is levied, from the time such assessment list is approved by the city council, and shall remain a lien thereon until fully paid and shall have precedence over all other liens except ordinary taxes to which it shall be subject, and such lien shall not be divested by any judicial sale, and no mistake in the description of the property, or in the name of the owner, shall obviate such lien, provided the property assessed can be identified by the description in such assessment list.

§ 168. AUDITOR SHALL CERTIFY ASSESSMENTS.] The city auditor shall, annually, at the time he certifies to the county auditor the amount of the city taxes to be levied for the current year, also certify to such auditor all sidewalk, and all sidewalk repair assessments, and all assessments for opening or widening streets, remaining in his office uncertified, and shall also certify to such county auditor a list of the lots and tracts of land specially assessed for any other purpose as hereinbefore provided, designating the purpose of such assessment, and the fund to which it belongs, with the proportion of such assessment for such year against each lot, and shall add thereto one per cent of all such assessments so certified; and the county auditor shall thereupon extend the same upon the tax list for the current year, and the amount, with all interest and penalties, shall be collected and paid over to the city treasurer in the same manner as other city taxes, and when so paid over shall be credited by the city treasurer and city auditor to the fund for which it was collected.

§ 169. WARRANTS MAY BE USED TO PAY ASSESSMENTS.] Any matured special assessment warrants or interest coupons may be used in the payment of special assessments levied for the payment of the improvement for which such warrants or interest coupons were issued, and such warrants or coupons so used shall be cancelled and retired by the city treasurer.

§ 170. RIGHT OF PROPERTY OWNERS TO PAY ASSESSMENTS.] The owner of any property against which an assessment shall have been made for the cost of any improvement under this act shall have the

right to pay the same, or any part thereof remaining unpaid, in full, with the unpaid interest thereon, and such payment in full shall constitute a discharge of the lien of such assessment upon his property. Such payment may be made to the county treasurer upon all installments of such assessments which have been certified to the county auditor, and may be made to the city treasurer upon all portions of such assessments which have not been so certified. The person desiring to pay any portion of such assessment of the city treasurer shall obtain from the city auditor a certificate of the amount due upon such assessment which has not been certified to the county auditor, and shall thereupon present such certificate to the city treasurer, and the city treasurer shall thereupon receive and collect such amount, and issue duplicate receipts therefor, one of which he shall deliver to the party paying such assessment, and thereupon deposit the other in the office of the city auditor, and the city auditor shall thereupon note upon his records the payment of such assessment.

§ 171. PENALTIES TO BE ADDED.] The county treasurer shall add to all such special assessments the same interest and penalties that are provided to be added in the case of general taxes, and at the same time, and shall collect such interest and penalties with such special assessments, and shall pay over to the city treasurer all such interest and penalties.

§ 172. DELINQUENT SPECIAL ASSESSMENT SALES.] If the real property against which any assessment is levied is sold to enforce the collection of a special assessment which has become delinquent, the sale shall be made by the same officer, and upon like notice and subject to the same provisions in relation to redemption, and the same record thereof shall be kept by the officer making the sale, as in cases of real property for delinquent taxes; but if any real property is subject to sale at the same time for delinquent taxes, and also for delinquent special assessments it shall be sold separately for each, and a separate certificate of sale shall be issued upon each of said sales, although both sales are made to the same person, and the certificates issued upon the sale for special assessments shall so state; and if no redemption is made from such sale, a deed shall be issued to the purchaser or his assigns, which shall be, as nearly as practicable, in the same form as deeds issued upon sales for general taxes, except that it shall state that such sale was made for special assessments; and in case the sale for special assessments is made to a different purchaser from the sale for general taxes, such purchaser may redeem said premises from the purchaser of the same for delinquent general taxes, and upon such redemption shall be subrogated to all the rights of such purchaser from whom such redemption is made. Such redemption shall be made at the office of the county auditor, and the auditor shall issue to the redemptioner a certificate of such redemption, which shall state that such redemption is made by the holder of a certificate of sale of the premises for delinquent special assessment, and that the person to whom such certificate is issued or his assigns, is subrogated to all the

rights of the original purchaser, and such certificate shall entitle the holder to a tax deed of said premises under such sale for delinquent general taxes, subject to the same conditions, and at the same time as the original certificate of sale.

§ 173. WHEN NO BIDDERS. TAX DEED.] Whenever any parcel of land shall be offered for sale for a special assessment, as provided in the preceding section, and there shall be no bidder therefor, the county auditor shall strike off such parcel of land to the city, making such assessment, and issue a certificate of sale therefor to such city, which certificate shall be assignable as hereinafter provided, and, if no redemption be made from such sale, or such certificate be not assigned within three years from the date of such certificate of sale, the piece or parcel of land so bid off shall become the absolute property of the city at the expiration of said three years, without any further act upon its part, and may be disposed of by the city at public or private sale, as may be provided by the city council and the city may redeem any parcel of land from a purchaser thereof under a sale for general taxes as is hereinbefore provided for such redemption in other cases, and any assignee of the city's certificate of sale may likewise, and in like manner redeem any such parcel of land from any such sale for delinquent general taxes, and such redemption shall have the same force and effect as provided in the preceding section. The city may at any time before its title to said land becomes absolute, by resolution of the city council, assign said certificate of sale to any person except the city auditor and city treasurer, their deputies and clerks, who shall pay the amount for which the same shall have been bid in, and the amount of all subsequent special assessments thereon then due, and all penalties, interest and costs upon the same, and the city auditor shall thereupon execute to the purchaser of such certificate of sale an assignment thereof, substantially as provided in section 1272 of the revised codes. In case such lands are not redeemed from such sale, and any amount paid by the city for the redemption of such premises from sale for general delinquent taxes with interest thereon at the date of such assessment, the county auditor shall, at the expiration of the period of redemption, issue a deed thereof to such city if such certificate has not been assigned by it, and if so assigned, then to the holder of such certificate; provided, that no deed shall be issued on any such certificate except to the city, until notice of expiration of the period of redemption has been given as provided for sales for general taxes.

§ 174. VACATION OF JUDGMENT IN CONDEMNATION PROCEEDINGS.] Whenever any property is to be taken under this act by condemnation proceedings, the court shall upon request by resolution of the city council call a special term of court for the purpose of the trial upon such proceedings and may summon a jury for such trial whenever necessary and such proceedings shall be determined as speedily as practicable and any appeal from the judgment in such action shall be taken within sixty days after the entry of such judgment and such

appeal may be determined at either a special or regular term of the supreme court and shall be given precedence of all other civil causes before the court, except election contests, and in case any judgment which shall be rendered in condemnation proceedings, for damages to property used by any city for street, sewer or other purposes, is entered, it shall not be vacated or set aside, provided the city council shall within three months after its entry, levy special assessments for its payment in whole or in part, and shall at the time of the next annual tax levy, levy a general tax for the payment of such part of the same as is not to be paid by special assessment; and provided, further, that upon failure of the city council to make such assessments and levy as hereinbefore stated, said judgment may then be vacated.

§ 175. RECORDS. DUTY OF AUDITOR.] It shall be the duty of the city auditor to keep in his office a complete record of all proceedings taken in the matter of making any improvements under this act, including all reports and the confirmation thereof, and all petitions, orders, appointment of commissioners, notices and proofs of publications and orders and resolutions of the city council. Such record or certified transcript thereof or the original papers, proofs of publication, orders or resolutions on file in his office, shall be admitted in evidence without further proof, as evidence of the fact therein contained, in any court or place in this state.

§ 176. ABBREVIATIONS.] In all proceedings taken for the levy and collection of any special assessments, abbreviations, letters and figures may be used to denote lots, lands and blocks, sections, townships, ranges and parts thereof, years, days of the month, and amounts of money.

§ 177. CONNECTIONS WITH SEWER AND OTHER MAINS.] Whenever the city council shall determine to pave any street in which water mains, gas mains, sewers, steam pipes or other pipes, or either of them shall have been previously laid and constructed, they may, by resolution, require the owners of all property abutting on the said street, to cause water and gas, steam and other service pipes, and sewer pipes to be first constructed and laid in such street, at the cost of the property fronting thereon, from the sewer, water, gas, steam or other mains in said street, to a point two feet inside of the curb line on either side of such street at such intervals along the whole length of such street as shall be necessary to supply and serve each lot, or part of a lot, which has been separately built upon, the whole length of such street except at street and alley crossings. Upon the adoption of such resolution, the city auditor shall cause the same to be published once, in the official newspaper of such city, and unless such work is done and completed within thirty days after such publication, the city engineer shall cause the same to be done, and shall certify the cost of each connection so made to the city auditor, designating the lot or parcel of land against which such cost is properly assessable, and the city auditor shall, prior to the making of the special assessment for such paving, certify the same to

the special assessment commission, and the special assessment commission shall, after having made their assessment against each of said lots add thereto by separate items the assessment for the cost of making each such connection, designating the same, and such cost shall thereupon become and be a part of such special assessment. All work done under the provisions of this section, shall be done under the supervision and approved by the city engineer, and all excavations made in any street for such service connections shall be so filled that the same shall not settle after such street has been paved.

§ 178. PROCEEDINGS HERETOFORE COMMENCED, HOW COMPLETED.] Any special assessment or other proceeding hereinbefore provided for, which shall have been commenced by any city officer or committee appointed under the laws heretofore existing, may be completed by such officer or committee in the manner provided by such law, and shall have the same force, effect and validity as though taken or completed under this act, but all future steps and proceedings not so commenced, taken for any purpose hereinbefore provided for, shall be taken under the provisions of this act, and no special assessment, or other proceeding heretofore had with reference to any improvement or assessment hereinbefore provided for, shall be in any manner affected by the provisions of this act.

§ 179. WATER MAIN PROVISIONS. APPLICABLE WHEN.] The provisions of this act with reference to water mains shall apply only to cities which own a system of water works and water mains.

§ 180. SPECIAL ASSESSMENTS. LIEN BETWEEN VENDOR AND VENDEE.] As between vendor and vendee, all special assessments upon real property for local improvements shall become and be a lien upon the real property upon which the same are assessed, from and after the first day of December, next after such assessments shall have been certified and returned to the county auditor, to the amount so certified and returned, and no more.

ARTICLE 19—IMPROVEMENT OF ROADS LEADING TO CITIES.

§ 181. ROADS LEADING TO CITIES. HOW IMPROVED.] Whenever ten per cent of the electors, as shown by the last municipal election, of any city, shall petition the city council to call an election for the purpose of raising money or the issuing of bonds to repair or construct any road or bridge within such city, or approaching or leading thereto, whether the same is adjacent thereto or not, or to pay for any bridge heretofore constructed or built on any such road or highway; and if such petition shall state first, the purpose of raising such money and the object for which the same is to be expended; second, the amount thereof, it shall be the duty of such city council to call an election in said city for the purpose of submitting to the electors therein the question of raising the money, and the amount thereof as stated in the petition, and which election may be called at any regular or special meeting of such city council, and such city council shall cause notice of such election to be published twice in the official

paper of the city, once in each week for two consecutive weeks, and such election shall not be held until at least twenty days after the first publication of such notice ; and such notice shall state :

First. The purpose of raising such money.

Second. The object for which the same is to be expended.

Third. The amount thereof.

Fourth. That the amount thereof that shall be raised by the issuing of bonds in payment thereof, or by the customary and usual method of raising money by assessment and levy, as such electors may designate on their ballots at such election ; and if at such election a two-thirds majority of all the electors voting shall vote in favor of raising such sum of money, and a majority of the electors voting at such election shall vote in favor of raising such money by the issuing of bonds therefor, then the city council is authorized to issue and negotiate the sale of such bonds without any other election ; but if a two-thirds majority of the electors voting at such election shall vote in favor of raising such sum of money, and a majority of the electors voting at said election shall vote in favor of raising the same by levy and assessment, then the same shall be raised by levy and assessment as in other cases provided by the law governing cities. And such money, when so raised, shall be used and expended by the city council for the purpose stated in the notice of election, and for no other ; provided, however, that any money coming into the city treasury from the county treasury, on account of road taxes collected from residents of any incorporated city and all road taxes collected on account of real or personal property situated within an incorporated city, or which may come into the city treasury from the bridge fund of such county from any such taxes, levied, assessed and collected from persons and property in such city, may be, at the discretion of the city council expended in the repair or construction of any such road within such city, or approaching or leading thereto, or for the repair or building of any bridge thereon, or any bridge heretofore constructed thereon whether the same is adjacent to such city or not.

ARTICLE 20—CORPORATE LIMITS.

§ 182. POWER TO EXTEND CITY LIMITS.] Any city in this state that shall become incorporated under this act may extend its corporate limits in the manner hereinafter provided.

§ 183. How.] When a majority of the property owners adjacent to the corporate limits of any city in this state petition the mayor and city council to have any of their property included within the corporate limits of said city, it shall be the duty of the city council to publish such petition in the official paper of the city for four consecutive weeks, and unless a written protest signed by at least twenty-five property owners of said city is filed with the mayor opposing such proposed annexation, within ten days after the publication of said petition, such proposed annexation shall be included in and become a part of said city.

§ 184. 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.

§ 185. EXTENSION OF LIMITS.] Any city in the state, having not less than fifteen hundred inhabitants, may so extend its boundaries as to increase the territory within the corporate limits not to exceed one-fourth of its present area, by a resolution of the city council, passed by two-thirds of the entire members-elect, particularly describing the land proposed to be incorporated within the city limits, setting forth the boundaries and describing the land platted by blocks and lots provided that at least two-thirds in area of the territory described in such resolution and proposed to be incorporated within such limits shall have previously been platted into blocks and lots.

§ 186. PUBLICATION OF RESOLUTION.] The resolution of the city council shall be published in the official newspaper of the city twice, once in each week for two successive weeks, and unless a written protest signed by a majority of the property owners of said proposed extension is filed with the city clerk or auditor within ten days after the last publication of such resolution, the territory described in the resolution shall be included within and become a part of said city.

§ 187. PLAT FILED.] When the city limits of any city have been extended, as provided by the last two sections, the mayor shall forthwith 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 the city.

ARTICLE 21—MISCELLANEOUS.

§ 188. MAYOR AND CITY AUDITOR TO SIGN BONDS AND CONTRACTS.] All bonds of the city and all contracts and conveyances, except as herein otherwise provided, shall be signed by the mayor and countersigned by the auditor, who shall affix the seal of the city thereto, and shall keep an accurate record of all bonds issued in a book to be provided for that purpose.

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

§ 190. 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 state, shall be paid to the officer entitled by law to receive the same.

§ 191. PENALTY FOR BEING INTERESTED IN CONTRACT.] 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 parties accept or receive any valuable consideration or promise for his influence or vote, shall be fined in a sum not exceeding one thousand dollars, one-half of which shall go to the informer and the balance be paid into the city treasury by the officer collecting or receiving the same, and the said contract shall be null and void.

§ 192. CONSTRUING ACT.] The provisions of this act, so far as they are the same as existing statutes, must be construed as continuations thereof and not as new enactments.

§ 193. REPEALS.] Chapter 28 of the revised codes, as revised, amended and republished under the provisions of chapter 123 of the laws of 1899, and chapters 35, 53 and 210, laws of 1903, are hereby repealed, except as hereinbefore otherwise provided.

§ 194. EMERGENCY.] Whereas, an emergency exists in that the general laws in force for the incorporation of cities are conflicting in their provisions, and difficult of construction; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved February 28, 1905.

CHAPTER 63.

[S. B. No. 93—Little.]

CITY WATER CONTRACT.

AN ACT to Amend Section 2264 of the Revised Codes of the State of North Dakota, Relating to Power of City Councils to Make Contracts for Water for Fire Protection, and Provide Appropriations for the Same.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That section 2264 of the revised codes of 1899 be amended to read as follows:

§ 2264. CONTRACTS, HOW MADE.] No contract shall be made by the city council, and no expense shall be incurred by any officers or 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 provided; provided, however, that the city council is authorized to enter into contracts with persons, associations or corporations for the furnishing of water for fire protection to the city, and in case such contract shall extend over a term of years, then and in that case it shall not be necessary that an appropriation shall have been previously made concerning such expense, except sufficient to cover the amounts payable under such contract for the first year thereof; provided, further, that such contract shall not be made for a longer period than twenty years.

Approved February 17, 1905.