

to be acknowledged. The register of deeds in whose office the plats aforesaid are recorded shall write in plain, legible letters across the plat or that part of a plat so vacated the word "vacated," and shall make a reference on the same to the volume and page in which such instrument of vacation is recorded.

Approved March 14, 1907.

CITIES

CHAPTER 45.

[S. B. No. 278—Senator Hanna and Representative Peake]

COMMISSION SYSTEM FOR CITIES.

AN ACT to Provide for a Commission System of Government in Cities Which Shall Adopt the Provisions of This Act.

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

§ 1. CITIES INCORPORATED, HOW.] Any city in this state and any incorporated town or village therein having a population of not less than two thousand inhabitants may become incorporated, under this chapter, as a city in the manner following: Whenever one-tenth 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 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 chapter, 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 four years.

§ 2. NOTICE OF ELECTION.] The mayor of such city or 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 charter under commission system of government, ;”

“Against city charter under commission system of government, ;”

the elector to designate his choice by placing a cross in the square opposite his choice. 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 commission system, such city shall henceforth be deemed to be organized under this chapter, and the city, village or town officers then in office shall thereupon exercise the powers conferred upon like officials by this chapter, until their successors shall be elected and qualified.

§ 4. Within twenty days after the issuance of patent incorporating any city under the provisions of this act it shall be the duty of the mayor or president of the city, town or village voting such incorporation to call a special election for the purpose of electing the first board of city commissioners provided for herein, such election to be held as provided in section 14 of this act.

§ 5. COURT TAKES JUDICIAL NOTICE.] All courts in this state shall take judicial notice of the existence of cities organized under this chapter, and of the change of the organization of any city from its former organization to its organization under this chapter, and from the time of such organization the provisions of this chapter 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 chapter shall continue in force and be applicable to any such city the same as if such change had not taken place.

§ 6. BODIES CORPORATE.] Cities organized under this chapter shall be bodies politic and corporate under the name and style of “city of (name),” and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred.

§ 7. 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 chapter, but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this chapter, 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 chapter, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this chapter, the same shall be deemed cumulative to the remedies before provided and used accordingly.

§ 8. LEGAL IDENTITY OF CITIES NOT CHANGED.] All ordinances and resolutions in force in any city at the date of its organization under this chapter 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.

§ 9. RESULT OF ELECTION, RETURNS OF.] If a majority of all the votes cast at such election shall be for a commission system, then said city shall adopt the form herein provided for. The result of the election as canvassed by the judges shall be returned to the town, city or village clerk, as the case may be, and if a majority of all the votes cast are in favor of a commission system of government said clerk shall certify the fact to the secretary of state, together with the result of the census taken, if any, and thereupon a patent shall be issued as hereinafter provided, which shall specify the boundaries of such city and the number and boundaries of the wards thereof.

§ 10. CERTIFIED TO SECRETARY OF STATE.] If said commission system of government be accepted the result shall be certified under the corporate seal of the city to the secretary of state, together with a copy of the proceedings relating thereto; thereupon the governor shall issue letters patent under the great seal, reciting the facts, defining the boundaries of the city and constituting the same a body corporate and politic by the name of the city of(specifying the name of such city) and declaring that the same shall be governed by the provisions of this chapter.

§ 11. PATENT, WHERE RECORDED.] Any patent issued under the provisions of this chapter shall be recorded in the office of the secretary of state in a book kept for that purpose. Any patent so issued and recorded, the record thereof or a certified copy of such record shall be conclusive evidence in all courts and places of the due incorporation of the city mentioned and of all the facts therein recited.

§ 12. BOUNDARIES OF WARDS.] The number and the boundaries of the wards of any city organized under the provisions of this chapter may be changed by ordinance adopted by a majority vote of the city commissioners, provided said ordinance must be introduced at a regular meeting of the city commissioners in May and before final action is taken thereon shall be published in the official paper of the city, if any, otherwise in a newspaper designated by such ordinance, once in each week for four successive weeks, and when the boundaries of any wards are fixed by any ordinance the number of wards and boundaries thereof or of any of said wards

shall not be again changed for a period of two years except by adding thereto such territory as may at any time be added to the city limits; provided, further, that the territory of the wards shall be contiguous and compact and that no ward having a population of less than one hundred shall be created.

§ 13. OFFICERS.] The officers of cities incorporated under this act shall be a president of the board of city commissioners and four city commissioners who, together, shall be known as the board of city commissioners of the city of.....; a treasurer, auditor, attorney, a police magistrate, one or more justices of the peace, one or more assessors, a physician, street commissioner, chief of fire department, city engineer, chief of police, a board of public works, one or more policemen, and such other officers or boards as the board of city commissioners may deem necessary; provided, that the board of city commissioners by a majority vote may dispense with the offices of street commissioner, engineer and board of public works and provide that the duties thereof be performed by other officers or boards by the board of city commissioners or a committee thereof.

§ 14. ELECTIONS BIENNIAL.] Biennial municipal elections in all cities shall be held on the first Tuesday in April at such place or places as the board of city commissioners shall designate. The polls of such election shall be opened at eight o'clock a. m. and closed at five o'clock p. m. Ten days' previous notice of the time and place of such election and of the officers to be elected shall be given by the city auditor by publication in the official city paper and by posting written or printed notices in three public places in the city; but the failure to give such notice shall not invalidate such election. In all other respects such election shall be conducted as prescribed by general election laws, except that no registration of voters shall be required unless provided for by ordinance.

§ 15. COMMISSIONERS, HOW ELECTED.] The president of the board of city commissioners and four city commissioners shall be elected by the legal and qualified voters in the city, in the following manner: The president of the board of city commissioners and the four city commissioners shall be elected at large and not by wards. Each voter shall be allowed to cast but one vote for the candidate for the office of president of the board of city commissioners. Each voter shall be allowed as many votes for the candidates of the office of city commissioners as there are commissioners to be elected, such votes to be distributed among the candidates as the voter shall see fit, but no voter shall be allowed to cast more votes than candidates to be elected.

§ 16. TERMS OF OFFICE.] Each of said four commissioners and the president of the board shall hold office for four years from and after the date of his qualification and until his successor shall have been duly elected and duly qualified, except the first board, the two commissioners receiving the highest number of votes shall

hold for four years, the two receiving the next highest for two years.

§ 17. ELIGIBILITY OF OFFICERS.] No person shall be eligible for an office created by the provisions of this chapter who is not at the time of his election a citizen of the United States and of this state and resident elector of the city.

§ 18. TERMS, BEGIN WHEN.] The term of office of the president and members of the board of city commissioners shall commence on the third Tuesday of April succeeding their election and qualification except in the case of their first election when their term of office shall commence within ten days succeeding such election. The term of all other officers shall commence on the first day of May succeeding their appointment unless otherwise provided by ordinance, and they shall hold for such term as has been provided for each respectively and until their respective successors are qualified.

§ 19. SUCCESSION.] The first president and the other members of the first board of commissioners appointed and elected under this act, shall be held and deemed, in law and in fact, the successors of the mayor and aldermen of said city, and upon the qualification of said president and the other members of said board of commissioners, all the powers, rights and duties of the mayor and board of aldermen of said city shall cease; and whenever the said city has heretofore, under the decree of judgment of any court, or under any law, ordinance or resolution, been entitled to representation through the mayor of said city and one or more of the aldermen thereof, on the board of directors of any incorporated company in which the said city may own stock or be interested, it shall hereafter be represented on any such board of directors by the president of said board of commissioners, and by two other members of said board, to be selected by said board.

§ 20. STYLE OF COMMISSION.] Said commissioners shall collectively constitute and be known as the "board of city commissioners of the city of" They shall take an oath to faithfully perform the duties of their respective offices and each shall receive such compensation for his services as may be provided by law.

§ 21. OFFICIAL BONDS. APPOINTMENT OF SUBORDINATE OFFICERS.] Each commissioner, before entering upon the duties of his office, shall give bond, payable to the governor of the state, for the use and benefit of said city, in the sum of three thousand dollars, for the faithful discharge of his duty, with two or more good and sufficient sureties to be approved by the judge of the county, and shall in addition to taking the oath prescribed by the constitution of the state, also take an oath that he is not under any direct or indirect obligation to appoint or elect any person to the office of policeman or fireman, or any other office, position or employment under said government. The said commissioners shall by a majority vote

of all the commissioners elected under this act have the power to appoint all officers and subordinates in all of the departments of said city, and to suspend and to discharge the same for cause, at will, under the limitations hereinafter provided. Each commissioner elected under the provisions of this chapter shall qualify as provided by this section within ten days after the delivery to him of the certificate of his election.

§ 22. POWERS OF COMMISSION.] The president of said board shall have the right to vote, as a member thereof, on all questions which may arise. Said board of commissioners shall have the power to summon and compel the attendance of witnesses, and the production of books and papers before them, whenever it may be necessary for the more effective discharge of their duties; and shall have the power to punish for contempt of said board with the same fines and penalties as the county judge may punish for contempt of the county court. All process necessary to enforce the powers conferred by this section shall be signed by the president of the board, and attested by the city auditor thereof, and shall be served by any member of the police force of said city.

§ 23. CONTROL OVER DEPARTMENTS.] Said board of commissioners so constituted shall have control and supervision over all the departments of such city and to that end shall have power to make all such rules as they may see fit and proper, concerning the organization, management and operation of such departments; and shall have power, under such rules and regulations as they shall make, to appoint, and, for cause which to said board shall seem sufficient, and after an opportunity to be heard, to discharge all employes, including the chiefs of the departments respectively. Said commissioners shall have sole authority to pass and adopt all such rules and regulations concerning all of the departments of such city and the other agencies created by them for the administration of its affairs.

§ 24. DEPARTMENTS OF ADMINISTRATION.] In addition to the powers aforesaid, the said commissioners shall have the right, and it shall be their duty, by a majority vote of all the said commissioners elected, to designate from among their members one commissioner, who shall be known as "police and fire commissioner," and who shall have under his special charge the enforcement of all police regulations of such city and general supervision over the fire department of such city; and one commissioner to be known as the "commissioner of streets and of public improvements," who shall have under his special charge the supervision of streets and alleys of such city, and be charged with the duty of lighting such streets, and keeping the said streets and alleys in clean and sanitary condition, and with the enforcement of all rules and regulations necessary to that end, for the preservation of the health of the inhabitants of such city, and who shall also have under his special charge the supervision of all public improvements, and shall see

that all contracts therefor are faithfully complied with, and that the conditions of any grant of any franchise or privilege are faithfully complied with and performed; and one commissioner to be known as the "waterworks and sewerage commissioner," who shall have under his special charge the waterworks and sewerage departments of such city, and shall see to the enforcement of all regulations with respect to said departments, and with respect to all the revenues pertaining thereto; and one commissioner who shall be known as the "commissioner of finance and revenue," who shall have under his special charge the enforcement of all laws for the assessment and collection of taxes of every kind and the collection of all revenues belonging to such city, from whatever source the same may be derived; and who shall also examine into and keep informed as to the finances of such city.

§ 25. EXECUTIVE OFFICER. FINANCIAL STATEMENT, PUBLISHED WHEN.] The president of said board of commissioners shall be the executive officer of said city, and shall see that all the laws thereof are enforced. The commissioner named at the head of each department shall audit all accounts against it, but before payment they shall be acted upon and approved by at least three members of said board of commissioners. Said board shall require a statement to be published in January, April, July and October of each year, in the official newspaper of said city, showing a full, clear and complete statement of all the taxes and other revenues collected and expended, indicating the respective sources from which the moneys are derived, and also indicating the disposition made thereof. All legislative sessions of said board, whether regular or called, shall be open to the public.

§ 26. SPECIAL POLICE, AUTHORITY TO APPOINT.] Whenever the president of the board of city commissioners shall deem it necessary, in order to enforce the laws of the city, or to avert danger, or protect life or property, in case of a riot or any outbreak, or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak, or any other danger to said city or the inhabitants thereof, he shall summon into service, as a special police force, all, or as many of the citizens as in his judgment and discretion may be necessary and proper; and such summons may be by proclamation or order, addressed to the citizens generally or those of any ward of the city or subdivision thereof, or such summons may be by personal notification. Such special police, while in service, shall be subject to the orders of the president of the board of city commissioners, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city, and any person so summoned, and failing to obey or appearing and failing to perform any duty that may be required by this act, shall be fined in any sum not exceeding one hundred dollars.

§ 27. DISABILITY OF PRESIDENT OF COMMISSION, PROCEDURE.] In case the president of said board is unable to perform the duties of his office by reason of temporary or continued absence or sickness, the said board shall appoint by ballot, by a majority vote of all the members thereof, one of their number to act in his stead, whose official designation shall be "acting president of the board of city commissioners," and the commissioner so appointed shall be invested with all the powers and shall perform all the duties of the president of said board during such absence or sickness, and shall receive the salary of the president during such vacancy in lieu of his own regular salary; provided, that it shall continue for ten days or longer, and during that time the president shall receive no salary.

§ 28. REGULAR MEETINGS.] Said board of commissioners shall meet at least once every week in regular meeting, at such time as shall be fixed by said board, at the city hall or other designated place in such city, to consider and take under advisement and act upon, such business as may come before them. A majority of such board as appointed and elected shall constitute a quorum for the transaction of all business, but no action of said commissioners shall be effective unless upon a vote of a majority of such quorum; and no final action shall be taken in any matter concerning the special department of any absent commissioner unless such business has been made a special order of the day, or such action is taken at a regular meeting of the board. Special meetings may be called by the president of such board, or by any two members thereof, at any time, to consider such matters as shall be mentioned in the call of such meeting, and written notice thereof shall be given to each member of said board.

§ 29. ORDINANCES.] The board of city commissioners of such city shall be vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the constitution and laws of this state, touching every object, matter and subject within the local government instituted by this act. Every ordinance imposing any penalty, fine, imprisonment or forfeiture for a violation of its provisions shall, after the passage thereof, be published in four issues of the official paper and proof of such publication by the printer or publisher of such newspaper made before any officer authorized to administer oaths, and file with the clerk of the board of commissioners or any other competent proof of such publication shall in all courts be conclusive evidence of the legal publication and promulgation of such ordinances. Ordinances passed by the board of commissioners and requiring publication, shall take effect and be in force from and after the fourth publication thereof, unless it be otherwise expressly provided for in such ordinance. Ordinances passed by the board of commissioners and not requiring publication, shall take effect and be in force from and after their passage, unless it shall therein otherwise expressly be provided.

§ 30. ENACTING CLAUSE.] The style of all ordinances shall be "Be it ordained by the board of city commissioners of the city of,," but said caption may be omitted when such ordinances are published in book form, or are revised and digested.

§ 31. OFFICERS, APPOINTMENT OF.] The board of city commissioners in all cities, at their first meeting after their qualification or as soon thereafter as possible, shall appoint the following officers, to wit: A treasurer, auditor, attorney, one or more assessors, a physician, street commissioner, chief of the fire department, a board of public works, one or more policemen, and such other officers or boards as the board of city commissioners may deem necessary; provided, that the board of city commissioners, by a majority vote, may dispense with the offices which in its judgment are unnecessary.

§ 32. SALARIES, HOW FIXED.] The board of city commissioners shall by ordinance provide such salary or compensation for the officers and employes of the city as it shall deem proper. The board of city commissioners shall, at its first regular meeting in February, fix the amount of the salary which shall be received by every officer entitled to a salary, who may be appointed during the ensuing year, which shall not be increased or diminished during his term of office, and which shall be paid out of the city treasury at the end of each month. All salaries heretofore fixed or established by law shall be and remain the salaries of such officers until the board of city commissioners shall otherwise determine; provided, however, that where any new city shall have been incorporated and officers thereof appointed, the board of city commissioners may at any regular meeting, during the term of office of such officer, declare and fix the amount of compensation they shall receive.

§ 33. VACANCIES.] When any officer shall remove from the city or any such officer shall refuse or neglect for ten days after official notification of his appointment to qualify and enter upon the discharge of the duties of his office, the office shall be deemed vacant. Whenever a vacancy shall occur in any office to be filled by appointment the same proceedings shall be had to fill such vacancy as are provided for in case of an appointment in the first instance.

§ 34. VACANCIES, ELECTIONS TO FILL.] Special elections to fill vacancies or for any other purpose shall be held and conducted by the inspectors and judges of election of the several precincts in the same manner and the returns thereof shall be made in the same form and manner as of the general municipal elections, and within such time as is prescribed by law.

§ 35. TENURE OF OFFICE.] Every person elected or appointed to fill a vacancy shall hold his office and discharge the duties thereof for the unexpired term.

§ 36. OATH OF OFFICE.] Every person elected or appointed to any office shall, before he enters upon the discharge of the duties

thereof, take and subscribe the oath of office provided for by the constitution, and file the same with the city auditor within ten days after notice of his election or appointment; and in case of his failure to do either the office shall be deemed vacant.

§ 37. BONDS, WHAT OFFICERS GIVE.] The treasurer, auditor, justice of the peace, constable, and such other officers as the board of city commissioners may direct, shall, before entering upon the discharge of the duties of their respective offices, execute and deliver to the city a bond in such sum as the board of city commissioners may determine, with two or more sureties, conditioned for the faithful discharge of the duties of their respective offices, and with such other conditions as the board of city commissioners may prescribe; the board of city commissioners may at any time require new and additional bonds of any officer. All bonds must be approved by the president of the board of city commissioners, and when so approved shall be filed in the office of the city auditor within ten days after the officer executing the same shall have been notified of his appointment, and when so approved and filed shall be recorded by the city auditor in a book kept for that purpose; such auditor shall annex to each such record a certificate that the same is a true copy of the original, and such record shall be prima facie evidence of the contents of such bond and in the absence of the original may be used as evidence in all courts. Justices of the peace and constables shall also give a bond as required by statute.

§ 38. REMOVAL FROM OFFICE.] Every person appointed to any office may be removed therefrom by a majority vote of all the members of the board of city commissioners, but no such officer shall be removed except for cause nor unless charges are preferred against him and an opportunity given him to be heard in his defense. The board of city commissioners may compel the attendance of witnesses and the production of papers when necessary for the purpose of such hearing, and shall proceed within ten days after the charges are filed with the city auditor to hear and determine the case upon its merits. The president of the board of city commissioners may suspend any officer against whom charges have been preferred until the disposition of the same and appoint an officer to fill the vacancy temporarily until the charges have been disposed of. Any officer appointed by the president of the board of city commissioners without confirmation under the provisions of this chapter may be removed by him when he deems it for the best interest of the city.

§ 39. CITY AUDITOR, POWERS AND DUTIES.] The city auditor shall have the care and custody of the corporate seal and all papers and records of the city. It shall be his duty to attend all meetings of the board of city commissioners and keep a full record of their proceedings; to record all ordinances and bonds in a book kept for that purpose; to keep a record of all licenses granted, which record

shall at all reasonable times be open to inspection by the public; to carefully preserve all receipts filed with him and draw and sign all orders upon the treasury, except as otherwise herein provided, in pursuance of an order or resolution of the board of city commissioners, and keep a full and correct account thereof in books provided for that purpose. He shall have such power and authority and perform such duties as auditors of cities and villages may be required to perform under the general laws. He shall keep an accurate account with the treasurer and charge him with all tax lists presented to him for collection and all sums of money paid into the treasury. He shall be ex-officio secretary of the board of public works and shall perform such duties as may be required of him by the board of city commissioners. Within thirty days after the close of each fiscal year he shall make and cause to be published in the city official paper a financial statement showing the receipts and disbursements on account of each fund during the last preceding year. Copies of any and all books, papers, documents or instruments duly filed and kept in his office and transcripts from the records of the proceedings of the board of city commissioners, certified by him under the corporate seal of the city, shall be evidence in all courts and places in like manner and with the same force and effect as if the originals were produced. He shall also have power to administer oaths and affirmations authorized to be taken by and under these statutes. Every such auditor may with the consent and approval of the board of city commissioners in writing appoint a deputy and shall file such appointment in his office; such deputy shall aid in the performance of the duties under his direction and in case of his absence or disability or of a vacancy in his office shall perform all such duties during such absence, disability or the continuance of such vacancy; and every such auditor and his sureties shall be liable upon his official bond for the acts of such deputy.

§ 40. CITY ATTORNEY. ASSISTANT.] The city attorney shall conduct all the law business of the city and of the departments thereof and all other law business in which the city shall be interested; he shall, when requested, furnish written opinions upon the subjects submitted to him by the board of city commissioners, or any other department. He shall keep a docket of all the cases to which the city may be party in any court of record, in which shall be briefly entered all steps taken in such cause, which docket shall at all reasonable hours be open to public inspection. It shall also be his duty to draft all ordinances, bonds, contracts, leases, conveyances and such other instruments as may be required by the officers of the city; to examine and inspect tax and assessment rolls and all other proceedings in reference to the levying and collection of taxes and assessments, and to perform such other duties as may be prescribed by the board or ordinances. He may, with the consent and approval

of the board of commissioners, appoint an assistant who shall have power to do all the acts required by law of the city attorney; provided, that he shall be responsible to the city for the acts of such assistant, and that the city shall not be liable for nor have any authority to pay compensation to such assistant.

§ 41. TREASURER, POWERS AND DUTIES.] The city treasurer shall receive all monies belonging to the city, keep an accurate account of the same in suitable books prepared for that purpose, and pay over the money in his hands according to the law. He shall keep a detailed account of the money received and disbursed by him in such manner as the board of city commissioners shall direct; his books shall at all reasonable times be open to inspection by any voter of the city; he shall make a report to the board of city commissioners each month and as much oftener as required, which report shall embrace a statement of the receipts and disbursements in his office, and ten days preceding every biennial election he shall make and file in the city clerk's office a full and minute report of all the monies received and disbursed by him, of all tax certificates, vouchers and other effects of pecuniary value in his possession and of all other transactions relating to his office from the date of the like report of his predecessor to the date of the report required to be made out by him. He shall keep an accurate account of each of the separate funds in his custody. Except as herein otherwise provided he shall have such power and authority and perform such duties as treasurers in villages, cities and towns are required to perform under these statutes. He shall receive no fees or per diem except the salary fixed by the board of city commissioners prior to his election, but all fees collected by him shall be paid into the city treasury at the end of each month.

§ 42. ADDITIONAL DUTIES OF AUDITOR.] The auditor shall, on or before the first day of October of each year, file with the president of the board a detailed statement of the expenses of the city and the wards thereof during the last fiscal year, and such statement shall also contain an estimate of the expenses of the fiscal year and the income for that year from sources other than taxation. He shall countersign all contracts made with the city if the necessary funds shall have been provided to pay the liability that may be incurred thereunder and no such contract shall be valid until so countersigned. He shall make a list of all certificates for the payment of which special taxes are to be levied in each year in time for the same to be inserted in the tax roll in the form of a schedule of special taxes, and certify the correctness of the same, and such certified schedule shall be prima facie evidence of the legality and regularity of the taxes levied in pursuance thereof; but no irregularity in the making of such lists shall invalidate any such special tax. He shall report monthly, in writing, to the board of city commissioners the condition of the several funds of the city and of the condition of all outstanding

contracts and claims which may be payable out of each fund. He shall examine and countersign all city orders before the same shall be valid, but shall not countersign any order before the money is in the treasury to pay the same. He shall examine all claims presented against the city, whether founded on contract or otherwise, and determine as to each whether it is properly itemized and sworn to; if on contract, whether the items charged are correct, whether such claim was incurred by proper authority and generally determine its correctness. For the above purposes he may swear witnesses to take testimony. If he does not find any objection to any claim he shall mark his approval thereon, if he disapproves or approves in part or disapproves in part, he shall report to the board of city commissioners his reasons therefor and in all cases shall report the evidence taken by him. No claim shall be considered by the board of city commissioners until it shall have been thus examined and reported on by the auditor. He shall examine each month the treasurer's accounts as reported and kept by him and report as to the correctness of the same, and also any violation by the treasurer of his duties in the manner of keeping his accounts or disbursing monies. The auditor shall procure a claim book at the expense of the city in which all claims against it shall be entered as fast as the same are filed; said books shall be provided with an index and be in such form as to provide for the entry of the name of the claimant, number of claim, date of filing, amount claimed, date of the report of the auditor, whether approved and for how much, date of allowance or disallowance by the board of city commissioners, amount allowed, date of the order issued to pay the same, number of such order and date of the cancellation of the same. The auditor shall perform the duties of a member of the board of public works and such other duties as are required of him under the provisions of this chapter or by the board of city commissioners. In case the office of auditor is dispensed with, the duties pertaining thereunto shall be discharged by such officer or officers or board as the board of city commissioners shall designate by resolution or ordinance.

§ 43. OFFICIAL NEWSPAPERS.] The board of city commissioners, at its first meeting or as soon thereafter as may be, shall designate one or more newspapers printed in the city in which shall be published all the ordinances, notices and all other proceedings by law to be published, and said board of city commissioners may establish by ordinance such rates for printing and publishing as to them may seem just and proper; provided, that the price of such printing shall not exceed the legal rate for like work as the same now is or may be established by law.

§ 44. CERTIFICATE OF OFFICIAL PUBLICATION.] When any ordinance, notice, resolution or other proceeding shall have been published, a copy of such publication, together with the affidavit of the printer or his foreman stating the length of time the same has

been published, shall be filed with the city clerk and such affidavit shall be conclusive evidence of the publication thereof and the bill for such publication shall not be audited until such affidavit is so filed.

§ 45. DUTIES OF OFFICERS GENERALLY.] All other officers elected or appointed under and by virtue of the authority of this chapter shall perform such duties as are required to be performed by like officers under these statutes and also such as are prescribed by the board of city commissioners.

§ 46. RULES OF COMMISSIONERS. QUORUM. CONFIRMATIONS.] The board of city commissioners shall determine the rules of its own proceedings. A majority of the members thereof shall constitute a quorum, but a smaller number may adjourn; their sessions shall be open to the public; the ayes and nays may be required by any member; and on the adoption of any ordinance or resolution assessing or levying taxes or for the appropriation or disbursement of money or creating any liability or charge against the city or any fund thereof, the vote shall be taken by ayes and nays, and every such vote shall be entered at length upon the journal. The board of city commissioners shall be the judges of the election and qualifications of its own members, and may punish them or other persons present by fine for disorderly behavior; may compel the attendance of its members upon its meetings, and may employ the police of the city for that purpose; may fine or expel any member for neglect of duty as such member or for unnecessary absence from sessions of the board of city commissioners. At all confirmations by the board of city commissioners the vote shall be taken viva voce and shall be recorded by the clerk in the journal; a concurrence of a majority of all the members shall be necessary for a confirmation.

§ 47. CONTROL OF THE FINANCES. AUTHORITY OF COMMISSIONERS.] The board of city commissioners shall have the management and control of the finances and of all the property of the city, except as herein otherwise provided, and shall likewise, in addition to all other powers herein and elsewhere in these statutes vested in them, have full power and authority to enact, ordain, establish, publish, enforce, alter, modify, amend and repeal all such rules, by-laws and regulations for the government and the good order of the city, for the benefit of its trade and commerce, and health of the inhabitants thereof, for the prevention of crime and for carrying into effect the powers vested in said board as they shall deem expedient; such board shall have the power to declare and impose penalties and enforce the same against any person or persons who may violate any of the provisions of such ordinances, by-laws or regulations; and such ordinances, rules, by-laws, regulations shall have the force of law, provided that they be not repugnant to the constitution of the United States or of this state or of the laws thereof, and for the aforesaid purposes such board of

city commissioners shall have authority by ordinance, resolution, by-law or regulation.

§ 48. GENERAL POWERS OF COMMISSIONERS.] The board of city commissioners shall have power:

1. To control the finances and property of the corporation, to appropriate money for corporate purposes only, and provide for the payment of debts and expenses of the corporation.

2. To levy and collect taxes for general and special purposes on real and personal property.

3. To fix the amount, terms and manner of issuing and revoking licenses.

4. 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 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 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 waterworks 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 bond when it falls due, and to pay and discharge the principal thereof when the same becomes due, and such provision for the collection for such annual tax shall be irrevocable 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 the city shall, by a majority vote, determine in favor of issuing such bonds; provided, further, that no bonds issued under the provisions of this chapter shall be issued for a longer period than twenty years.

5. To lay out, open, alter, establish, widen, grade, pave, park or otherwise improve streets, alleys, avenues, sidewalks, wharves,

parks and public grounds and vacate the same, and to regulate the planting of trees thereon; to prevent and remove obstructions and encroachments upon the same; to provide for the lighting of the same, and to provide for the furnishing of lights to the inhabitants of the city.

6. To provide for the cleaning and health of the city.

7. To regulate the laying of gas or watermains and pipes, and the building, laying or repairing of sewers, tunnels and drains, and erecting gas or electric light plants; provided, however, that any company heretofore organized under the general laws of this state or any association of persons organized or which may hereafter be 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 board of city commissioners, subject to existing rights, to erect gas or electric light works and lay down pipes or string wires on poles in streets or alleys of any city in this state, subject to such regulations as such city may by ordinance prescribe.

8. 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.

9. 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.

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

11. 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.

12. 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.

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

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

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

16. To regulate the numbering of houses and lots.

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

18. 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.

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

20. 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.

21. 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.

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

23. To license, tax, regulate, suppress and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, ticket scalpers and employment agencies, and to revoke such license at pleasure; provided, however, that the provisions 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.

24. 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.

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

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

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

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

29. To provide for the place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meat and other provisions, and to regulate the selling thereof.

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

31. 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 same, and 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.

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

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

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

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

36. To regulate places of amusement.

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

38. To regulate partition fences and party walls.

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

40. To prescribe the limits within which wooden buildings shall not be placed or erected 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 damages, 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 to prescribe penalties therefor; and define fire proof material and by ordinance provide for issuing building permits and appointment of building inspectors.

41. To prevent the dangerous construction and condition of chimneys, fire places, 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.

42. To regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires.

43. To prevent the deposit of ashes in unsafe places, and to cause all such buildings and inclosures as may be in a dangerous state to be put in a safe condition.

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

45. 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, skyrocketes and other pyrotechnic displays.

46. To provide for the inspection of steam boilers.

47. 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.

48. 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.

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

50. To prohibit and punish cruelty to animals.

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

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

53. 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.

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

55. 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.

56. To regulate, restrain and prevent the running at large of horses, mules, cattle, swine, sheep, goats and geese; and provide for the establishment and maintenance of public pounds for the impounding of any 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.

57. To license, regulate or prohibit the running at large of dogs and injuries and annoyances therefrom, and to authorize their sum-

mary destruction when at large contrary to any such prohibition or regulation.

58. 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.

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

60. 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.

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

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

63. 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.

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

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

66. 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.

67. 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 fire limits of the city.

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

69. 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.

70. 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.

71. To redistrict the city into wards, and prescribe the boundaries thereof.

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

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

§ 49. EXERCISE OF POWER THROUGH ORDINANCE.] When by this chapter the power is conferred upon the board of commissioners to do and perform any act or thing, and the manner of exercising the same is not specifically pointed out, the board of commissioners may provide by ordinance the details necessary for the full exercise of such power.

§ 50. POWERS OF COMMISSIONER OF PUBLIC HEALTH.] The commissioner of public health shall have all the power and authority heretofore given or which hereafter may be given to boards of health by any general law, and it shall be his duty to provide such additional rules and regulations as shall be proper and necessary for the preservation of the health of the people of the city, to prevent the spread of contagious diseases and to cause the removal of all objects detrimental to the health of such people and to enforce such rules and regulations as are hereinafter provided.

§ 51. HEALTH REGULATIONS.] All rules and regulations prepared by said commissioner shall be by him reported to the board of city commissioners, and if the board of city commissioners shall approve the same by a vote of the majority of its members, such rules and regulations shall have the force and effect of ordinances, and the violation thereof may be prosecuted and punished as in the case of ordinances.

§ 52. SANITARY RECOMMENDATIONS.] The commissioner of public health shall also from time to time, recommend to the board of city commissioners such sanitary measures to be executed at the public expense, as shall seem to him to be necessary for the preservation of the public health.

§ 53. SALARY OF COMMISSIONER OF PUBLIC HEALTH. ASSISTANTS.] It shall be the duty of the board of city commissioners to fix the salary of said commissioner, which shall be paid out of the city treasury. The commissioner may appoint, subject to confirmation by the president of the board of city commissioners, such assistants as may be necessary, and all such appointees shall receive such salary or compensation as the board of city commissioners may fix.

§ 54. AUTHORITY TO INSPECT PREMISES.] The commissioner of public health or any person acting under him shall have authority

to enter into and examine at any time all buildings, lots and places of any description within the city for the purpose of ascertaining the condition thereof so far as the public health may be affected thereby, and any person refusing to allow entrance into or upon his premises at reasonable hours for such purpose, shall, on conviction thereof, be fined not less than ten dollars nor more than one hundred dollars; and in all cases in which the commissioner shall deem it necessary for the protection of the health of the city to abate or remove any nuisance, source of filth, or cause of sickness which shall be found on private property, he shall cause a notice to be served upon the owner or occupant thereof, requiring him to remove the same at his own expense within a reasonable time, not less than twenty-four hours; and if said owner or occupant shall refuse or neglect to comply with such notice, or if such nuisance, source of filth, or cause of sickness exist on the property of non-resident owners or upon property the owners of which cannot be found, the commissioner shall cause the removal of such nuisance, source of filth, or cause of sickness under his direction at the expense of the city, and the costs thereof shall be charged against the lots, pieces or parcels of land upon which said work has been done, and shall be assessed against said property in the manner provided for the assessment of other special taxes.

§ 55. CONTAGIOUS DISEASES. DUTIES OF PHYSICIANS.] It shall be the duty of every physician practicing in any city which has adopted this charter to report in writing to the commissioner of public health every patient he shall have who is sick with smallpox, scarlet fever, diphtheria, typhoid fever, Asiatic cholera, or any other dangerous contagious disease, within twenty-four hours after he shall ascertain or suspect the nature of such disease. The report shall be in such form as may be prescribed by the state board of health and shall state the name, sex, age and place of residence of the person whose sickness is reported, the nature of the disease and such additional facts as said board may prescribe. Any practicing physician who shall neglect or refuse to perform the duties required of him by this section or who shall make a false return of the facts required, shall be punished by a fine not less than twenty-five dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail for a period not exceeding sixty days, or by both fine and imprisonment.

§ 56. REPORTS TO STATE BOARD OF HEALTH.] The commissioner of public health shall also discharge such duties, not herein enumerated, as may from time to time be imposed upon him by the board of city commissioners by ordinance or resolution, and shall make such reports to the state board of health and generally perform such duties as are or may be required of health officers by these statutes.

§ 57. DUTIES OF PEACE OFFICERS AS TO HEALTH REGULATIONS.] It shall be the duty of the members of the police force of the city and all magistrates and other civil officers and all citizens to aid to the utmost of their power the commissioner of public health in the discharge of his duties, and on his requisition it shall be the duty of the chief of police to serve or detail one or more of the policemen to serve the notices issued by said commissioner and to perform such other duties as he may require.

§ 58. CITY FUNDS, CONTROL OF.] All funds in the city treasury, except school funds, funds created and set apart for the payment of interest and principal of the debt of the city, and funds collected on special assessments, shall be under the control of the board of city commissioners and be drawn out on the order of the president of the board of city commissioners, duly countersigned by the auditor, when authorized by a vote of the board of city commissioners. All orders drawn upon the treasurer shall specify the purposes for which they are drawn, and be payable out of any funds in the treasury not otherwise appropriated, and shall be payable to the persons in whose favor they are drawn and may be transferred by indorsement.

§ 59. TREASURER'S LIABILITY.] The city treasurer shall not pay out the funds in his hands which shall be appropriated by law for any special purpose except for the purpose for which such funds are appropriated, any direction of the board of city commissioners to the contrary notwithstanding.

§ 60. TREASURER'S STATEMENT.] The treasurer shall, on the first day of each month, deliver to the city auditor a statement showing the condition of the treasury at the close of the preceding month and a statement of all disbursements since the last report.

§ 61. DEPOSITARY OF FUNDS.] The board of city commissioners may designate by resolution the bank or banks where the money belonging to the city shall be deposited, and the security, to be approved by the president of the board of city commissioners and auditor to be given by such bank or banks, and when the money is so deposited the treasurer and his bondsmen shall not be liable for the loss thereof by reason of the failure of such bank or banks, and the interest arising therefrom shall be paid into the treasury; provided, such money shall not be deposited in any bank without this state.

§ 62. INTEREST ON DEPOSITS.] The board of city commissioners may contract with a bank receiving the city deposits for the payment of interest thereon.

§ 63. MEANING OF PHRASES.] Whenever in the laws not repealed by this act the words "town council, city council, or village board" appear, it shall mean board of city commissioners; the word "mayor" or "president" shall mean president of the board of city commissioners.

§ 64. SUCCESSION OF POWERS.] All the provisions of law now in force or which may hereafter be passed by the legislative assembly in relation to the powers, duties or privileges of the president of boards of trustees of towns or villages, or mayors of cities, are hereby granted to the president of the board of city commissioners, and except where inapplicable all the provisions of law now in force or hereafter passed by the legislative assembly in relation to the powers, duties or privileges of town or village trustees, or other municipal boards thereof, or the powers, duties or privileges of city councils are hereby granted to the board of city commissioners provided for in this act; provided, cities incorporated under this act shall for all purposes according to their respective population retain the classification otherwise provided by law.

Approved March 20, 1907.

CHAPTER 46.

[S. B. No. 2—Taylor]

AMENDMENTS TO CITY CHARTERS.

AN ACT to Amend Section 2740, Article 17, Immediately After Section 1770, Section 2778, Section 2780, Section 2782, Section 2783, Section 2769, Section 2798, Section 2815 and to Repeal Section 2779 of Chapter 30 of the Political Code of the State of North Dakota, Revised Codes of 1905, Relating to Cities.

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

§ 1. AMENDMENT.] Section 2740, revised codes of the state of North Dakota of 1905, be and the same is hereby amended to read as follows:

§ 2740. POWERS OF POLICE OFFICERS.] The chief of police shall perform such duties as shall be prescribed by the city council for the preservation of the peace. All police officers and watchmen of a city shall, within the city limits and for a distance of one and one-half miles in all directions within the state next outside the city limits, perform the duties and exercise the power of peace officers as defined and prescribed by the laws of the state; and shall also have power, and it shall be their duty to serve and execute any warrants, writs, process, order or notice issued to them by a police magistrate or city justices or justice of the peace within said city in any civil or criminal action or proceeding for or on account of a violation of any city ordinances, or in any action or proceeding in which the city is a party or beneficially considered; and in addition thereto shall perform such duties as such be prescribed

by the ordinances of the city, and shall also have power within said limits to serve and execute all writs and process whatsoever issued by said justices in civil actions.

§ 2. AMENDMENT.] Article 17 of chapter 30 be and the same is hereby amended by adding thereto immediately after section 2770, the following:

§ 2770a. In all cases where snow and ice are not removed from sidewalks within the time and in the manner that is now or hereafter may be provided by the ordinances of any city, the same may be removed by or under the direction of the street commissioner, and the necessary expense thereof shall be chargeable against the abutting property. On or before May 1 in each year the street commissioner shall make and file in the office of the city auditor a list of the property chargeable and assessed against each lot and tract separately, and stating the owner's name, so far as known to him. The city auditor shall give notice by publication in the official newspaper of the hearing and confirmation of such report and assessment at the regular June council meeting, notifying all persons objecting thereto to appear and present their objections, such notice to be published twice, once in each week for two consecutive weeks, the last publication to be not less than eight days before the time fixed for the hearing. At the June council meeting or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the council shall take up and consider said assessment and shall hear any objection thereto or to any part thereof, and after revising and correcting the same, if necessary so to do, shall approve and confirm the same. 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 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 thereupon 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. Such assessment shall be certified to the county auditor by the city auditor at the same time and in the same manner that sidewalk assessments are certified by him under the provisions of section 2804, revised codes of 1905.

§ 3. AMENDMENT.] Section 2778 of the revised codes of the state of North Dakota of 1905, be and the same is hereby amended to read as follows:

§ 2778. RESOLUTION DECLARING WORK NECESSARY.] After the plans, specifications and estimates mentioned in the preceding sec-

tion 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, such resolution shall refer intelligently to the plans, specifications and estimates therefor, and shall be published twice, once in each week for two consecutive weeks in the official newspaper of the city. If the owners of a majority of the property liable to be specially assessed for such proposed improvement shall not within fifteen days after the first publication of such resolution file with the city auditor a written protest against such improvement, then the majority of such owners shall be deemed to have consented thereto. At the next regular meeting of the city council after the expiration of the time for filing protests against such improvement, the council shall hear and determine the sufficiency and validity of such protests, and if two-thirds of the council shall decide that such protests are insufficient or not well taken, then the city council shall have power to cause such improvement to be made 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 responsible bidder whose bid is the lowest therefor. In case the work to be done consist of paving or repaving, the city council shall not in its resolution declaring such improvement necessary determine which of the kinds of paving or paving material shall be adopted; but in the call for bids bidders shall be invited to submit bids for one or more of the several kinds of paving or paving material for which the city engineer shall have been directed to file plans and specifications. When the bids shall have been opened and made public they shall be entered on the minutes of the meeting and be carefully preserved by the city auditor, and action on the same shall be deferred for a period of at least five days and another meeting of the council shall be held at least five days after the opening of the bids for the purpose of considering and acting on the same. Notice of the time and place of such future meeting shall be published by the city auditor at least once in the official newspaper of the city at least five days before the date fixed for such meeting. If, after the opening of the bids and before the meeting of the council to consider the same, the owners of a majority of the property liable to be specially assessed for such paving or repaving, shall file with the city auditor a written petition (which may consist of a single petition or several separate petitions signed by the owners of a majority of the property liable to be specially assessed for such improvement, or their authorized agents) indicating that such petitioners are agreed in a preference for any one of the kinds of paving or paving materials for which bids have been invited, then it shall be obligatory upon the city council to cause the paving or repaving to be constructed of the kind of paving material indicated in such petition.

§ 4. REPEAL.] Section 2779 of the revised codes of the state of North Dakota of 1905, be and the same is hereby repealed.

§ 5. AMENDMENT.] Section 2780 of the revised codes of the state of North Dakota of 1905, be and the same is hereby amended to read as follows:

§ 2780. 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 consecutive 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. The city council may also require bidders to state the rate of interest the warrants shall bear (not exceeding seven per cent per annum) which are to be received and accepted by them at par in payment for such work. In case of pavement such proposals may call for bids for one or more kinds of pavement. 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 indorsed 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 be not 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 a check and bond hereinafter provided for shall be considered, and if not accompanied by such check and bond shall be rejected.

§ 6. AMENDMENT.] Section 2782 of the revised codes of the state of North Dakota of 1905, be and the same is hereby amended to read as follows:

§ 2782. BONDS.] Each bid for any such work shall also be accompanied by a bond running to the city. In case of all improvements except sidewalks, paving and repaving the amount of bidder's bond shall be a sum equal to the full amount of the bid. In case of paving or repaving, the amount of the bond to be required on each bid for different kinds of paving or repaving shall be fixed at a sum equal to at least five per cent of the amount of the bid or such additional sum as the city council may by resolution determine at the time bids are called for; provided, however, that in the case of contracts for the construction of sidewalks the amount of the bond shall be five hundred dollars. Such bidder's bond shall be executed by the bidder or contractor as principal and by a surety company authorized to do business in this state, or by two or more freeholders resident of this state; and if executed by individuals as sureties such sureties must attach to such bond an affidavit of justification, showing that they possess the qualifications required of sureties in arrest and bail and are worth in the

aggregate in property within this state a sum equal to twice the penalty of the bond over and above their exemptions; such bonds shall be made payable to the city and shall be conditioned as follows: That if the principal's bid shall be accepted and the contract for the work of improvement awarded to him, he will, within ten days after the acceptance of his bid or within such further time as the city council shall grant, enter into and execute a contract bond in a sum equal to the amount of the bid and a contract in writing to and with the city, to well and faithfully perform and complete the work for which his bid was accepted in accordance with the plans and specifications therefor and the terms of his bid and within the time required by the terms of such contract; that he will pay for all labor and materials used in such work. Such bonds shall be for the benefit of the city. In case the bidder shall fail to execute a contract bond and a contract as aforesaid for the completion of the work bid for within ten days or such further time as the city council may grant after the acceptance of the bid, then the city council shall be authorized the same as if the bid or bond contained an expressed stipulation to that effect, to cause such work to be done or completed, the work, or contract, with some other contractor to do or complete the work, and in such case may recover in a suit on the defaulting bidder's bond the difference between actual cost to the city of such improvements and the sum which it would cost if the defaulting bidder had complied with his bid. The successful bidder shall, within the time fixed by the city council for executing the contract, file a contract bond in a sum equal to the full amount of the contract with the city auditor. Such contract shall be executed by the bidder or contractor as principal and a surety company authorized to do business in this state, as surety or by two or more freeholders resident of this state, and if executed by individuals as sureties such sureties must attach to such bond an affidavit of justification showing that they possess the qualifications required of sureties in arrest and bail, and are worth in the aggregate in property within this state a sum equal to twice the penalty of the bond over and above their exemptions; such bond shall be made payable to the city and shall be conditioned that 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 city auditor's office, and pay for all labor and material used in such work, and that in case of default on the part of the bidder or contractor to perform such work as provided in his contract, the sum named in the 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 said bidder and his sureties in an action by the city against them on said bonds. Such bonds shall be approved by the city council and shall thereupon be and remain in full force and

effect. Upon the execution of the contract and approval of the contract bond the bidding bond shall be returned. A sufficiency of any bond filed by a bidder shall be determined by the city council at the time of considering bids. If the council shall at any time deem the bond of a contractor insufficient either in form or sufficiency of sureties, it may require the successful bidder or contractor to furnish a new bond to be approved by the mayor and the city council, within such reasonable time as the council may fix and if the bidder or contractor shall fail to furnish such new bond within the time required after notice to him to do so his contract may be canceled and in that event the contractor's bond shall be liable the same as if the contractor had failed to perform his contract.

§ 7. AMENDMENT.] Section 2783 of the revised codes of the state of North Dakota of 1905, be and the same is hereby amended to read as follows:

§ 2783. COUNCIL MAY REJECT BIDS.] The city council shall have the right to reject any and all bids for work to be done under this article, 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 responsible bidder whose bid is the lowest upon the basis of cash payment therefor, provided such bidder shall have complied with the foregoing requirements; provided, further, that in case the contemplated improvements consist of paving or repaving, the city council may after opening and considering the bids, by resolution, determine the kind or kinds of pavement to be laid, and may then proceed to award a contract or contracts therefor.

§ 8. AMENDMENT.] Section 2769 of the revised codes of the state of North Dakota of 1905, be and the same hereby is amended to read as follows:

§ 2769. 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 September of each year, the city council shall review all assessments and hear all complaints against the same, and approve the same as finally adjusted.

§ 9. AMENDMENT.] Section 2798 of the revised codes of the state of North Dakota of 1905, be and the same is hereby amended to read as follows:

§ 2798. PAYMENT OF ONE-FIFTH BY GENERAL TAXATION.] Any city which shall have power under the debt limit provisions of the constitution to create valid obligations to that extent, may, at the option of the city council, provide for the payment of not exceeding one-fifth of the cost of any work hereinbefore provided

for other than sidewalks, opening and widening streets and sewer and water connections from main to curb line, 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 the special assessments for such improvement. Such appropriation and tax levy, if not heretofore included in the annual appropriation ordinance, may be made at any time as the occasion may require and be included in the next annual appropriation and tax levy. Such appropriation and levy, whether made as part of the regular annual appropriation ordinance and tax levy, or made thereafter, shall state the specific improvement for which such tax is levied, and the district in which such improvement is made and the amount thereof shall be credited to and the taxes collected thereunder be turned in to and be deemed a part of the district fund upon which the warrants issued in payment of the improvement are to be drawn.

§ 10. AMENDMENT.] Section 2815 of the revised codes of the state of North Dakota of the year 1905, be and the same is hereby amended to read as follows:

§ 2815. CONNECTIONS WITH SEWER AND OTHER MAINS.] Whenever the city council shall determine to pave or repave any street, avenue or alley 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 sewer, water, gas, steam and other service pipes to be first constructed and laid in such street, avenue or alley at the cost of the property fronting thereon, from the sewer, water, gas, steam or other mains in said street, avenue or alley to a point two feet inside of the curb line on either side of such street, avenue or alley at such intervals along the whole length of such street, avenue or alley as shall be necessary to supply and serve each lot, part of lot or parcel of land in accordance with the city ordinance governing the construction of such connections. Upon the adoption of such resolution the city auditor shall publish in the official newspaper of the city twice, once in each week for two successive weeks, a notice to said owner or occupant, setting forth what work is to be done 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 land in front of which the improvement is to be made. If such work is not done 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 improvement, and such expense, including the expenses of

all notices in connection with such work and the assessment therefor, and any other expenses 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. The city council after the adoption of such resolution declaring the necessity of making the service connections above referred to, shall, by resolution, direct the city engineer to prepare plans and specifications for same and file with the city auditor and shall direct the city auditor to advertise for bids for the construction of such connections in accordance with the plans and specifications for the construction of the same, which plans and specifications shall be filed with the city auditor by the city engineer; and such bids shall each be accompanied by a certified check in the sum of \$500 to guarantee the entering into the contract should same be awarded to him. Bids shall be received by the city council and the contract awarded to the lowest responsible bidder. The successful bidder shall give a surety bond in the sum of \$1,000 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. The city council shall have the right to reject any and all bids for work to be done under this section 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 responsible bidder whose bid is the lowest upon the basis of cash payment therefor; provided, such bidder shall have complied with the foregoing requirements and furnished the bond hereinbefore provided for. All contracts entered into for any work provided for in this section shall be entered 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, and subject to the approval of the city engineer, who shall 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 an 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 or 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. 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. All money collected from special assessments for building and constructing sewer and water and other connections shall be kept in a fund called "sewer and water connections special assessment fund," and warrants shall be drawn on such fund for the payment of the costs of all such connections. All such sewer and water special assessments shall be paid in a single amount.

§ 11. NOT RETROACTIVE.] This act shall not affect any contract let and commenced under this act which it amends, but all such contracts shall be conducted and concluded under the terms of said act.

§ 12. EMERGENCY.] Whereas, the present law relating to cities restricting police powers, methods of advertising for paving bids, letting contracts and bonds for same, and duties of auditors in relation thereto, therefore this act shall be in full force from and after its passage and approval.

Approved February 26, 1907.

CHAPTER 47.

[H. B. No. 36—Storey]

EXTENSION OF CITY LIMITS.

AN ACT to Amend Section 2825 of the Revised Codes of North Dakota of 1905, Relating to Extension of Corporate Limits of Cities.

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

§ 1. AMENDMENT.] Section 2825 of the revised codes of North Dakota of 1905, be and the said section is hereby amended so as to read as follows:

§ 2825. EXTENSION OF LIMITS.] Any city in this 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; provided, further, that whenever any incorporated city in this state, whether organized under the general law or under a special charter and without regard to the number of its inhabitants, is or shall be separated into two parts not contiguous at any point, the strip of unincorporated territory so separating and lying between such parts, if the same does not exceed one-fourth of the present limits of such city, may be so incorporated within such limits without having previously been platted into blocks or lots by the passage of such a resolution as is hereinbefore provided for the extension of limits.

Approved March 12, 1907.

CHAPTER 48.

[S. B. No. 337—Sharpe]

RE-DISTRICTING CITY INTO WARDS.

AN ACT Authorizing the City Council to Re-District into Wards Any City in this State of Less than Two Thousand Population.

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

§ 1. POWER TO REDISTRICT.] The city council of any city in this state having less than two thousand population, shall have

power to re-district the city into wards for the purpose of equalization of population; provided, that the number of such wards shall not be diminished nor increased.

§ 2. EMERGENCY.] Whereas, there is no law whereby cities of less than two thousand population can be re-districted into wards, therefore an emergency exists, and this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1907.

CLERK HIRE

CHAPTER 49.

[S. B. No. 301—LaMoure]

ADDITIONAL CLERICAL ASSISTANCE IN STATE OFFICES.

A JOINT RESOLUTION Authorizing the State Auditing Board, in Their Discretion, from Time to Time, as the Necessities May Arise, to Employ Additional Clerical Assistance in the Various State Offices, and Authorizing an Appropriation for the Payment Therefor.

Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring, That the state auditing board may, in their discretion, from time to time as the necessity therefor may appear to them, authorize the employment in the different state offices at the capitol, of clerical assistance to enable the different state officers to properly fulfill their duties. The said state auditing board shall act on written applications only, which application shall be signed by the state officer desiring the additional clerical assistance, giving the name of the party desired to be employed, the probable time of such employment and the salary that should be paid such person. On receiving such written application the said board shall, by resolution, duly entered in the minutes of their proceedings, approve or disapprove the said request, state the person authorized to be employed, the duration of such employment, the salary to be received and such other and further directions as to said board may seem proper. On receipt of a duly certified copy of such resolution the state auditor is authorized to draw his warrant on the state treasurer from time to time for the sum authorized to be paid and a sufficient appropriation to cover the same out of any funds in the state treasury is hereby made. Be it further