

2319

RE-INDEXED  
MAY 12 1921

STATE OF MINNESOTA :  
COUNTY OF HENNER : SS.

I, Charles F. Cook the duly elected, qualified and acting Mayor and Chief Magistrate of the City of Austin, Minnesota, do hereby and herewith certify that the hereto attached and following contains and is a new charter of the City of Austin, proposed by a duly appointed, qualified and acting Charter Board of and for said city, and which said proposed new charter was duly ratified by the qualified voters and electors of said city at the general municipal election held and had in the City of Austin on Tuesday the 10th day of March, A.D., 1903, as more fully appears by the returns of said election, and by the declaration of the Common Council of said city, acting and sitting as a canvassing board, which said canvassing board did on the 11th day of March A.D., 1903, duly declare said proposed charter hereto attached to be adopted and ratified by the electors of said city.

WITNESS, My hand and the seal of said City this 11<sup>th</sup> day of April A.D., 1903.  
*Charles F. Cook*  
Mayor.

Attest:

*J. M. Farter*  
City Recorder. #  
2319

THE  
CHARTER  
OF THE  
CITY OF AUSTIN, MINNESOTA.

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PUBLISHED BY AUTHORITY OF THE COMMON COUNCIL.

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FRAMED AND ADOPTED PURSUANT TO  
CHAPTER 351 OF THE GENERAL LAWS OF MINNESOTA, 1890.  
AND ACTS AMENDATORY THEREOF.

C H A R T E R  
OF THE  
C I T Y O F A U S T I N, M I N N E S O T A.  
FRAMED AND ADOPTED PURSUANT TO  
CHAPTER 351 OF THE GENERAL LAWS OF MINNESOTA  
FOR 1890, AND ACTS AMENDATORY THEREOF.

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C H A P T E R I.  
C I T Y A N D W A T E R B O U N D A R I E S.  
C R E A T I O N O F C O R P O R A T I O N.

SECTION 1. All that part of the County of Mower, and State of Minnesota, within the limits and boundaries hereinafter described, shall be a city, and the inhabitants thereof shall be and form a municipal corporation, under the name and style of the city of Austin. The said corporation shall have the powers generally possessed by municipal corporations at common law, and in addition thereto, shall possess the powers hereinafter specifically granted. It shall, under its corporate name, be capable of contracting and being contracted with, of suing and being sued, and of pleading and being impleaded, in all courts of law or equity; and it shall have a corporate seal, which it may change or alter at its pleasure, and it may take, hold, purchase, lease, sell and convey such real, personal and mixed estate as the purposes of said corporation may require, or the exigencies of said corporation may render convenient, within or without the limits of the city, and the same shall be free from taxation.

SECTION 2. All that territory within said County of Mower and State of Minnesota, contained in the limits and boundaries hereinafter described, shall constitute the City of Austin, viz.:

All of section number three (3); the north half, and the

southwest quarter, and the northwest quarter of the southeast quarter of section number two (2); and the northeast quarter of section number ten (10); and the northwest quarter of section number eleven (11), all in township number one hundred two (102) north, range number eighteen (18) west; also the south half of the south half of section number thirty-four (34); and the south half of the southwest quarter, and the southwest quarter of the southeast quarter, of section number thirty-five (35); also a strip of land forty (40) feet wide off from the west side of the northwest quarter of the southeast quarter of said section number thirty-four (34); also the land included in, and known as, Oakwood Cemetery, being in the southwest corner of the northwest quarter of said section number thirty-four (34), all in township number one hundred three (103) north, range number eighteen (18) west.

#### WARD BOUNDARIES.

SECTION 3. The city shall be divided into three (3) wards as follows, to-wit:

THE FIRST WARD, which shall include all that territory of said city west of the Cedar river and north of a line extended west from said river, through and along the center of Bridge street in said city to the west boundary thereof.

THE SECOND WARD, which shall include all that territory within the designated boundaries of said city which lies west of the Cedar river and north of the Cedar river and south of a line extended west from the Cedar river, along and through the center of Bridge street in said city to the west boundary thereof.

THE THIRD WARD, which shall include all that territory included in the designated boundaries of said city lying east and south of the Cedar river.

## CHAPTER II.

### ELECTION.

#### PRECINCTS.

SECTION 1. Each ward shall constitute an election precinct, and whenever at any election it shall appear that more than four hundred votes have been cast in any one election precinct, it shall be the duty of the common council, at least sixty days prior to the next election, to divide such precinct into two or more precincts, the boundaries of which shall be defined, and notice thereof describing the boundaries of the election precinct so divided shall be published in the official paper of the city at least ten days prior to the next election.

#### ELECTIONS—WHEN HELD.

SECTION 2. An election of city officers shall be held on the first Tuesday after the first Monday in April, A.D., 1904, and on that day biennially thereafter; notice of the time and place of holding such election shall be given by the city recorder by publishing said notice in the official paper of the city at least ten days prior to such election, and by posting notices thereof at each place of election in the city; the places at which such election shall be held in the election precincts shall be fixed and designated by the common council of said city.

#### QUALIFICATIONS OF ELECTORS.

SECTION 3. Any person entitled, under the general statutes of the State of Minnesota, to vote for county and state officers, shall have the right to vote for any officer, at any election held under this charter, in the election precinct in which he shall have been a resident for thirty days immediately preceding such election.

#### HOW CONDUCTED.

SECTION 4. All elections in said city, whether for state and

county officers or for city officers, shall be held and conducted by judges of election, appointed by the common council, in the same manner, during the same hours, and under the same penalties, and vacancies in the board of judges shall be filled in the same manner as prescribed by the general statutes of the state, applicable to cities of its size in point of population. Said judges in each instance, before entering upon the discharge of their duties, shall take the oath or affirmation prescribed by such statutes; and they shall have the power to appoint clerks, and to administer all necessary oaths; provided that no candidate for office at such election shall act as judge or clerk thereof. The vote shall be by ballot as prescribed by the statute, and a plurality of votes shall be sufficient to elect.

#### SPECIAL ELECTIONS.

SECTION 5. Special elections, for any purpose, shall be held and conducted in all respects as general elections under this charter, and upon notice of not less than ten days, given as herein provided for general elections, which notice shall fully specify the object and purpose of said election.

#### QUALIFICATION OF ELECTORS IN MONEY MATTERS.

SECTION 6. Whenever a proposition is voted upon that money shall be borrowed, or bonds shall be issued, for and on behalf of said city, then, and in that case only, the qualified voters who have paid taxes to the city treasurer of said city for the year immediately preceding the election, or are assessed to a taxable amount at the time of such election for property in the city of Austin, shall be allowed to vote. And the judges of election are authorized to require the production of the proper tax receipt, or evidence of assessment for their inspection, or other satisfactory proof thereof, which proof shall be made a matter of record, and any person refusing or neglecting to comply therewith shall not be allowed to vote on any such proposition.

If said proposition is voted upon at the same time when officers or other propositions are voted upon, then and in that case a separate ballot shall be used for the above purpose, and deposited in a separate ballot box provided therefor, and all votes upon such proposition not cast in compliance with the above requirements shall not be counted.

#### ELECTION RETURNS.

SECTION 7. Whenever any city election shall be closed, and the votes cast thereat counted, and the result obtained, the said election board shall make the return thereof with an abstract of the number of votes cast at such election, stating the whole number of votes for each person, for each office, and upon any and all propositions, affirmative or negative of any proposition submitted to the people at such election, and shall, within two days deliver or cause to be delivered, by one of their number, into the hands of the city recorder, such abstract and return, and the common council shall meet and canvass said returns and declare the result, as it appears from the face of said returns, within four days thereafter.

The city recorder shall then forthwith notify the officer or officers elected of their election, by written notice served upon such officers in person, or left at their usual place of abode with some person of suitable age and discretion. Certificates of election shall be issued to all elective officers of said city, under the direction, and in the manner and form as the common council may, by resolution, prescribe. In case the election of any person, receiving a certificate of election as above provided, shall be disputed by any other candidate, the latter may contest the same in the district court of the County of Mower, and the proceedings in such contest shall be the same, as nearly as may be, as the proceedings prescribed by the general statutes of this state in the case of contested elections of county officers.

#### TIE IN ELECTION.

SECTION 9. Whenever it shall appear to the common council on canvassing the face of the returns of any city election, as above provided, that two or more candidates have received the same number of votes at such election for the same office, such number being a majority, or a plurality, of all the votes cast at such election for such office, a record of such fact shall be made by the city recorder in the proceedings of the common council, and said council shall proceed to determine a choice by the casting of lots in the presence of the council, at such time and in such manner as the council may direct, notice of which proceedings shall be served upon the respective candidates interested, by the city recorder, at least one day prior to such meeting, and such election and the proceedings had in reference thereto shall be public..

#### COMMENCEMENT OF TERM OF OFFICE.

SECTION 9. The official term of all elective officers, under the provisions of this charter, shall commence on the second Tuesday following the election, and all officers to be appointed by the common council, as hereinafter provided, shall enter upon the duties of their respective offices on the first Monday in May in the year of their appointment. All the aforesaid officers of said city, elected by the people, shall hold their respective offices for the term of two years, and until their respective successors shall be elected and qualified.

#### VACANCIES--HOW FILLED.

SECTION 10. Whenever any vacancy shall occur in any elective office of said city, excepting that of mayor, which is hereinafter provided for, such vacancy shall be filled by appointment, by the common council, which incumbent so appointed shall hold his office until the next succeeding election, and until his successor is elected and qualified.



#### APPOINTMENT OF OFFICER.

SECTION 11. Any officer removing from the city or ward for which he was elected or appointed, or who shall neglect or refuse for ten days, after notice of his election or appointment, to qualify or enter upon the discharge of the duties of his office, shall be deemed to have vacated the same, and the common council shall declare the office vacant and proceed to fill such vacancy as hereinbefore prescribed.

#### NEW ELECTIONS--NOTICE.

SECTION 12. Should there be a failure by the people, for any cause, to hold any city election at the time or in the manner hereinbefore prescribed, or to elect any officer herein required to be elected on the day designated, the common council may order a new election to be held, ten days' notice of the time and place being given, by publishing the notice thereof in the official city paper, and by posting thereof in three of the most public places in said city; provided, that no failure of the city recorder to give the notice of election specified herein shall in any manner invalidate any general election.

CHAPTER III.

CITY OFFICERS.

ELECTIVE OFFICERS.

SECTION 1. The elective officers of said city shall be a mayor, seven members of the common council, to be styled aldermen, city treasurer, assessor, and one justice of the peace in each ward of the city. All of said officers shall be residents, and qualified voters in said city, and shall hold office for two years, and until their successors are elected and qualified, and no person shall be eligible to, or shall be elected or appointed, to fill any office in said city who is in any manner, either directly or indirectly, interested in any contract with the city, regardless as to whether said contract was made with the common council, or any officer or board of said city, for the benefit of said city or any of its departments; and all contracts made by the common council, or any officer or board of said city, for the benefit of said city, or any of its departments, with any officer, thereof, directly or indirectly, shall be wholly void.

ALDERMAN - JUSTICES OF THE PEACE - ELECTION AND QUALIFICATION.

SEC. 2. Each ward shall elect two aldermen and a justice of the peace, each of whom shall be a resident and a qualified voter within the ward for which he is elected. There shall also be elected within and for said city one alderman-at-large, who shall be a resident of said city.

OTHER OFFICERS - HOW CHOSEN.

SEC. 3. All other officers herein provided for, and necessary to the proper management of the affairs of the city, shall be elected by the common council, unless otherwise provided.

POWERS AND DUTIES OF OFFICERS - REMOVAL OF OFFICERS.

SEC. 4. Every person appointed to any office by the common

council or mayor of said city, or elected to any city office by the people, may be removed from said office by a vote of two-thirds of all the members of the common council, but no officer elected by the people shall be removed except for cause, nor unless furnished with a written statement of the charges against him, nor unless he shall have had a reasonable opportunity to be heard in his defense. The common council shall fix a time for the hearing on such charges, of which not less than ten days' notice shall be given to said accused officer, and said common council shall have the power to compel the attendance of witnesses, and the production of books and papers, and to hear and determine the case; and if said officer neglects to appear and answer the charges against him, the common council may declare the office vacant.

#### OATHS AND BONDS.

SEC. 5. Every person elected or appointed to any office under this charter shall, before he enters upon his duties of such office, take and subscribe an oath of office, and file the same, certified by the officer administering the same, with the city recorder of said city; and the city treasurer, city recorder, chief of police, street commissioner, city engineer, and such other officers as the common council may direct, shall, before entering upon the duties of their respective offices, be required to execute such bond to the city of Austin, as the common council thereof may direct and approve, for the faithful performance of the duties of such office, and such bonds may be increased or diminished at the pleasure of the council, and if any officer fails to give the required bond, the common council shall declare the office vacant, and proceed to fill the vacancy as herein provided.

#### MAYOR --- POWERS AND DUTIES.

SEC. 6. The mayor shall be the chief executive officer of the city and ex-officio president of the common council, but he shall not

vote on any question. He shall take care that the laws of the state and the ordinances and regulations of the city are duly observed and enforced within the limits of said city, and that all executive officers and employees of said city faithfully discharge their respective duties, and may, for a period not exceeding sixty days, suspend any executive officer, excepting the treasurer, during which such suspension such suspended officer shall be entitled to no compensation unless the common council shall decide that such suspension was not warranted. In case of such suspension, the mayor shall immediately report the same, with the reasons therefor, to the common council, by means of a written communication filed with the city recorder, and shall immediately call a meeting of the common council to consider the same, and may, pending action in the matter by the council, temporarily devolve the duties of the suspended officer upon some other person, who shall receive the same compensation as that of the officer so suspended.

He shall be the head of the police department, and by virtue of his said office, and by and with the consent of the common council, shall appoint such police officers and watchmen as may be necessary, except when otherwise provided herein. In case of riot, large public gatherings, or disturbances of the peace, he may provide or appoint as many temporary or special policemen, or watchmen, as he may deem necessary, and any public officer thus appointed by the mayor, as aforesaid, may be discharged by him. But such special or temporary appointment shall not continue for more than one week without the consent of the common council. He shall have the power to remove any officer of said force and shall have, subject to the ordinances and regulations of the city, and the laws of the state, general supervision of all other executive departments of the city government, and of all the executive city officers, and of all the employees of the city, except employees of the various boards, and shall see that they discharge their respective duties properly. He

shall, from time to time, give the common council such information and recommend such measures as he may deem advantageous to the city.

All ordinances and regulations shall, before they take effect, be presented to the mayor for his approval, and if he approves the same he shall endorse his approval upon, and sign the same, and such as he shall not approve he shall return to the common council with his objections thereto, by depositing the same with the city recorder to be and upon the return of any ordinance or resolution without the approval of the mayor, to the common council, the vote by which the same presented to the common council at the next stated meeting thereof; was passed, of it shall be reconsidered, and if, after a reconsideration, it shall be passed by a vote of two-thirds of all of the members of said council, shall have the same effect as if approved by the mayor, and in such case the vote shall be by yeas and nays, which shall be recorded by the city recorder. Any ordinance or resolution not returned by the mayor within five days (Sundays excepted) after the same shall have been presented to him, shall have the same effect as if approved and signed by the mayor. He shall countersign all orders and warrants drawn upon the city treasurer for the payment of money.

He may also, at the request of any person, firm, society or organization, if he deem it necessary, appoint policemen or watchmen, who shall serve without expense to the city, and who shall have police powers to preserve the peace and protect property within such limits and at such places as may be designated in such appointment; but such limited policemen or watchmen shall not exercise any authority or wear any badge of office outside of the limits of such appointment. The mayor may, when he deems it necessary, with the consent and approval of the common council, from time to time make such regulations for the control of the police force, and the powers and duties of the several officers thereof, as may be deemed necessary or expedient.

He shall possess such further powers and perform such further

duties as may be conferred or prescribed by this charter, or by the city ordinances or regulations, duly passed and adopted in pursuance thereof, or by the general laws of this state.

#### ACTING MAYOR.

SEC. 7. In case of vacancy in the office of mayor, or in case of the absence of the mayor from the city, or by reason of his inability, through sickness or other cause, to perform the duties of his office, the alderman-at-large, or if he is also absent or incapacitated from acting, then such member of said council as the council may by vote designate, shall, during such absence or disability, exercise the powers and perform the duties of the mayor, and while so acting shall be styled "acting mayor," and his acts in that capacity shall have the same force and validity as if performed by the mayor.

#### CITY RECORDER.

SEC. 8. The city recorder shall have the custody of the corporate seal and all the papers and records of the city, attend all meetings of the common council and keep a correct record of all its proceedings, and of all rules, ordinances and regulations which it may adopt or pass, insuitable books kept for that purpose. He shall have authority to administer oaths, and certify deeds and other instruments in all cases in which the same are required or sanctioned by law. He shall keep his office at the place of meeting of the common council, and the same shall be kept open at all reasonable hours as determined by the common council, and all records and files of his office shall be open to the inspection of the public. Copies of all papers filed in his office, and transcripts from all records of the common council, certified by him under the corporate seal, shall be evidence in all courts as if the original were produced. He shall file in his office all chattel mortgages, chattel notes and other contracts, and perform all things incident thereto as required

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by law, He shall draw and countersign all orders on the treasurer, in pursuance to any order or resolution of the common council, and keep a full and accurate account thereof. It shall be his duty to keep regular books of account in which he shall enter all indebtedness of the city, and which shall at all times show the precise financial condition of the city, the amount and number of bonds, orders, certificates or other evidences of indebtedness outstanding, and the amount of each which have been paid and redeemed; to countersign all bonds, orders or other evidences of indebtedness of the city, and to keep accurate accounts thereof together with a complete copy of all such bonds, to whom issued, for what purpose, when and where payable, and the rate of interest they bear, and the date of payment thereof. All claims and demands against the city, before they are allowed by the common council, shall be fully itemized and verified by the oath of the claimant, and shall be filed in the office of the city recorder. He shall collect all moneys due the city, except as otherwise provided by this charter, the general laws of this state, or by resolution and direction of the common council, keeping an accurate account thereof under such regulations as the council may adopt, and shall within twenty-four hours after receipt thereof, deposit the same with the city treasurer, excepting that when Sundays and legal holidays intervene, the same shall be deposited on the next business day. It shall be his duty to make to the common council at the first meeting in each month, detailed report of the financial condition of the city, and he shall report to the common council annually, at the close of each fiscal year, a detailed statement of the receipts and disbursements for the year, accompanied by the cancelled vouchers arranged in order for ready examination and reference, together with a detailed statement of the outstanding bonded and floating indebtedness, showing to whom payable and when due, at such time as may be determined by this charter.

He shall also furnish estimates for the purpose of levying taxes

as hereinafter required. It shall be his duty to report to the common council promptly and fully in writing, if, before the first day of January of any year, it shall appear that the amount expended, or to be expended, chargeable to any city fund, adding thereto the current expenses estimated for the remainder of the fiscal year and chargeable to such fund, shall be equal to three-fourths of the tax authorized to be raised, or revenue estimated for such fund, and he shall not countersign any contract chargeable to such fund unless the amount of taxes actually collected be ascertained; and during the remainder of the fiscal year he shall not countersign any contract, the payment of which shall exceed the revenue actually collected for the fund to which such outlay is properly chargeable. It shall be his duty to examine all the reports, books, papers, vouchers and accounts of the city treasurer, and from time to time he shall perform such other duties as the common council may direct, and such as are required, by law, of clerks of cities or townships in this state, for which compensation is made from state or county treasury; such service shall not be regarded as service for the city, and the compensation received therefor shall not be regarded as a part of his salary as city recorder.

He shall perform such other duties as may be prescribed herein or may hereafter be prescribed by ordinance or resolution of the common council.

#### CITY ATTORNEY.

Sec. 9. The city attorney shall be a person admitted to practice in all courts in this State, at least three years prior to his appointment, and shall be the legal adviser of all officers of said city upon all subjects arising by virtue of this charter and ordinances adopted in accordance therewith. He shall attend, and prosecute or defend, all suits, actions, or proceedings, either civil or criminal, for and on behalf of the city, or in which the city may be a party.



He shall, when required, furnish a written opinion upon any subject arising by virtue thereof, submitted to him by the common council, or any of its committees, or by the mayor, attend the meetings of the common council when requested, draw all contracts and agreements between said city and other parties, and such other legal instruments and papers as may be required in connection with the administration of city affairs, and perform such other professional services as shall properly pertain to his office. He shall hold his office for the term of two years, at the pleasure of the council appointing him, and his compensation shall be fixed by the common council.

When, from absence, sickness or other cause, he shall be unable to attend to any of his official duties, he may designate some one to act in his stead for the time being, but at his own expense. Provided, the common council shall have the right and authority to employ additional counsel to assist the city attorney in the prosecution or defense of any proceeding or action at law in which the city is interested, or to discharge the duties of city attorney when there is none.

#### TREASURER.

Sec. 10. The treasurer shall be the custodian of, and shall receive all moneys and funds belonging to the city from whatever source received, including license money and fines, and shall be responsible for the safe keeping and disbursement thereof, and he shall keep an accurate and detailed account thereof in such books, and in such manner, as the common council may direct. The treasurer shall file in the office of the city recorder, on the day of the first stated meeting of the common council in each month, a detailed statement, showing the moneys received and paid out by him on behalf of said city during the preceding month, and the balance on hand, if any, or the overdraft, as the case may be. And the treasurer shall report to the common council annually, on or before the first regular meeting of the council, in the month of April in each year, a full detailed

statement of receipts and the sources from which received, and a detailed statement of the city orders paid during the fiscal year ending with the first day of March in each year, together with the condition of the treasury at such date, which statement shall be filed with the city recorder, and a copy thereof published in some newspaper of the city. The treasurer's books shall be subject at any and all times to the demand of the common council or any of its committees for inspection. The treasurer shall pay out moneys only on orders duly drawn upon him, signed by the mayor and attested by the city recorder, and upon receipt of moneys from any source except directly from the city recorder, shall execute a receipt therefor, in duplicate, filing such duplicate receipt with the city recorder within twenty-four hours thereafter.

#### STREET COMMISSIONER.

SEC. 11. The street commissioner shall, under the direction of the common council, superintend all work and improvements on the streets, bridges and public grounds of said city, and carry into effect all orders and ordinances of the common council in relation to work and improvements on the streets, roads, sidewalks, alleys, bridges and public grounds, and it shall be his duty to see that the same, when graded and opened for travel, are kept clear from obstruction and in such repair as to be safe and passable, and, under the direction of the park board, see that all trees along and over sidewalks shall be trimmed, and see that all warnings are so kept as not to obstruct or interfere with public travel along the sidewalk, and shall perform such other services as are required of him by the common council, and receive and receipt to his predecessor for, and account to his successor for, all property of the city received by him or under his control belonging to the city. But no improvement exceeding an estimated cost of Twenty-five Dollars (\$25.00) shall be made, except by direction of the common council; while the street commissioner shall be under the full direction and control of the

common council, he shall nevertheless be held personally accountable for the faithful discharge of his duties as herein provided, or by the common council directed.

#### SANIT.

SEC. 18. The street commissioner shall not be interested in any contract for work done upon the streets, nor be allowed compensation for the use of any teams owned by him, or in which he has any interest. He shall, at each regular meeting of the common council, make and file with the city recorder a detailed written report, showing the amount and character of work done by his department since the date of his last report, and showing by whom said work was done and the sum due to each person therefor, and shall also report in detail any defects which he may have discovered in any street, sidewalk, crossing, bridge or culvert in said city, together with his recommendation as to the best means for the repairing thereof, which said report shall be by the city recorder presented to the council at said meeting, but until such report is filed as above provided, no salary shall be allowed or paid said street commissioner.

#### ASSESSOR.

SEC. 19. The assessor, shall at the time of his election, be a resident and qualified voter of said city, and shall have been for a period of at least six months prior to his election, and at the time thereof, the owner of real estate within the city limits. He shall have and possess all the authority, rights, powers and duties of assessor under the general laws of this state, excepting as hereinafter provided and qualified. In case of his inability to perform the duties of his office from any cause whatever, the common council shall appoint an assistant to serve until such disability shall be removed; and such assistant shall have all the powers and perform all the duties which are, by law, imposed upon his principal, and shall receive, from the salary of his principal, all the compensation

he shall be entitled to receive for such service, which shall be at the same rate as his principal. He shall be present, at the time provided by the general laws of the state, at the office of the city recorder, or such other place as the council may provide, with his assessment for review, and shall himself be present during the review of said assessment to advise, if needed, in regard thereto, and upon the completion of such review, and within the time provided by the general laws, make returns to the county auditor.

#### CHIEF OF THE FIRE DEPARTMENT.

SEC. 14. The chief of the fire department shall, at the time of his appointment, be a resident and qualified voter of said city; He shall be a man who has had some experience in fighting fires and managing firemen. It shall be his duty to promptly attend upon all fire alarms and assume control over, and have the management of, all firemen and fire apparatus, and require of all the firemen of the city prompt obedience to his orders and efficient work in the fire department, and shall have authority to discharge any fireman for disobedience, neglect, inefficiency or insubordination. He shall have charge and supervision of all the fire apparatus of the city and see that it is kept in a safe, proper and convenient condition for use at fires; that all hose is properly drained and dried and all appliances ready for immediate use. He shall, at least once in every three months and as much oftener as the common council may direct, present a report in writing to the council, giving in detail the number of men in the department, both volunteer and employed, the condition of all fire apparatus, including fire teams, the number of fires which have occurred, and who of said firemen have attended said fires, together with the dates thereof, and a statement of the property injured or destroyed, together with the amount of insurance thereon, at the same time, and in the same manner, advising the council of any needed additions to the department, or the

apparatus, for the necessities or improvement thereof. In addition to the duties hereinbefore prescribed, it shall also be the duty of the chief of the fire department to observe the building and erection of all buildings within the fire limits, and of all chimneys and smoke stacks in said city, and in such capacity he shall be designated the "fire warden," and as such fire warden it shall be his duty, upon observing that any building is being erected within the fire limits, which is not built in strict conformity with the ordinances and requirements of the city, or any chimney or smoke stack within the city limits of said city, which is not being built in strict conformity with such ordinances and regulations, or when such building, chimney or smoke stack is being so built and erected as to be dangerous in any respect, especially as to fires, or which he may deem to be dangerous, either in plan or method of construction, to immediately report to the mayor in writing, stating briefly wherein the ordinances and regulations of the city are being violated, and in what respect such erection and construction is dangerous, together with the name of the person or persons erecting such building, chimney or smoke stack, describing the lot, block or parcel of ground whereon the work is being done. He shall also, from time to time, inspect the buildings, chimneys and smoke stacks in said city with a view of ascertaining whether or not such chimneys and connections therewith are safe, and properly and safely made, and for that purpose he shall have authority to enter any business place or private residence, in said city, at all reasonable hours, in the day time, and upon making such inspection, report to the mayor, in detail, any defect which he may discover, and which, in his judgment, is likely to cause loss or damage by fire. Upon receipt of such report by the mayor, he shall immediately call the matter to the attention of the council, and the common council shall take such action as will remedy any defect, and as the exigencies of the case may require. It shall also be the duty of the fire warden, whenever any building has been damaged by fire in such manner that the walls thereof, if allowed to stand, will be, or become, dangerous to the public, to take immediate steps

to cause such walls to be taken down, or the property guarded and barricaded as the particular case may require, and upon his order in writing, directed to and served upon the owner or his agent, of any such building or buildings, ordering such walls either to be taken down or supported and barricaded, the owner of, or agent for, such property shall immediately comply with such order, and upon his failure for twenty-four hours so to do, the fire warden shall proceed to do such work as shall be necessary, either in taking down, supporting or barricading such walls, and the cost thereof shall be reported to the common council in detail, and shall become a charge against the property, and shall be taxed thereon in the same manner as is herein provided for the levy of special assessments; provided, that nothing herein contained shall relieve the owner of such property from any damage or injury which may have been caused to any person or property by reason of his failure to properly remove, support or barricade such walls or openings, either before or after such notice.

#### JUSTICES OF THE PEACE.

SEC. 15. The justices of the peace shall possess all the authority, powers, rights, and perform all of the duties as justices of the peace of this state under the general laws, and shall have concurrent jurisdiction with the justices of the peace of the County of Mower, and may have their office and hold court anywhere in said city, and shall have, in addition thereto, exclusive and original jurisdiction to hear, try and determine summarily, and without a jury all complaints, conduct all examinations and trials for offenses committed within said city, for violation of any provision or provisions of the charter, or any ordinance, by-law, rule, or regulation made or adopted under or by virtue thereof, and of all cases cognizable before the justice of the peace, in which the city is a party, and of all rights, actions, prosecutions and proceedings in the re-

covery of fines, forfeiture or penalty under any by-law, ordinance or regulation of the city or its charter, and in all cases of offense committed against the same; and such other and further jurisdiction as is conferred by Section 1074 of the General Statutes of 1894, and the amendments thereto. Provided, that appeals may be taken from the judgments of justices of the peace to the district court of the County of Mower, State of Minnesota, upon the same grounds, and under the same provisions, and subject to the same restrictions, and with like effect as is provided by the general laws of this state for appeals from justices of the peace.

In all actions, prosecutions and proceedings of any kind before any city justice, such justice shall take judicial notice of all ordinances of said city, and it shall not be necessary to plead such ordinances in said court.

The said city justices shall, each month, and as much oftener as the common council may prescribe, make and file with the city recorder, written reports of all proceedings instituted before them in which the city is interested, and make such report of all criminal cases instituted before them, with their title, date of trial and character of offense, witnesses and amount of fine, and whether fine is paid or defendant remanded, and shall also account to and pay over to the city treasurer all fines and penalties collected by them belonging to the city, within twenty-four hours after being collected, and file the treasurer's receipt with their report; and said justices shall be entitled to receive from the County of Mower such fees in criminal cases as are allowed by statute to justices of the peace for similar services.

#### CIVIL ENGINEER.

SEC. 16. The city civil engineer shall be a person skilled in the science of surveying and civil engineering. He shall possess the same powers in making surveys and plats within the limits of said city, and certifying to the same, as are by law vested in the county surveyors in this state.

He shall, under the direction of the common council, unless other provision is made therefor, by said council, superintend all work done by or for the city in which engineering skill is deemed requisite by the council, and shall, when so directed by the common council, draw plans and specifications for all such work, estimate the expense thereof, and when such work is done by contract, shall execute all certificates given to contractors, showing the amount and value of work performed, or the proper performance and completion of the contract. All surveys, profiles, diagrams, specifications and estimates made by him for the city shall be the property of the city, and shall be filed in the office of the city recorder before any compensation shall be allowed therefor, and shall be there preserved for the inspection of all persons interested; and when plans and specifications drawn, for work to be done for the city by contract or otherwise, shall be required for reference and use in doing the work, the engineer shall make, or cause to be made, copies of such plans and specifications for that purpose.

Said engineer shall perform such other duties and exercise such other powers as are elsewhere specified in this charter, or as may from time to time be required or conferred by the common council, or by ordinances of said city, and he shall keep his office in some convenient place in the city.

#### SALARY OF MAYOR, COMMON COUNCIL AND CITY OFFICERS.

SEC. 17. The mayor shall receive for all services by him performed for said city, a sum not exceeding One Hundred Dollars (\$100.00) per annum.

Each of the aldermen of said city shall receive, for all his services performed, the sum of Fifty Dollars (\$50.00) per annum, and he shall receive no compensation whatever for any other work or service of any character.

The city recorder, city attorney, treasurer, street commissioner,



assessor and chief of the fire department shall receive such salary and compensation as shall be fixed by the common council, by resolution, at the commencement of his term of office, and which shall not thereafter be raised or diminished, except by the unanimous consent of the council.

The justices of the peace shall receive such fees in full for their services as such justices as are allowed by the law of this state to justices of the peace.

The civil engineer shall receive for his compensation such pay per diem, or such salary, as the common council may fix or may agree upon with such engineer, together with such pay for helpers as shall be fixed or agreed upon.

The common council shall also fix and agree upon the compensation to be given to all employees of the city, in whatever department or upon whatever work they may be employed, not, however, including employees of the several boards created by this charter.

#### OFFICERS OF THE PEACE.

SEC. 18. The mayor, or acting mayor, sheriff of the county of Hower and his deputy, the coroner, each alderman, the justices of the peace, and the police officers, shall be officers of the peace, may command the peace, suppress in a summary manner all rioting and disorderly behavior within the limits of the city, and for such purpose may command the assistance of the bystanders, and if need be, of all citizens and military companies. And if any person, bystander, military officer or enlisted man shall refuse to aid in maintaining the peace when so required, such person shall forfeit and pay a fine of Fifty Dollars (\$50.00).

#### CITY PRINTING - BIDS.

SEC. 19. The common council at its first meeting after each annual election, or as soon thereafter as possible, shall advertise for

proposals to do the city printing, giving public notice of not less than one week, in such manner as the council may direct, that sealed bids will be received by the recorder for doing said printing. The bids received pursuant to such notice shall be publicly opened and read by the recorder, at such time and place as the council shall appoint, and the person or persons offering to do said printing for the lowest sum or price, in any legal, reliable public newspaper published in the city, and who shall give satisfactory security for the performance of the work, shall be declared the city printer for the ensuing year, and the newspaper printed by him designated as the official city paper, in which shall be published all ordinances, by-laws and other proceedings and matters required by this act, or by the ordinances, resolutions and by-laws of the common council, to be published in a public newspaper not herein otherwise provided to be printed; provided that the common council may, in its judgment, refuse any or all bids if they shall deem them too high, or if they shall deem the newspaper an improper or impractical one in which to publish the city official business; and provided further that no irregularity in the publishing of the notices, or acceptance of such bids, or the designation of such printer or paper, shall invalidate any legal publication required to be published therein.

The city printer immediately after the publication of any notice, ordinance or resolution which is required to be published, shall file with the city recorder a copy of such publication with his affidavit, or the affidavit of his foreman, attached thereto, reciting the fact of publication, the time when first published and the date of each subsequent publication, and the total length of time published, and such affidavit shall be prima facie evidence of the publication of such notice, ordinance or resolution, and no bill shall be allowed by the common council for such printing until such copy and affidavit have been filed.

#### DELIVERY OF BOOKS AND PROPERTY TO SUCCESSOR IN OFFICE.

SEC. 20. IF any person having been an officer of said city,

shall fail for ten days after notification and request to deliver to his successor in office all property, books, papers and effects of every description in his possession or under his control, belonging to said city, or pertaining to the office he may have held, he shall forfeit and pay to the use of the city the sum of One THOUSAND Dollars (\$1,000), in addition to all damages caused by his neglect or refusal so to deliver, and his successor may recover possession of said books, papers and effects in the manner and form prescribed by the laws of this state.

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#### C H A P T E R IV.

##### OF THE POLICE.

SECTION 1. The police force of the city shall consist of the mayor, who shall be the chief executive officer of the city, and who shall at all times have control and supervision of the police of the city, and such other policemen and watchmen as he shall, by and with consent of the common council, appoint. He shall have the power to remove, suspend or discharge any police officer, summarily, whenever in his opinion the welfare of the city may demand it, either for the appointment of other officers in their places, or for the reduction of the police force.

SEC. 2. The mayor shall in his appointment, designate one officer to be chief of police, and such other officers for special duties as he may deem necessary, and may designate the rank of such officers by such proper titles as he may select.

The officer designated as chief, subject to his duty to enforce all laws of the state and ordinances of the city, shall be subject to the will of the mayor, have control and supervision of the other police officers and watchmen, and he shall be responsible for the faithful performance of their duties as well as his own.

##### POWERS OF POLICE OFFICERS.

SEC. 3. All police officers and watchmen of the city shall

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possess the powers of constables at common law, under the laws of this state, and in addition thereto, shall have power, and it shall be their duty, to serve and execute all warrants, processes, commitments and any writs whatsoever, issued by the city justices of said city, and they shall have the power, with the consent and by the direction of the mayor, to pursue and arrest any person fleeing from justice, in any part of the state. When, by consent of the mayor, they pursue criminals out of the city, and such criminals are charged with offences against the state law, they shall be entitled to receive for their own use all fees for such pursuit, and all rewards offered for the apprehension of such criminals.

#### ASSUMING TO ACT AS POLICE OFFICER.

SEC. 4. If any person shall without authority, assume to act as a policeman, or pretend to have such power, or wear the badge of a policeman, within the city, he shall be deemed to be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding One Hundred Dollars (\$100) or imprisoned not exceeding thirty (30) days, at the discretion of the court.

#### COMPENSATION OF POLICE OFFICERS.

SEC. 5. Police officers shall be paid such salary and compensation for their services to the city as shall be fixed by the common council, by resolution, immediately after appointment and qualification. And any extra policemen or watchmen which may be appointed pursuant to the authority vested in the mayor shall be paid such reasonable compensation as to the council may seem just and equitable. In addition to the salary allowed to police officers they shall be allowed to receive and retain as their own all fees to which they may be entitled for services of papers in different cases arising in the justice courts in said city, provided that they shall not be paid any additional compensation whatever for the service of warrants subpoenas and other papers, or attendance upon court in any criminal action in said city, wherein the city of Austin is a party.

such fees are taxed against and collected from the defendant.

CHAPTER V.

THE COMMON COUNCIL -- ITS GENERAL POWERS AND DUTIES.

SECTION I- The mayor and aldermen shall constitute the common council of the city of Austin, and a majority thereof shall constitute a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members.

The style of all ordinances shall be, "The Common Council of the City of Austin do ordain."

ORDINANCES.

SEC. 2. All ordinances, regulations, resolutions and by-laws shall be passed by an affirmative vote of a majority of the members of the common council present, by yeas and nays, which shall be entered upon the records of the council approved by the mayor and attested by the city recorder, and published in the official paper of the city before they take effect, and then recorded at length by the city recorder in a separate book provided for the purpose. No ordinance shall be passed at the same meeting at which it shall have been presented, except by unanimous consent of all the members present, and not then unless at least two-thirds of the members elected are present, which fact shall be noted on the record, but this shall not preclude the passage of any ordinance reported by any committee of the council, to whom the subject of such ordinance shall have been referred at any previous meeting. All ordinances shall be published for two weeks, once in each week, and all resolutions and other official notices shall be published once in the official city paper.

MEETINGS.

SEC. 3. The common council shall hold stated regular meetings on the first Friday of each month, at such hour as the council may designate; the first regular meeting, after the annual election, shall

be held on the second Friday of April in each year at seven thirty (7:30) o'clock in the afternoon. The mayor, or on his refusal, any four (4) members of the common council, may call special meetings by written notice to each of the members, to be delivered personally, or left at their usual place of abode, which said notice shall contain a statement of the business for which said meeting is called, and no other business shall be transacted at such special meeting except such as is designated in such notice.

#### JUDGES OF MEMBERS -- RULES.

SEC. 4. The common council shall be the judges of the election, return and qualification of its members, subject to section seven (7) of chapter two (II), and of section two (2), of chapter three (III) hereof, and in such case shall have the power to send for persons and papers. It shall determine the rules of its own proceedings and provide for the punishment of its members for absence or disorderly conduct, and, with the concurrence of two-thirds of all the aldermen, may expel a member after due notice given, and an opportunity extended to the accused to be heard by counsel or otherwise; and shall have the power to compel the attendance of absent members. Continued absence from the meetings of the common council by any alderman, without excuse, for three (3) consecutive meetings, shall be deemed good cause for removal.

#### RECORD OF PROCEEDINGS.

SEC. 5. The common council shall keep a record of its proceedings, and the "yeas" and "nays," when demanded by any member present, shall be entered on the journal; provided, however, that upon the final passage of any ordinance or resolution, or the appropriation of money for any purpose, except for the payment of ordinary bills and expenses, the "yeas" and "nays," shall be taken, entered and recorded upon said journal.

CONTROL OF FINANCES AND PROPERTY - POWER TO ENACT ORDINANCES.

SEC. 6. The common council shall have the management and control of the finances and all the property of the city, subject to the provisions of this act, and shall likewise, in addition to the powers herein vested in them, have full power and authority to make, ordain, establish, publish, alter, modify, amend and repeal all such ordinances, resolutions, rules and regulations for the government, good order and cleanliness of the city, the protection of its property, for the suppression of vice and intemperance, the benefit of trade and commerce, and for the prevention of crime, as they shall deem expedient; they shall have the power to establish and maintain a city prison, work-house, and watch-house, and make all needful rules and regulations therefor, for the improvement, custody and safe keeping of all persons arrested and charged with an offense whatsoever; the common council shall have exclusive right to exercise all the legislative powers granted by this act to the corporation, and have full power and authority to declare and impose penalties and punishments against any person or persons who may violate any ordinance, rule or regulation passed or ordained by them, and all such ordinances, rules and regulations are hereby declared to be and to have the force of law, provided they be not repugnant to the constitution and laws of the United States or of this state, and for these purposes shall have authority by ordinance, resolution or regulation:

FIRST- To license and regulate the exhibition of common showmen and shows of all kinds, the exhibition of caravans, circuses, concerts and theatrical performances, also to license and regulate auctioneers, hawkers, peddlers, transients and temporary merchants, public halls and other buildings and enclosures used for places of public resort and amusement, billiard tables, pool or pigeon-hole tables, nine or ten pin alleys, bowling alley saloons, taverns, saloons, butcher shops and butcher stalls, and vendors of butchered meats, retail stores, pawnbrokers, bucket shops, broker and stock brokers, insurance offices and insurance agencies, skating rinks,

violinists, and all dealers in new and second-hand goods, and all temporary and transient dealers in any kind of merchandise, new, second-hand or bankrupt, junk dealers, and all keepers of intelligence offices and employment offices, all dairymen, hucksters, and persons selling goods at retail by sample. Provided, that all licenses, except for exhibitions, carnivals, circuses, managers, concerts and theatrical performances, shall expire on the first day of July of each year next following the issuing thereof. And provided further, that the power to regulate above given shall extend to and be construed to include among other powers the power to define who shall be construed to be pawnbrokers, auctioneers, dealers in second-hand goods, junk dealers, hucksters and peddlers and transient and temporary merchants.

SECOND. To restrain and prohibit all descriptions of gambling and fraudulent devices and practices, and all playing of cards, dice, or other games of chance for the purpose of gambling within the city, and to restrain from vending or dealing in, or otherwise disposing of spirituous, vinous, fermented and malt liquors, unless duly licensed by the common council, and no license issued for such purpose of the common council shall be transferable. Provided, that nothing contained in this charter shall be construed so as to prevent the people of the city of Austin, from deciding for themselves whether or not license shall be granted to any person or persons in said city to sell lager beer, spirituous, malt or fermented liquor, and the city recorder is hereby required, on the petition of ten (10) per cent, or more, of the legal voters of said city, based upon the vote cast at the last preceding annual municipal election, filed with him at any time not less than ten (10) days before any annual municipal election, to give notice that the question of license will be submitted at said election; and notice thereof shall be given by the city recorder at the same time and in the same manner that notices of annual municipal elections are given, and he shall place or cause to be placed upon the ticket or ballot, in the same manner that the names of candidates are placed thereon, the words, "In favor



of license," and the words, "Against license," and upon the canvass of a ballot a return shall be made showing the number of votes in favor of license and the number of votes against license, in the same manner as prescribed by law for canvassing other election returns; that if such returns show that a majority of votes cast at said election are against license, then, and in such case, the common council of said city shall grant no license to sell lager beer, spirituous, vinous, malt or fermented liquor to any person whomsoever in said City of Austin, except to persons legitimately and bona fidedly engaged in the business or occupation of druggists, and then only for medical and mechanical purposes.

And provided further, that it shall be the duty of the common council in all cases where the people of said city have heretofore or shall hereafter by vote, in manner as aforesaid, declare that no license shall be granted for the sale of spirituous, vinous, malt fermented or other intoxicating liquors (except for medical or mechanical purposes), to prohibit any and all persons from bartering, selling, giving away or in any manner disposing of, or keeping for sale or other disposal, any spirituous, vinous, malt, fermented or intoxicating liquors within the limits of the City of Austin, anything contained in this charter to the contrary notwithstanding.

And provided further, that nothing herein shall be construed so as to require the common council to grant license to sell spirituous, vinous, malt, fermented or other intoxicating liquors, even if the people of the city shall vote to grant license, but the said council shall have the right to refuse to issue a license to all or any person whomsoever, for any cause which shall be deemed by a majority of the common council sufficient.

And provided further, that no license shall be granted to any person or persons to deal in or vend within the city limits of said city, and spirituous, vinous, fermented or malt liquors for a less sum than One Thousand Dollars (\$1000), as a license fee for one year or any part of a year, and all licenses granted for such purpose shall

shall terminate on the first day of July of each year next following the issue thereof. Provided that such license heretofore granted and expiring on the first Monday in May, 1903, the common council may extend until July 1st, 1903, upon execution of the proper bond and the payment of a pro rata license fee for said two months.

And provided further, that no such license shall be granted unless the application therefor is accompanied by a bond, with two or more sufficient sureties to be approved by the common council, such bond to run to the City of Austin, Minnesota, and to be conditioned for the faithful observance and performance of all of the laws of the State of Minnesota, and of the ordinances, resolutions and regulations of the City of Austin, and to protect and save harmless the said city from any and all loss or damage in any way growing out of or connected with the granting of such license, and which bond shall provide for the payment of the amount thereof upon the conviction of the licensee for the violation of any of the laws of the State of Minnesota, or any of the ordinances, resolutions and regulations of the City of Austin, to be recovered by said city for its use in an action upon said bond and against the sureties thereof.

THIRD- To prevent rioting, noise, disturbances, and disorderly assemblages in said city, and to provide for the arrest and punishment of any person or persons who may be guilty of the same; to suppress disorderly houses and houses of ill fame, and to provide for the arrest and punishment of the keepers of the same or the inmates thereof, and to authorize the destruction of all instruments and apparatus used for the purpose of gambling.

FOURTH- To compel the keepers or occupants of any cellar, soap factory, tannery, hide warehouse, stable, barn, privy, cess-pool, sewer, or other unwholesome and nauseous house or place, to cleanse, remove or abate the same, from time to time, as often as may be necessary for the health, comfort and convenience of the inhabitants of said city.

FIFTH- To locate, regulate or prohibit the erection or amangement of stock yards, slaughter houses, packing houses, markets, breweries, distilleries, soap factories, glue factories and bone-boiling establishments, and to establish rates for, and license, vendors of gunpowder, nitro-glycerine, dynamite and other explosives, and to regulate or prohibit the storage, keeping and conveyance of gunpowder, nitro-glycerine, dynamite or other explosives, or combustible oil, substance or other material, and to regulate or prohibit the use thereof in the city.

SIXTH- To prevent the incumbering of streets, sidewalks, alleys, lanes and public grounds with carriages, carts, wagons, sleighs, boxes, lumber, firewood, posts, signs, awnings, stacks of hay, or other material or substance whatever.

SEVENTH- To prevent and provide for the punishment of horse racing, immoderate riding or driving in streets, and to regulate the use and speed of automobiles and all other vehicles; to compel persons to fasten their horses or other animals attached to vehicles or otherwise, while standing in the streets; and provide and regulate places for bathing and swimming in the waters within the limits of said city.

EIGHTH- To direct and control the laying out and construction of railroad tracks, bridges, turnouts and switches in the streets and alleys, and the location of depot grounds within the city; to require that railroad tracks, bridges, turnouts and switches shall be so constructed and laid out as to interfere as little as possible with the ordinary travel and use of the streets and alleys; and that sufficient space be left on either side of said tracks for the safe and convenient passage of teams through and persons; to require railroad companies to keep in repair streets through which their tracks may run, and to construct and keep in repair sidewalks, alleys, also suitable crossings properly graded at the intersections of streets and alleys; to require the construction of sewers, ditches, and cul-

verts when the council shall deem necessary, and the construction and maintenance of bridges, culverts, drains and sewers across and along the full width of their right-of-way in the streets, alleys, and highways, and to compel them to build and maintain overhead crossings and bridges across their right-of-way or yards, in said city, when and where the same shall be deemed necessary for public safety or convenience by the council; to regulate the movement and speed of railroad locomotives and cars; to require the maintenance of flagmen, lights, or the construction and maintenance of gates at the crossings of railway tracks over such streets, alleys and avenues of the city as the common council shall deem to require such precaution; to prevent any railroad company from necessarily obstructing the streets or crossings at any time, and in no event exceeding five (5) minutes, accident excepted.

NINTH- To restrain the running <sup>at large</sup> of horses, mules, cattle, swine, sheep, poultry and geese or other animals and fowl, and to authorize the distraining and sale of the same, and to impose penalties on the owners of such animals for the violation of the ~~an~~ ordinance; provided, that when the sale of such animal shall be made, the proceeds thereof, after deducting the expenses of distraining, keeping, advertising and selling the same, shall be deposited in the office of the treasurer of the city for the use and benefit of the owners or owners thereof, if called for by such owner or owners within one year from the date of sale, otherwise the same shall belong to the city.

TENTH- To prevent the running at large of dogs, and to impose a tax or license on the same; impose fines on the owner or keepers and authorize the muzzling, destruction or killing in a summary manner, of all dogs when at large, contrary to the ordinances.

ELEVENTH- To prevent any person from bringing, depositing or leaving within the city ~~any~~ any putrid carcass or any other unwholesome substance, and to require the removal of the same by any person

who shall have upon his premises any such substance or any putrid or unsound beef, pork, fish, hides or skins of any kind, and to authorize the removal thereof by some competent officer at the expense of such person or persons, and to make the expense of such removal a lien upon the premises from which such substances are removed.

TWENTH- To build and construct and establish public ponds, pumps, wells, cisterns, hydrants, reservoirs, and to erect lamps and poles to provide for the furnishing of water and the lighting of the city; to contract for the erection of gas or electric light plants for lighting the streets, public grounds and public buildings, or for the erection and maintenance of any and all systems of electric or gas lights for lighting and power purposes; to create, extend and alter lamp districts, or to contract with other parties to furnish gas or electricity for such purposes.

THIRTEENTH- To establish and regulate boards of health, provide hospitals and hospital grounds and nurses and keepers thereof, the registrations of births and deaths, the return of lists of mortality, and to regulate and prevent if deemed expedient, the burial of the dead within said city, and to purchase and hold grounds for a public cemetery, to improve and ornament the same and make all regulations necessary for the care, protection and government thereof.

FOURTEENTH- To prevent any person from riding or driving any horse, mule or other animal, bicycle, automobile or any similar device upon the sidewalks, parks or other public grounds in said city, or in any way doing damage to sidewalks and public grounds or property, and to prevent the staking out of cattle, horses, mules or other animals, either upon and within public streets and alleys or upon private grounds, so that such animal can trample upon, over and across any sidewalk, or upon any public grounds in said city.

FIFTEENTH- To prevent the discharge of fire-arms or fire-crackers, and to prevent the exhibition of any fireworks in any place or situation which may be considered by the common council dangerous

to the city or any property therein, or annoying to any of the citizens thereof.

SIXTEENTH- To regulate the size and weight of bread, and to provide for the seizure and forfeiture of bread for sale contrary thereto, and to provide for the inspection and regulation of bakeries, to regulate the inspection of flour, pork, beef, salt, fish, whiskey and other provisions and liquors, and to appoint inspectors, measurers, weighers and gaugers if deemed expedient, and to prescribe and regulate their duties and compensations.

SEVENTEENTH- To restrain and punish vagrants, mendicants, tramps, street beggars and prostitutes.

EIGHTEENTH- To prevent open and notorious drunkenness, immoderate drinking, brawling and obscenity within said city, and to provide for the arrest and punishment of all persons who shall be guilty thereof.

NINETEENTH- To direct, regulate and prohibit, in all parts of the city, the planting, preservation, removal, injury and destruction of trees in the streets, roads, highways and public grounds of the city and provide for the trimming of trees along the sidewalks thereof, and to provide for the punishment of any violation of the ordinances relating thereto.

TWENTIETH- To restrain, regulate or prohibit porters, hackmen, expressmen, and also runners, agents and solicitors for stages, cars, public houses or other establishments, and also processions and parades.

TWENTY-FIRST- To establish public markets and other public buildings and yards; to regulate the place and manner of weighing and selling hay, straw and other substances for feed; and the measuring, weighing, and selling of firewood, coal and other fuel, and to appoint suitable persons to superintend and conduct the same, to provide for a standard weight and measure; for the appointment of a city sealer and weigher, if found expedient, to require all weights and measures to be sealed by the city sealer, and to provide for the punishment of the use of false weights and measures, and to provide for the enforcement of rules and regulations in regard to such matters.

TWENTY-SECOND- To license and regulate butchers' stalls, shops and stands for the sale of game, fish, poultry, butchered meats, butter and provisions.

TWENTY-THIRD- To provide for, prescribe, regulate or prohibit the erection of hitching posts, rings or fastenings for horses or other animals, and to prohibit the same in any part of the streets, sidewalks, alleys and public grounds.

TWENTY-FOURTH- To define and declare what shall constitute a nuisance, and enact ordinances to prevent the same and punish violation thereof, and to remove and abate any nuisance within the city injurious to public health and safety, and to provide for the punishment of all persons who shall cause or maintain such nuisance.

TWENTY-FIFTH- To remove and abate any nuisance, obstruction or encroachment upon the streets, alleys, highways or public grounds of the city.

TWENTY-SIXTH- To do all acts and make all regulations which may be necessary and expedient for the preservation of the health and the suppression of disease, of any among the inhabitants of the city; to make, regulate and provide means to prevent the introduction or spread of contagious diseases in the city; to make quarantine laws, and to provide for the punishment of the violation thereof.

TWENTY-SEVENTH- To regulate and prevent the landing of persons from railroad cars, or other conveyances, infected with contagious or infectious diseases or disorders, and to make such disposition of such person as may be necessary to preserve the health of the city; and also to regulate, control and prevent the landing of paupers and persons in destitute conditions, of persons not having a legal residence or settlement therein, and to require that such person be taken back to the place from whence they may have been brought by the person or persons bringing, conveying or having them in said city.

TWENTY-EIGHTH- To compel the owners or occupants of buildings or grounds to remove snow, dirt, or rubbish from the sidewalk, street or alley opposite thereto, and to compel such owners or occupants

to remove, from the lot owned or occupied by him, all such substances as the board of health shall direct, and upon his default to authorize the removal or destruction thereof by some officer at the expense of the owners or occupants. Also to compel the owner of low ground where water collects, or is liable to collect and become stagnant, to fill or drain such low places, and upon their default to authorize such filling or draining at the expense of such owner, and to provide that such expense shall become a lien upon the lot or property so drained or filled; and also to provide for the punishment of any person or persons who shall fail to comply with the requirements of the ordinances for the removal of such dirt and rubbish from sidewalks, streets or alleys opposite to the premises owned or occupied by them.

TWENTY-NINTH- To regulate the time, place and manner of holding public auctions, or vendues and sales, at public outcry.

THIRTIETH- To provide, for, create and establish the police force of said city, to prescribe the number of police officers and their duties and to regulate the same, and to provide for watchmen and designate their number and duties, and to designate their salaries and compensation.

THIRTY-FIRST- To control, regulate and prevent the dumping of manure, rubbish and other substances into the Cedar river and other streams within the limits of said city, and to prevent the pollution of the waters thereof; and to regulate and control the cutting of ice within the city limits, to designate the districts and area within which ice may be cut, and to require such places to be securely fenced while open or in a dangerous condition, and to license and regulate ice dealers.

THIRTY-SECOND- To regulate the inspection of wood, hay, grain, flour, pork, mutton, veal and all other kinds of meats, poultry, game, fish, salt, whiskey and all other provisions and liquors, and to authorize the seizure and destruction of any provisions and liquors sold, or offered for sale, that are dangerous to the public health,



and to provide for the punishment of the persons selling or offering them for sale.

THIRTY-THIRD- To regulate or prohibit the carrying or wearing by any person of concealed dangerous or deadly weapons, and to provide for the confiscation thereof to the city.

THIRTY-FOURTH- To regulate or prohibit the opening of hatchways and cellar-ways upon the streets or sidewalks of the city, and to compel proper guards about the same.

THIRTY-FIFTH- To regulate the numbering of houses and lots, and to compel the owners or occupants of houses and other buildings to have such numbers designated thereon; to name, change and regulate the names of the streets, avenues and highways of said city.

THIRTY-SIXTH- To require the owner or lessee of any building or structure, now or hereafter erected in said city, to place thereon such fire escapes and such appliances for protection against, or extinguishment of, fires as it may direct, and to do each and every act which it may deem necessary to lessen the danger of human life in case of fire or accident; to provide for and require owners of buildings or other structures which have been damaged by fire or otherwise, or which by reason of dilapidation, defects in construction, or from other causes may have or shall become dangerous to life and property, or liable to cause accident, to take the same or any part thereof down, or remove the same, and in case of refusal or neglect of such owner to take down or remove the same when ordered by the common council or any officer thereof, then to cause the same to be done at the expense of the owner, and to make the cost thereof a lien upon the land upon which said building or structure was situated.

THIRTY-SEVENTH- To regulate the construction of all buildings within the fire limits, and all other buildings in said city that are more than two stories high; and prescribe fire limits in said city and prohibit the erection of wooden buildings or placing of wooden sidewalks within said city.

THIRTY-EIGHTH- To license and regulate draymen, hackmen, expressmen and other persons engaged in the carrying of baggage, freight or passengers and to regulate their charge therefor, and to authorize the mayor and chief of police of said city to regulate and direct their location or stand of vehicles standing upon the streets and public grounds of the city.

THIRTY-NINTH- To regulate and control, or prohibit, the placing of poles and suspending or stringing therefrom of telegraph, telephone, electric light or other wires along or across any of the streets, alleys, highways or public grounds of said city, and to order the same to be put under ground in the streets, alleys, highways or public grounds of said city in their discretion; and to compel the use of properly insulated wires in all electrical work in said city.

FORTIETH- To regulate and control the quality and measurement of gas, to prescribe and enforce rules and regulations for the manufacture and sale of gas and electricity, to provide for the inspection of gas, water and electric meters, and ~~to appoint an inspector of gas, water and electric meters,~~ and to appoint an inspector and prescribe his duties.

FORTY-FIRST- To regulate and prohibit the location, size and construction of steam boilers in said city, and to prohibit the location of such boilers at any place where the common council may deem it dangerous to life and property.

FORTY-SECOND- To control the penning, herding and treatment of all animals within the city.

FORTY-THIRD- To prescribe the limits within which wood, lumber, lath, shingles, hay, straw or other combustible materials can be piled or stored, and lumber yards established or maintained.

FORTY-FOURTH- To direct the location, regulate and prescribe the construction of privies, vaults and cess-pools, to require and provide for the removal and disposition of their contents, and of all swill, offal, garbage, ashes, barnyard litter, manure, yard cleanings.

dead animals, foul or unhealthy stuff and obnoxious weeds throughout the city, with authority to assess, levy upon, and compel the payment of the expense of such removal upon the property, owner or occupant thereof from which such above named matter or thing shall be taken; provided, that notice be first served upon the owner or occupant thereof to remove said matter or thing above named within the time to be fixed in the notice.

FORTY-FIFTH- To regulate fishing or hunting within the limits and within the waters and streams of said city.

FORTY-SIXTH- To purchase, or acquire by gift or devise, lands for the purpose of parks or public grounds, and to provide for the improvement of the same, and also to direct and regulate the planting and preservation of ornamental or shade trees in the streets, alleys, parks or public grounds in said city, and to appoint a suitable person to inspect and take charge of the same, and fix his compensation and prescribe his duties, provided there is not a park board.

FORTY-SEVENTH- The common council is authorized to permit the construction and operation of street railways, telephone, telegraph lines and heating plants within said city, and may prescribe the street or streets, and alleys on which such street railway may be constructed and upon which the telephone and telegraph lines, or conduits, and pipes for heating, may be placed; and the common council may and it shall be their duty to impose such restrictions and limitations upon the use and enjoyment of such privileges as the council may deem proper. Provided, that no such permit shall be granted until notice of the intention of the common council so to do shall have been given to the people, by a published notice of the time and place when the matter shall be considered, such notice indicating as fully as may be the application made to the council, and the streets, alleys or public grounds proposed to be affected thereby, and fixing a time and place when all persons interested may be heard.

Provided further, that no such permit shall be granted except by ordinance which shall contain fully the restrictions and limitations

imposed, and which shall be accepted by its applicant before the permit shall go into effect.

FORTY-EIGHT- The common council shall also provide for the laying out and construction of a general system of sewerage within said city, and to tax the cost of building and construction of such sewer to the property owners fronting along the streets, alleys, or highways within which such sewer is built and constructed as is more particularly provided in this chapter.

FORTY-NINE- The common council may also provide for the paving, repairing or macadamizing of any street, lane or alley in said city, and to lay, relay or extend any water mains in or through any such street, lane or alley or any portion thereof, and may provide for the assessment and payment for such construction as hereinafter provided.

FIFTIETH- The common council shall have the authority to require the city recorder and city treasurer to make monthly reports or statements of the receipts and disbursements, and of the financial condition of said city, to the common council, and require such report or statement to be made and submitted before his salary for the preceding month be paid, and to withhold his salary until such report or statement is made and submitted.

FIFTY-FIRST- To establish, lay out, alter, open, widen, extend, grade, repair, pave, bridge and otherwise improve and keep in repair the streets, alleys, highways, sidewalks, culverts, gutters, sewers, parks, cemeteries and other public grounds in said city; also to regulate the width, grade, material, construction and surface line of streets and sidewalks, and to provide for the elevating or depressing thereof, and to prescribe different widths in different localities, and to prevent damage thereto.

FIFTY-SECOND- To establish, and record with the city recorder, grades of streets, alleys, highways, and walks and require buildings and other structures to conform thereto, and to provide for the enclosing, improving, adorning and regulating of all public buildings and

grounds belonging to the city.

FIFTY-THIRD- To establish, maintain and regulate public pounds, for the detention of stray animals; to provide for a pound master or keeper and prescribe his fee or compensation.

FIFTY-FOURTH- To provide, construct and maintain public water works, wells, cisterns and reservoirs, water mains and hydrants; to provide for and control the water supply for the inhabitants of the city, and regulate water use and rates; to create, alter and extend water districts; to purchase, construct and maintain electric light, power and heating plants, gas works and other works for lighting of the city streets, alleys, public grounds and buildings and for commercial and private lighting; to provide for the lighting of the city; to create, alter, and extend lamp districts; to establish and regulate rates of private lighting, power and other utilities; provided, however, that the common council shall not purchase, build or construct any public water works, electric light plant, gas works, city hall or other public improvements, the cost of which shall exceed Five Thousand Dollars (\$5,000.00) without first submitting such proposition to the legal and qualified voters of said city for their approval or rejection, at a regular or special election called for that purpose; If a majority of the legal and qualified voters at such regular or special election favor the proposition, the common council shall then have the power and authority to build and make such improvements, but if a majority of votes cast at such election shall be against the proposition, they shall not have such power and authority.

#### EVIDENCE.

SEC. 7. A copy of the record of any ordinance, heretofore passed and recorded, or which shall be hereafter passed, certified by the city recorder and attested by the seal of the city, and any copy thereof published in the official paper of the city, or in any

official compilation of the ordinances, made and published under the direction of the common council, shall be prima facie evidence of the contents of such ordinances and of the regularity of all proceedings relating to the adoption and approval thereof, and shall be admitted as evidence in any court of this state without further proof.

#### ABATEMENT OF NUISANCES.

SEC. 8. The powers conferred upon the common council to provide for the abatement or removal of nuisances shall not bar or hinder suits, prosecutions or proceedings according to law.

#### AUDIT OF ACCOUNTS.

SEC. 9. The common council shall examine, audit and adjust the accounts of the treasurer, city recorder and all other officers of the city at such times as they may deem proper, and at the end of each year, and before their term of office shall expire, and if any officer shall refuse to exhibit his books, accounts and records for examination and settlement, or shall refuse to comply with the orders of said council in the discharge of his duties in pursuance of this section, the common council shall declare such office vacant, shall order suits and proceedings at law against any officer or agent of the city, who may be found delinquent or defaulting in his accounts, or the discharge of his official duties, and shall make a full record of all settlements and adjustments.

#### FINANCES - PROPERTY.

SEC. 10. The common council shall have the management and control of the finances, and all property of the city both real and personal, and may provide for the sale of any such property in such manner as it shall consider for the best interest of the city.

PROPERTY- HOW ACQUIRED OR SOLD.

SEC. 11. The common council shall have the power to acquire by purchase, lease, donation, grant or condemnation such private property as may be necessary for public buildings, streets or grounds, for the use of the city and all other necessary purposes in manner as herein provided and as provided by law; provided, however, if the price or value of property so acquired by purchase shall exceed the sum or value of Five Thousand Dollars (\$5,000.00) the question of such purchase, lease or condemnation shall first be submitted to a vote of the people at a general or special election, and the same shall not be acquired unless a majority of the qualified electors voting thereon, vote in favor thereof. The common council may by a unanimous vote of all members of the council sell, convey and dispose of such real estate as the city may own and which is not needed for municipal purposes.

REVOCATION OF LICENSE.

SEC. 12. Any license issued by the authority of the common council may be revoked by the mayor or council at any time; <sup>for cause</sup> and, upon conviction before any court of any person holding a license, for the violation of any provision of any ordinance, or for a violation of the state liquor law, the court may, upon a second conviction revoke such license, in addition to the penalties provided by law or ordinance for any such violation.

PUNISHMENT.

SEC. 13. Fines, penalties and punishments imposed by the common council for breach or violation of any ordinance, law or regulation of said city, may extend to a fine not exceeding One Hundred Dollars (\$100.00), or imprisonment not exceeding ninety (90) days, or to be fed on bread and water, in the discretion of the court, and offenders against the same may be required to give security for their good behavior and to keep the peace for a term not exceeding six (6) months and in a sum not exceeding Five Hundred Dollars (\$500.00).

#### OFFENDERS PUT TO LABOR.

SEC. 14. The common council may also provide by ordinance, that any one convicted of vagrancy before a justice of the peace, may be kept at hard labor in any city jail, lockup or workhouse established or designated for that purpose, or upon the streets, highways, or public works or improvements of said city, or both, or upon any pile of rock or stone owned by said city, and crushing or breaking the same.

#### TEMPORARY LOANS.

SEC. 15. The common council may, during any fiscal year by vote of two-thirds of all the members elected, the "yeas" and "nays" being taken and entered upon the journal, issue certificates or other evidence of indebtedness of said city, bearing interest at a rate not exceeding six (6) per cent per annum, and for a time not exceeding the then fiscal year, in such amount and under such regulations as the common council may prescribe, in anticipation of the taxes and revenues of such year. Provided, that the amount of such certificates or other evidences of indebtedness shall not at any time exceed one-third of such taxes and revenues. And provided further that the proceeds of such <sup>certificates or other</sup> evidences of indebtedness shall be applied to the same purpose as the taxes and revenues in anticipation whereof they may have been issued.

Provided further than when the taxes are collected a sufficient amount shall be immediately set aside and used to pay the temporary loans and interest thereon.

#### PLATS.

SEC. 16. Whenever any person or persons shall lay out any addition to the city, or sub-divide any lot, piece or parcel of land within said city, or any tract of land heretofore platted, he shall cause the same to be surveyed and platted, in accordance with the provisions of the general laws of this state relating to town or city



plats, and when the survey and plat is so completed and acknowledged it shall be presented to the common council, and the council may accept or reject such plat, or direct it to be changed or modified in such manner as it may deem expedient. When any plat is accepted by the common council, the city recorder shall so certify upon the face of such plat and affix the corporate seal, when, and only when, it may be recorded, in the same manner and of the same effect, as provided by the general laws.

#### BOARD OF REVIEW.

SEC. 17. At the first stated meeting in June of each year, the mayor, by and with the consent of the common council, shall appoint five (5) persons who shall constitute a board of review, one from each ward, and one at large; they shall be sworn, according to law, as such board, and shall meet at the rooms occupied by the common council of said city on the fourth Monday of June of each year, or at such time as such boards are required to meet, as provided by the General Laws of this state; and revise, alter and equalize the assessments of the roll of the assessor as they may deem just and proper. It shall be the duty of the assessor and city recorder to be present at all meetings of said board of review, and the recorder shall act as clerk of said board, and the assessor shall present before the board all facts relating to the assessment. Such board of review shall possess and be vested with all the powers which are or may be vested in town boards of review, and may require any person who may be required to list property, or whose property is listed for taxation, to appear before said board and submit to an examination under oath touching any property owned by him, or under his control, subject to be listed for taxation, and they may examine upon oath any person whom they may suppose to have knowledge of the amount or value of the personal property of any person, and for that purpose any member of said board is hereby authorized to administer oaths to all persons

who, by the provisions of this act are required to submit to an examination before said board. Such board of review may sit from day to day or adjourn from time to time as it shall deem proper until it shall have revised and equalized said assessments. Any person aggrieved by any assessment shall have the right to appear before such board of review and present his grievances, and whenever it appears upon a hearing or otherwise that any property is listed or assessed at less than its true, said board shall immediately proceed to correct such <sup>under</sup> valuation; and whenever it appears to the satisfaction of the board that property which ought to be listed has been omitted by the assessor, or otherwise, the board shall immediately proceed to list and place such property upon the tax roll with the true valuation thereof. Any three of said board of review are authorized to act at any meeting of said board. When the assessment rolls shall have been revised by said board, they shall return the same to the common council, who may confirm or return the same to the board for further revision, to be again reported to the common council. When the common council shall have confirmed the assessment, the city recorder shall attach thereto a certificate of such confirmation, and such roll shall then be returned to the county auditor within the time and manner as other assessment rolls. In case the common council shall neglect to take final action on such assessment rolls on or before the time required by law for the return to the county auditor, it shall be the duty of the city recorder to return them to the county auditor with a certificate of that fact, and in such case the assessment rolls as reviewed or equalized by the board of review shall have the same validity as if confirmed by said common council. Each member of said board of review shall receive Two Dollars (\$2.00) per day, for the time actually employed in serving on said board.

CHAPTER VI.  
TAXES AND FINANCES.

Fiscal Year.

Section 1. The fiscal year of the City of Austin shall end on the first day of March in each year.

PROPERTY SUBJECT TO TAXATION.

Sec. 2. All real, personal and other property within the city, except such as may be exempt by the laws of this state, shall be subject to taxation for the support of the city government, and the payment of its debts and liabilities, and all taxes shall be assessed and collected in the manner provided for by the General Laws of this state, except as hereinafter provided; provided, that nothing herein contained shall be construed as limiting the levying and collecting of special assessments as provided for in this charter.

WHEN AND HOW LEVIED.

Sec. 3. All taxes shall be levied by resolution of the common council at their first regular meeting in the month of October in each year. All taxes shall be levied in specific amounts and based upon an itemized estimate of the city expenses for the ensuing year.

ESTIMATES TO BE FURNISHED.

Sec. 4. On or before the third Monday in September in each year, the several heads of departments, officers, boards, committees of the common council, and commissions, shall furnish to the common council an estimate, in writing, of the amount of expenditure, specifying in detail the object thereof, required in their respective departments, offices, boards, committees and commissions during the year.

ESTIMATES FOR TAX LEVY.

Sec. 5. On or before the first day in September of each year, the city recorder shall prepare and transmit to the common

council an estimate of the probable expenditure of the city for the current fiscal year, giving the amount required to meet the interest and sinking fund for any outstanding funded debts, together with the amount needed for salaries, and the wants of all the departments of the municipal government in detail, and showing specifically the amount to be appropriated to each fund in the treasury. The estimate shall also show what amount of income and revenue is likely to be collected from fines, licenses, water and electric light plants and all other sources of revenue, exclusive of taxes upon property, and shall set forth the probable amount that will be required to be levied and raised by tax upon all property in the city to meet the requirements of such fiscal year.

#### FISCAL BUDGET.

Sec. 6. The common council shall, between the first day of September and the third Monday of September of each year, and by a majority vote of all members thereof, make a budget of the amount estimated to be required to pay the expenses of conducting the public business of the city for the fiscal year. The budget shall be prepared in such detail, as to the aggregate sum and the items thereof allowed to each department, office, board, committee or commission, as the council may determine, and shall be recorded upon the minutes at length.

#### SAME TO BE SUBMITTED TO MAYOR.

Sec. 7. The budget shall, when completed by the common council, be delivered to the mayor, who may, within five (5) days after such delivery to him, veto any item in said budget in whole or in part, and it shall require a vote of at least six members of the common council to overcome such veto. After the final estimate is made in accordance herewith, it shall be signed by the mayor and the city recorder, and the several sums shall then be appropriated to the fiscal year for the several purposes and departments therein named. The estimate shall thereupon be filed in the office of the city recorder.

#### LIMIT OF TAX LEVY.

Sec. 8. The common council shall annually levy taxes as

hereinbefore provided, not to exceed twelve mills on the dollar of the assessed valuation of the taxable property of the city, and in addition thereto not to exceed one and one-fourth mills upon the dollar of the taxable valuation of the city for the library fund. Provided, that none of the taxes levied or collected in any year for the payment of principal or interest on bonds, for the credit of the sinking fund or for any department, office, board, committee or commission or fund shall be diverted to any other use than that for which they were originally levied, and such taxes shall be in full for all purposes; provided, that the limit of taxation herein contained shall apply only when the property taxed is valued, as now, at approximately one-third of its true or market value, and the limit of taxation shall be reduced in proportion as the valuation of the property shall be increased; that is to say, if the taxable valuation of the property of the city be increased to the full valuation of such property, then the total tax levy, for all purposes, shall not exceed five mills on the dollar of such taxable valuation so increased.

#### TRANSMISSION TO COUNTY AUDITOR -- WHEN.

Sec. 9. The city recorder shall transmit to the county auditor of Mower County, on or before the tenth day of October in each year, a statement of all taxes levied by the common council as by its charter provided, and also all special assessments levied upon any of the lots, blocks or other portion of the city, and such taxes shall be levied and collected, and the payment thereof enforced, with and in like manner as state, county and other taxes are collected, and the payment thereof enforced, and the county treasurer shall pay such collected taxes to the city treasurer, at such times and in such manner as provided by the General Laws of this state.

#### FUNDS.

Sec. 10. The moneys and securities in the city treasury shall be divided into the following named funds, to-wit:

The general fund, into which shall be paid, and in which shall be kept, in addition to such moneys as may be raised therefor by taxation, all receipts by the city from license fees, fines and

costs, sales of city property, all moneys received from any source, except such as may be expressly destined for special funds, and from which shall be paid all the ordinary and current expenses, debts and liabilities of the city, including salaries of officers, street force, fire and health departments, street lighting, printing, stationery and other purposes not otherwise expressly provided for.

The street improvement fund, into which shall be paid such proportion of the general taxes as shall have been determined by the common council in compiling the budget, and all moneys received from special assessments for street and sidewalk improvements. No funds shall be transferred into this fund from any other fund.

The water works fund, into which shall be paid all moneys received from water rents, and from which shall be paid, to the extent thereof, all expenses and outlay connected with the water works, and for the payment of interest and principal on water works bonds. Whenever a deficiency occurs in the water works fund, money may be transferred from the general fund thereto.

The electric, gas and power fund, into which shall be paid all moneys received for commercial and street lighting and power, and from which shall be paid, to the extent thereof, all expenses and outlay incident to the operation of the electric light plant, and for the payment of interest and principal on electric light bonds. Whenever a deficiency occurs in this fund, money may be transferred from the general fund thereto, and from both this fund and the water works fund any surplus may be transferred to the general fund; both these funds shall be subject to the order of the proper officers of the water works, electric, gas and power board.

The city bond fund, into which shall be paid all funds raised by taxation or otherwise for the payment of bonds of the city, and interest thereon, and from which such bonds and interest shall be paid.

The library fund, into which shall be paid, and in which shall be kept, all moneys raised, by taxation or otherwise, for the support or benefit of the free public library of the city, and which

shall be subject to the order of the proper officers of said library for the payment of the expenses thereof.

And such other special funds as may hereafter be established by any statute of the state, or by order of the council.

**FUNDS TO BE KEPT SEPARATE.**

Sec. 11. The said different funds, mentioned in the last preceding section, shall be kept separate and distinct, and the city treasurer shall keep separate and distinct accounts of receipts therein and disbursements therefrom. Each of said funds shall be devoted only to the particular purpose or purposes for which it is created, and the city treasurer is expressly prohibited from making any disbursements from either of said funds, and from permitting the same to be to any extent depleted, for any other purpose than such particular purpose or purposes, any attempted appropriation by the common council or any order to the contrary notwithstanding. The city treasurer shall pay no order, or part of any order, drawn on either of said funds, unless the fund so drawn upon contains money or securities sufficient to cover the amount of such order or such part thereof, and he shall pay no orders unless the order recites upon its face the fund or funds to which it is chargeable; and in case he shall make payment on any order drawn on either of said funds in excess of the balance existing to the credit of such fund at the time of such payment, he shall be personally responsible therefor, and the city shall not be liable or accountable to him for the excess so paid; it shall be the duty of the city treasurer, as soon as any one of said funds is exhausted, to immediately notify the city recorder and common council of such fact.

The city treasurer shall not make or permit any transfer of money from either of said funds to another, except in the cases mentioned and provided for in this chapter.

**MONEYS NOT TO BE TRANSFERRED.**

Sec. 12. The common council shall make no appropriation from, nor shall the mayor or the city recorder sign any order upon, any one of said funds in the city treasury for any purpose for which said fund cannot legally and appropriately be used, nor shall the com-

men council authorize, or attempt to authorize, or the mayor or the city recorder sign any order for the transfer of money or its equivalent from any one of said funds to another, except as hereinbefore provided; provided, however, that when necessary to preserve the credit of the city, the common council may, by written resolution duly adopted, direct a transfer of the requisite amount from the general fund to the city bond fund, and may, in like manner, direct a return of such amount to the general fund as soon as the same can be spared from the city bond fund without unduly depleting the same; but in every order drawn to effect a transfer so authorized by resolution of the common council, by virtue of the above proviso, such resolution and the date of its adoption shall be mentioned and referred to, and the city recorder shall transmit to the city treasurer with such order a duly certified copy of such resolution; and in like manner and not otherwise, transfers may be made from the general fund to the water works and electric light fund, in case of deficiency in those funds, and from such funds to the general fund in case of a surplus in such funds.

#### APPORTIONMENT OF FUNDS.

Sec. 13. Whenever the city treasurer shall receive from the county treasurer, or from any other source, officer or person, any money or its equivalent belonging to said city, he shall apportion and credit the same to the proper fund or funds and shall, without delay, transfer to the city recorder a duplicate of his receipt therefor.

#### SEPARATE ACCOUNTS OF ESTIMATES AND APPROPRIATIONS.

Sec. 14. It shall be the duty of the city recorder to keep an accurate and separate account of the estimates, and of the appropriations, made from time to time for each department and purpose, in such form that he may be enabled thereby to inform the common council how much of the sum estimated for any department or purpose remains unpaid. And the city recorder shall keep general account of the receipts and disbursements from the general fund, the city bond fund and all other funds in the city treasury, except such as are not subject to the control of the common council, which accounts shall be in such form that comparisons may be readily made between them and



the accounts kept by the city treasurer, and the accounts of the treasurer and recorder easily and readily checked.

#### POWER OF COUNCIL TO BORROW MONEY.

Sec. 15. The common council shall have power and authority to borrow money, issue bonds and certificates of indebtedness and levy taxes for the purpose of carrying out any of the provisions of this charter, exceeding the amount authorized by other sections hereof; provided the same be authorized by a majority of the taxable inhabitants who are qualified voters, present and voting at any general or special election held for that purpose, for which notice is given as at other elections. Whenever it shall be desired to submit to a vote the question of issuing of any bond or bonds authorized by this section, the same may be done in such manner and form as the common council by a resolution may prescribe. No bond, bonds, or certificate of indebtedness shall be issued by the common council for any purpose unless so authorized, except refunding bonds, and certificates of indebtedness as otherwise provided in this charter. Provided, that neither said ~~common~~ common council nor any officer or officers of said city shall otherwise, without special authority of law, have authority to issue any bonds, or create any liability against said city in excess of the amount of revenue actually levied and applicable to the payment of such liabilities.

#### BONDS--HOW ISSUED.

Sec. 16. All bonds issued in pursuance of the provisions of this charter shall be under the corporate seal of said city, signed by the mayor and attested by ~~the~~ the city recorder, and shall, upon the face thereof, express the object for which they are given, and shall not be negotiated for less than par value.

#### NO LIMITATION-- WHEN.

Section 17. No limitation or restriction herein contained shall be construed to prohibit the levying of taxes to pay any bonds, orders, certificates of indebtedness or judgments that now exist, may be issued or may at any time be recovered against the city on account of failure to collect taxes, or other causes, and, if such

levy shall prove insufficient to pay any judgment, new taxes shall be levied until the whole of such judgment shall be paid. Any excess of the amount so levied and collected over the payment of any such judgment shall be credited to the general fund of said city.

#### ANNUAL STATEMENT OF RECEIPTS AND DISBURSEMENTS--PUBLICATION.

Sec. 16. The common council, on the first day of March annually, shall make a full and accurate statement of the receipts and disbursements of the preceding year, which statement shall contain a full and correct description of each item, from whom and on what account received, to whom paid, and on what account expended, together with an accurate statements of the finances of the city at the end of the fiscal year, including all debts and liabilities of every description and assets and other means to discharge the same; and shall within twenty (20) days thereafter cause the same to be published once in some newspaper of the city. The common council may direct the city recorder to prepare statements for publication at such other times as it may deem necessary or proper.

#### CHAPTER VII.

#### STREETS, SIDEWALKS, BRIDGES AND PUBLIC GROUNDS.

#### CONTROLLED BY THE CITY.

Section 1. The common council shall have the care, supervision and control of all public highways, streets, alleys, bridges, subways, causeways and public grounds within the limits of said city, and shall have the power to build and keep in repair bridges, elevate railroads, subways, causeways, and lay out, open, grade, alter, vacate, extend, narrow, widen or straighten any public highway, street, alley and public grounds, and to purchase, hold and convey lands in fee simple, and to take grounds for the site of public buildings and public parks, subject to the assessments of damages as hereinafter provided.

#### ESTABLISHMENT AND CHANGE OF GRADE.

Sec. 2. The common council shall have power and may cause to be established, from time to time, whenever it may deem necessary and as rapidly as the convenience of the inhabitants may require, under the direction of the city engineer or other competent surveyor, the grade of all highways, streets, sidewalks, alleys and public grounds within the said city, and it shall cause accurate profiles thereof to be made and kept in the office of the city recorder in a book, or books, of profiles for that purpose, and whenever any grade has been once established it shall not be changed unless by a vote of two-thirds of all members of the council elect. The expense of establishing all grades, shall, in the first instance, be borne by the city, but after such grade has been established and the profile thereof filed as aforesaid, the expense of finding such grade shall be paid by the owner of the property.

#### SIDEWALKS--NOW BUILT AND MAINTAINED.

Sec. 3. It is hereby made the duty of all owners of lands adjoining any highway, street, lane or alley in said city, to construct, reconstruct, and maintain in good order, and repair such sidewalks along the said street, lane, alley or highway next to and adjoining the land of such owners, respectively, as may have been heretofore constructed, or as shall hereafter be constructed or directed by the common council to be built, in such manner and of such material and width, and upon such line and grade as the common council may by ordinance or otherwise prescribe.

#### CLEANING STREETS.

Sec. 4. The common council shall have power to designate districts or portions of streets, highways and alleys of said city which are paved, for the purpose of cleaning the same, and may provide for the cleaning of such districts by contract, or otherwise, on such terms as may be deemed advisable,

#### WORK TO BE DONE BY CONTRACT.

Sec. 5. All work done, or constructions, or improvements made pursuant to the provisions or requirements of this chapter may, and when it causes an expenditure of Two Hundred Dollars (\$200) or more, shall be done by contract let to the lowest responsible

bidder, and in the latter case public notice shall be given and proposals invited for the same in such manner as the council <sup>shall</sup> direct.

#### BUILDING OF BRIDGES.

Sec. 6. All bridges in said city, whatever the form of material used in the construction thereof, shall, together with the grades and embankments connected therewith, and immediate approaches thereto, which forms a necessary part thereof, and also all such bridges or walkways crossing railway tracks, and the approaches thereto, or any portion thereof as shall not be chargeable to any railway company, or required by law to be built by the County of Mower, or any town, be built, maintained and kept in repair by the city, as a general city charge; and all other expenses connected with the opening, grading and keeping in repair streets, lanes, alleys and highways shall be paid from the general expense fund, except where other provision is made therefor.

#### POWER TO OPEN NEW STREETS AND TO ASSESS DAMAGES.

Sec. 7. Whenever the common council shall determine, by vote of two-thirds of all its members, to lay out or open any new streets, highways or alleys in said city, or to widen, straighten, alter or extend any that now exist ( or may hereafter exist-, it may for such purposes, purchase or condemn any real estate or interest therein, which is private property, and provide for the payment of the value of such property as may be taken for such improvements, and all damages done to any private property by reason of such improvements, and the expense of making such improvements, by assessing, levying and collecting the whole expense of such improvements, or any such part thereof as may be considered equitable, upon the property to be benefitted by such improvements, without regard to cash valuation; but no assessment for such improvement shall exceed the actual benefit to the property upon which the same shall be assessed, and in case the whole expense of such improvement shall exceed the benefit accruing therefrom to any specific property, the excess of such expense shall be made a general city charge, to be paid as current expenses of the city. Nothing in this section contained shall be construed as permitting the condemnation of any com-

etary ground or burial place used and occupied for such purposes, without the consent of the owners of such ground.

VACATING STREETS--EXCLUSIVE POWER OF COUNCIL.

Sec. 8. The common council of said city shall have the sole and exclusive power to vacate or discontinue public grounds, streets, alleys and highways within said city. No such vacation or discontinuance shall be granted or ordered by the common council, except upon the petition of one or more residents and free holders in said city; such petition shall set forth the facts and reasons for such vacation, accompanied by a plat of such public grounds, streets, alleys or highways proposed to be vacated, verified by the oath of the petitioner. The council shall thereupon, if they deem it expedient that the matter shall be proceeded with, order the petition to be filed of record with the city recorder, who shall give public notice by publication in the official paper of the city for four (4) successive weeks, at least once in each week, to the effect that such petition ~~shall~~ has been filed as aforesaid, stating in brief its object and that said petition will be heard and considered by the council, or a committee appointed by them, at a certain time and place specified, not less than ten (10) days after the expiration of such notice. The council or such committee as may be appointed by them for the purpose, at the time and place appointed, shall be present and shall investigate and consider the matter, and shall hear the testimony and evidence, together with the objections on the part of the parties interested. If, after having heard the testimony, evidence and objections, the council shall determine in favor of such vacation, it shall then appoint three (3) free holders of said city, no two of whom shall reside in the same ward, as commissioners to view the premises and to ascertain carefully the amount of damages and compensation to be paid to the owners of property which may be injured by such vacation, and to assess the benefits which ~~may~~ accrue to the lands and property which may be benefited by such vacation, and in proportion to the benefits to be received and without regard to its cash valuation. Two (2) of such commissioners shall constitute a quorum and be confident to perform any duty required of

such commissioners; they shall be notified of their appointment, and vacancies in their number be filled in the same manner, and they shall take the same oath and be subject to the same penalties for refusal or neglect to attend, to be collected in the same way as is provided in the case of commissioners appointed under section six (6) of chapter eight (8) of this charter. They shall give notice by two publications, in the official paper of said city, that such survey and plat is on file in the office of the city recorder for the examination of all persons interested, and that they will, on a day designated in such notice, which shall be at least ten (10) days after the first publication of such notice, meet at a place, designated in said notice, on or near the proposed improvements, and view that portion of the street proposed to be vacated, and ascertain and award therefor the damages and compensation, and assess thereon the benefits actually accruing to such property as may be benefited by reason of such vacation; and that they will then hear such evidence and proof as interested parties may offer. And such commissioners shall meet and view the premises pursuant to such notice, and may adjourn from time to time, and, after having viewed the premises may, for the hearing of evidence and preparation of their award and assessment, adjourn or go to any other convenient place in said city, and may have the aid and advise of the city engineer and of the other officers of the city. After viewing the premises and hearing evidence offered, such commissioners shall prepare and make a true and impartial appraisal and award of the compensation and damages to be paid to each person whose property may be injured by reason of such contemplated vacation, and of the amount of benefits, if any, which may ~~exist~~ accrue to property by reason thereof, and may offset the amount of benefits thus accruing against the damages which may be sustained by reason of such vacation. In each case they shall award only the excess of the compensation and damages over and above such benefits. The said commissioners shall then report to the common council an assessment list containing their appraisal of such compensation and damages, or such charges

thereon as shall not exceed the actual benefits to the property so assessed, which list shall contain a brief description of each tract or parcel of property assessed, the name or names of the owners thereof, if known, and the amount assessed, of the excess of such compensation and damages as aforesaid, which they shall return unassessed. Such report shall lie over until the next regular meeting of the council, which shall occur one week after the reception thereof, at which time, or at any other meeting, the common council may act on such report and hear any complaint touching such award or assessment, or it may refer the matter to a committee of the council to hear such complaint, and report thereon. The council may confirm such award and assessment, or either, or annul the same, or send the same back to the same commission for further consideration, and the commissioners may, in either case, again, upon giving a like notice as herein provided, meet at a time and place to be designated in such notice, which notice shall be given as provided for the first notice, meet and hear any further evidence that may be adduced by the interested persons, and may adjourn from time to time and may correct any mistakes in such award and assessment and alter and revise the same as they shall deem just, and again report the same to the common council, who may thereupon confirm or annul the same. Whenever the common council shall confirm any such award and assessment, such confirmation shall make such award and assessment final and conclusive upon all parties interested, except as hereinbefore provided, and the council shall proceed at the same or any subsequent meeting, to levy such assessment upon the several parcels of land described in the assessment list reported to the commissioners in accordance with the assessment so confirmed, and cause to be made and adopted an assessment roll of the same, which may be in such form as the council may adopt. When damages are awarded to any person or persons as provided in this section, in excess of the benefits, the council shall order the same to be paid out of the general fund of the city treasury, on warrants to be drawn in the usual form; said warrants to be issued to the person or persons entitled thereto, at the expiration

of the time for appeal, as hereinafter provided. The council, upon the confirmation of such award and assessment, may, by an order passed by a two-thirds vote of all the members elect, declare such public grounds, streets, alleys or highways vacated, which said order, after the same shall go into effect, shall be published as in the case of ordinances, and thereupon a transcript of such order, duly certified by the city recorder, shall be filed for record and duly recorded in the office of the Register of deeds of the County of Mower.

#### APPEALS FROM VACATION.

Sec. 9. Any person feeling aggrieved by any such vacation or discontinuance, or by any such assessment of damages therefor as herein provided, shall have the right at any time, within ten (10) days after the publication of the order vacating such street, alley or highway, to appeal to the district court of the county of Mower from such confirmation of such assessment or from such order declaring such vacation, where such appeal shall be tried by the court and a jury as ordinary cases, and the judgment of which court shall be final. It shall be the duty of the city recorder, as soon as any such appeal is taken, to transmit to the proper court a certified copy of the record of all proceedings in the case at the expense of the appellant. Such appeal shall be entered and brought on for trial and be governed by the same rules in all respects as appeals from justices of the peace in civil suits, except that no pleadings shall be required.

#### PLAT TO BE FILED WITH REGISTER OF DEEDS.

Sec. 10. Whenever any highway, street, alley or public ground is laid out, widened, narrowed, enlarged or any of the same are vacated or discontinued under the provisions hereof, the common council shall cause an accurate survey and plat thereof to be made and filed in the office of the register of deeds of Mower County.

#### RIGHT OF WAY OVER STREETS.

Sec. 11. The common council shall have the power and authority, by a vote of two thirds of all the members of the council, to grant the right of way over and through any of the public streets, highways, alleys and public grounds of said city for any steam or



electric railway company or other corporation upon such limitation and conditions as they may by ordinance prescribe.

#### RAILROAD COMPANIES NOT TO OBSTRUCT STREETS.

Sec. 12. It shall be unlawful for any railroad, or street railway company to pile up dirt, snow, freight or other material and leave the same piled upon any traveled portion of any street in said city, either in cleaning, repairing, or re-modeling their tracks or unloading freight.

#### NO LIABILITY FOR INSUFFICIENCY OF STREETS--WHEN.

Sec. 13. The acceptance of plats of additions, or subdivisions thereof, either within or without the limits of said city, shall not make the city liable to grade the streets therein designated, nor responsible for any insufficiency of such streets, unless the common council shall by resolution direct the same to be graded and opened for travel.

#### LIMITATION OF ACTIONS.

Sec. 14. No action shall be maintained against the City of Austin on account of any injuries received by means of any defect in the condition of any bridge, street, highway, alley, culvert, crosswalk, sidewalk, elevated way, sub-way, causeway, or thoroughfare, or by any other means, unless such action shall be commenced within one (1) year from the happening of the injury, nor unless notice shall have been given in writing, to the mayor and common council of said city, thereof within thirty (30) days of the occurrence of such injury or damage, stating the place where and time when such injury was received, and that the person so injured will claim damages from the city for such injury, and stating the amount claimed for such damages; but the notice shall not be required when the person injured shall, in consequence of such injury, be bereft of reason. Nor shall any such action be maintained for any defect in any street, lane or alley until the same shall have been graded and opened for travel; nor for any insufficiency of the ground, where sidewalks are usually constructed, where no sidewalk is built.

CHAPTER VIII.

SPECIAL ASSESSMENTS.

POWER OF COMMON COUNCIL AND MAYOR TO APPROVE.

Section 1. The city shall have the power to make local improvements by special assessments upon the property to be adjudged to have received special benefit for such improvements, or upon the property fronting thereon; the assessment and apportionment of the special benefits derived from such local improvements shall be made in accordance with the General Laws of the state, except as is otherwise provided in this chapter. No improvement to be paid for by special assessment shall be undertaken without the consent in writing, of a majority in interest and number of the owners of the property to be taxed or assessed, unless the ordinance therefor shall receive, on final passage, the affirmative vote of two-thirds of all the members of the common council, and be approved by the mayor after a public hearing of the persons interested, due notice of the time and place of which said public hearing shall have been published once in the official paper of said city at least five (5) days prior to the time designated in said notice.

PURPOSES FOR WHICH MADE.

Sec. 2 Such assessments may be made by the city for filling, grading, paving, sprinkling, curbing, walling and macadamizing any street, lane, alley or highway, and for keeping the same in repair, for laying out, opening, extending, widening, straightening or altering any street, lane, alley, highway or public ground, or procuring ground for any public building; also for the purpose of constructing, laying, relaying, erecting, cleaning and repairing sidewalks, area walls, gutters, sewers, surface drains, the establishment and extension of water works, and the abatement of any and all public nuisances within said city, and this section shall apply to all cases of appropriations of property for public use, except as in this act otherwise provided.

### IMPROVEMENTS--HOW MADE.

Sec. 3. The cost of any improvements mentioned in the foregoing section shall be defrayed, save as herein otherwise provided, by a special assessment upon the real estate benefitted thereby, to be levied in a manner hereinafter described. Provided, that all streets, crosswalks and sidewalks adjacent to public grounds, and all crosswalks and improvements on street intersections, shall be constructed at the expense of the city at large. Provided also, that the repairing of any street, alley, highway, public ground, bridge, sewer, drain, or the making of any other improvement, the cost of which is estimated not to exceed the sum of One Hundred Dollars (\$100) may be done by the common council of said city without special assessment therefor.

### CONDEMNATION OF PRIVATE PROPERTY FOR PUBLIC IMPROVEMENTS - HOW LOCATED.

Sec. 4. Whenever the common council shall consider it necessary to procure grounds for any public use, engine house, market or other public building, or for water works or electric light plant, the council shall appoint a committee of not less than three (3) of its members, who, together with the city engineer, shall make examination and propose to the council a location and description of the land suitable for such public use, and present to the council a plat of the land proposed to be taken, and in their report shall show, as far as the committee shall deem necessary, what structures and improvements thereon can be used in the appropriation, and other matter which the committee shall deem proper for the information of the council, and such committee may present for consideration of the council more than one location and plat.

### HEARING ON REPORT OF COMMITTEE.

Sec. 5. Such committee shall file its report with the city recorder, who shall give notice, by publication twice in the official paper in said city, that such report is on file in his office for the inspection of all persons interested, and that the same will be presented to the common council for action thereon at a meeting of said council at a time and place named in such notice,

which shall be the regular meeting of said council next occurring, after one week, from the second publication of said notice. At the meeting named in said notice, the city recorder shall next, after reading the minutes of the previous meeting, present such report, and the matter may be acted upon by the common council at that or any subsequent meeting. The council, under such rules as it may prescribe, may hear any person interested in the matter or refer the matter to a committee to hear such persons and make report.

#### COMMISSIONERS TO AWARD DAMAGES.

Sec. 6. Whenever the common council shall determine upon the lands and other property to be appropriated and taken, it shall designate the same as nearly as may be convenient, and shall cause such plat or survey as may be necessary to show or explain the same, to be made and filed therewith with the city recorder; and the council shall then or afterwards appoint three (3) commissioners who shall be freeholders of said city, and no two of whom shall reside in the same ward, to view the lands or other premises to be taken and appropriated, and ascertain and award the amount of damages or compensation to be paid to the owners of the property so to be taken and appropriated.

Two of such commissioners shall be competent to do any act required of such commissioners. They shall be notified by the city recorder, by notice to be served upon them severally, either personally or through the mail, to attend at his office on or before a day fixed by him, not less than two days after the service or mailing of such notices, to qualify and enter upon their duties; and if any commissioner shall, without good cause, refuse or neglect to attend as aforesaid, he shall forfeit and pay ~~xxx~~ to the city of Austin the sum of Fifty Dollars (\$50) to be recovered to the use of said city in a civil action; and in case a quorum of such commissioners shall not so attend at the time and place designated in said notice the mayor or acting mayor of said city may, in writing, appoint one or more commissioners in the stead of any such absentees.

The commissioners shall be sworn by the clerk or any officer authorized to administer oaths, to discharge their duties as such commissioners in the matter with fidelity and impartiality and make due returns of their action to the common council.

They shall give notice, by two publications in the official city paper, that they will, on a day designated in such notice, which shall be at least ten (10) days after the first publication of such notice, meet at a place designated in such notice, on or near the premises proposed to be taken and appropriated, and view the property proposed to be taken, and ascertain and award therefor compensation and damages, and that they will then and there hear such allegations and proofs as interested parties may offer. Such commissioners shall meet and view the premises on the day and at the time stated in such notice, and may adjourn from time to time, and after having viewed the premises may, for the hearing of evidence and preparation of their award, adjourn or go to any other convenient place in said city, and such commissioners shall make a true and impartial appraisal and award of the compensation and damages to be paid to each person whose property is to be taken or appropriated, and report the same to the common council, and such award shall lie over until the next regular meeting of the council, which shall occur at least one week after the reception of such award, at which, or at any subsequent time, the council may act on such award, and hear any objection made thereto, or may refer the matter to a committee to hear such objection, and report thereon. The common council may confirm such award or annul the same, or send the same back to the same or a new board of commissioners for further consideration, and such commissioners may, in such case, again, on giving notice as before, meet at the time and place to be designated in said notice, which shall be at least two (2) days after the final publication thereof, and hear any further evidence that may be adduced by interested persons, and may adjourn from time to time, and correct any mistakes in such award, and revise and alter the same as they may deem just, and again report such award to the common council, who may confirm the same. When any such award

shall be confirmed by the council the same shall be final and conclusive upon all parties interested, except as hereinafter provided.

#### PAYMENT OF AWARDS.

Sec. 7. Whenever an award, or compensation and damages, shall be confirmed by the council and not appealed from, and whenever the same, when appealed from, shall not be set aside by the court, the same shall constitute a lawful and sufficient condemnation and appropriation to public use of the land, property and rights therein, for which condemnation or damages are awarded, and the common council shall thereupon cause to be paid from the permanent improvement fund of said city to the owners of such property the amount awarded to each severally. In case such payment is not made within one year after the confirmation of <sup>the</sup> award or determination of the appeal thereupon, the proceedings shall be deemed to be abandoned.

Before payment of such award the owner of such property or the claimant of the award, shall furnish an abstract of title showing himself entitled to all the compensation and damages claimed. In case of neglect to furnish such abstract, or if there be any doubt as to who is entitled to such compensation or damage, or any part of the same, the amount so awarded shall be by the council appropriated and set apart in the city treasury for whoever shall be clear right to receive the same. The council may, in its discretion, require of such claimant a bond with good and sufficient sureties conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded, and all loss, cost and expense on account of such claims.

Upon the payment of such award or appropriation, or the setting apart of the money in the city treasury to pay the same as aforesaid, the city shall become vested with the title to the property taken and condemned, absolutely for all purposes for which the city may ever have occasion to use the same, and may forthwith enter

upon and use the property.

This section shall apply as well to all cases of appropriation of private property for public use provided for in this chapter.

#### LAYING OUT NEW STREETS-- COMMISSIONERS AND THEIR DUTIES.

Sec. 8. Whenever the common council shall vote to lay out or open any new street or alley, or to straighten, widen or extend any that now or may hereafter exist, which shall make it necessary to take, injure or interfere with private property, it shall determine and designate in a general way, as nearly as may be convenient, the character and extent of the proposed improvement, and thereupon it shall be the duty of the city engineer to make and present to the council a plat and survey of such proposed improvement, showing the character, course and extent of the same, and the property necessary to be taken or interfered with thereby, with the name of the owner of each parcel of such property as far as the engineer can readily ascertain the same, and such statement as may, in the opinion of the engineer, be proper to explain such plat and survey, and the character and extent of the proposed improvement, and his estimate of the cost of such improvement. And the council may cause such plat and survey to be modified, amended or changed as it may deem proper, and shall estimate and fix upon the cost of making such improvements.

When such plat and survey shall be finally adopted by the council, it shall be filed with the city recorder, and it shall be held to show correctly the character and extent of the improvement actually agreed upon and ordered by the council. Said plat shall also show the amount of land taken from each owner, so far as the owners may be known, and the lands contiguous to or affected by such improvement.

The common council shall then or afterwards appoint three (3) freeholders of said city, no two of whom shall reside in the same ward, as commissioners to view the premises and to ascertain and award the amount of damages and compensation to be paid to the which is to be taken or injured by such improvement, and to assess owners of the property the amount of such damages and compensation,

and the expense of the improvement upon the lands and the property to be benefitted by such improvement, and in proportion to the benefits to be received by each parcel and without regard to a cash valuation.

Two of such commissioners shall constitute a quorum and be competent to perform any duty required of such commissioners; and they shall be notified of their appointment, and vacancies in their number be filled in the same manner, and they shall take the same oath and be subject to the same penalty for refusal or neglect to attend, to be collected in the same way as it provided in the case of commissioners appointed under section six (6) of this chapter. They shall give notice, by two publications in the official paper of said city, that such survey and plat is on file in the office of the city recorder for the examination of all persons interested, and that they will, on a day designated in such notice, which shall be at least ten (10) days after the first publication of such notice, meet at a place designated in such notice on or near the proposed improvement, and view the property proposed to be taken or interfered with for the purpose of such improvement, and ascertain and award therefor compensation and damages, and view the premises to be benefitted by such improvement, and assess thereon, in proportion to the benefits, the amount necessary to pay such compensation and damages and the cost of making the improvement, and that they will then and there hear such allegations and proofs as interested persons may offer. And such commissioners shall meet and view the premises pursuant to such notice, and may adjourn from time to time and, after having viewed the premises may, for the hearing of evidence and the preparation of their award and assessment, adjourn or go to any other convenient place in said city, and may have the aid and advice of the city engineer, and of any other officers of the city. After viewing the premises and hearing the evidence offered, such commissioners shall prepare and make a true and impartial appraisal and award of the compensation and damages to be paid to each person whose property is to be taken or



injured by the making of such improvement; but if the remainder of the same property, a part of which <sup>only</sup> is to be taken or damaged by such improvement, shall be benefitted by such improvement, then the commissioners, in considering and awarding compensation and damages, shall also consider, estimate and offset the benefits which will accrue to the same owner in respect to the remainder of the same property, and award him only the excess of the compensation or damage ~~s~~ over and above such benefits, if any there be.

The said commissioners shall then assess the amount of such compensation and damages so awarded, together with the expense and cost of making the improvements upon the land and property benefited by such improvements and in proportion to such benefits, but in no case shall the amount of such assessment exceed the actual benefit to the lot or parcel of land so assessed, deducting therefrom any damages or injuries to the same parcel which are less than such benefits, and assessing only the excess, and prepare and report to the common council their appraisal and award. And if, in the judgment of said commissioners, the whole amount of such compensation and damages, together with the cost of making such improvement, shall exceed the actual benefit to the specific property subject to such assessment, they shall so indicate in their report, stating the amount of such excess. Said commissioners shall also report to the common council an assessment list containing their assessment of such compensation, damages and cost of such improvements, or so much thereof as shall not exceed the actual benefit to the property so assessed, which receipt shall contain a brief description of each tract or parcel of property assessed, the name or names of the owners thereof, if known, and the amount assessed as such compensation, damages and cost of such improvement aforesaid, which they shall return as unassessed.

Such report shall lie over until the next regular meeting of the council, which shall occur at least one week after the reception thereof, at which time or at which meeting the council may act upon such report and hear any complaint or objections touching such award or assessment, or it may refer the matter to a committee

of the council to hear such objections and complaints and report thereon. The council may confirm such award and assessment, or either, or annul the same, or send the same back to the same commission for further consideration; and the commissioners may, in such case, again, upon giving notice as before, meet at the time and place to be designated in said notice, which time shall be at least two (2) weeks after the publication thereof, and hear any further evidence that may be adduced by interested persons, and may adjourn from time to time and may correct any mistakes in such award and assessment and alter and revise the same as they shall deem just, and again report the same to the council, who may thereupon confirm or annul the same. Whenever the common council shall confirm any such award and assessment such confirmation shall make such award and assessment final and conclusive upon all parties interested, except as hereinafter provided, and the common council shall proceed, at the same or any subsequent meeting, to levy such assessment upon the several parcels of land described in the assessment list reported by the commissioners, in accordance with the assessment so confirmed, and cause to be made and adopted an assessment roll of the same, which may be in the following form or any other form the council may adopt:

The common council of the City of Austin does hereby assess and levy upon and against the several lots and parcels of land below described the respective sums of money set against each lot or parcel. This assessment is made to defray the compensation and damages awarded for the taking and injury to private property, and estimated cost of improvement in and about the \_\_\_\_\_ as shown by the plat and survey of the same on file in the office of the city recorder of said City. This levy is made conformable to the report and assessment of commissioners duly appointed to make such assessments, and in proportion to benefits from such improvements to accrue to the parcels, and not exceeding the benefits to the parcels so assessed.

Name of Owner if known	Description of land	Lot	Amount	
			Block	Dollars:Cents
:	:	:	:	:
:	:	:	:	:
:	:	:	:	:

Passed by a vote of the "yeas" and "nays" of the common

council this \_\_\_ day of \_\_\_\_\_ A. D. 190\_\_ . Yess \_\_\_ Nays \_\_\_

Approved .

\_\_\_\_\_  
Mayor

Attest :

\_\_\_\_\_  
City Recorder .

#### APPEALS .

Sec. 9. Any person whose property is proposed to be taken, interfered with or assessed for benefits under any of the provisions of this chapter, and who deems that there is any irregularity in the proceedings of the council or action of the commissioners, by reason of which the award of the commissioners ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of or interference with his property, or with the amount of the assessment for benefits to any property affected by such proceeding, may, at any time before such award or assessment shall be confirmed by the common council, file with the city recorder, in writing, his objection to such confirmation, setting forth therein specifically the particular irregularities complained of, and containing a description of the property affected by such proceedings, and if, notwithstanding such objections, the common council shall confirm the award and assessment, such person so objecting, shall have the right to appeal from such order of such confirmation to the district court of the County of Mower at any time within ten (10) days after the making of such order. Such appeal shall be made by serving a written notice thereof upon the city recorder of said city, which shall specify the property of the appellant affected by such award, and refer to the objection filed as aforesaid, and by also delivering to the said city recorder a bond to the City of Austin, executed by the appellant or some one in his behalf, with two or more sureties who shall justify in the penal sum of Fifty Dollars (\$50.00), conditioned to pay all costs that may be awarded against the appellant. Thereupon the city recorder shall make out and transmit to the Clerk of the district court of said county, a copy of the award of said commissioners as confirmed by the council,

and of the order of the council confirming the same, and of the objections filed by the appellant as aforesaid, all certified by said city recorder to be true copies, within ten (10) days after the taking of such appeal. But if more than one appeal be taken from any award it shall not be necessary that the recorder, in appeals subsequent to the first, shall certify up anything except a certified copy of the appellant's objection. There shall be no pleading upon such appeal, but the court shall determine in the first instance whether there was, in the proceedings, any such irregularity or omission of duty, prejudicial to the appellant and specified in said written objections, that as to him the award or assessment of the commissioners ought not to stand, and whether said commissioners had jurisdiction to take action in the premises. The case may be brought on for hearing on eight (8) days notice at any general or special term of the court, and shall have precedence of other civil cases and the judgment of the court shall be either to confirm or annul the proceedings only as the same affects the property of the appellant proposed to be taken, damaged or assessed for benefits, and described in said written objections.

In case the amount of damages awarded or assessments made for benefits is complained of by any such appellant, the court shall, if the proceedings shall be confirmed in other respects, upon such confirmation, order the cause to be docketed by the clerk, in the name of the person taking such appeal, against the City of Austin, as an appeal from assessments. The cause shall then be at issue in such court and shall have the preference in order of trial over all other civil cases pending in said court. Such appeal shall be tried in the district court as are all other civil causes, except no pleading shall be required, and as to the owner the only question to be passed upon shall be whether the valuation of the property specified in the objections is a fair valuation and the assessment of damages, so far as it affects said property, is fair and impartial. The judgment of said court shall be such as to confirm or annul said assessment, or to modify such assessment to conform to the verdict or finding of the jury, so far as the same

affects the property appropriated of said appellant, from which judgment no appeal or writ of error shall lie, and if the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge costs against the appellant in a sum not exceeding Twenty-five Dollars (\$25.00); otherwise no costs shall be recovered by either party.

#### COUNCIL MAY ABANDON PROCEEDINGS.

Sec. 10. The common council shall have the right at any time during the pendency of any proceedings for the improvements authorized in this chapter, or at any time within thirty (30) days after the final order of the court, on any appeal from such proceedings, to abandon all such proceedings whenever it shall deem it for the interest of the city so to do.

#### ASSESSMENTS FOR PAVEMENTS AND SEWERS.

Sec. 11. Whenever the common council shall determine to cause to be paved, repaved or macadamized any street, lane or alley in said city, or any gutter or gutters along any such street, lane or alley, or to lay, relay or extend any sewer pipes in or through such streets, lanes or alleys or any portion thereof, it shall determine and designate in a general way, as nearly as may be convenient, the character and extent of the improvements and the material to be used therein, and thereupon it shall be the duty of the city engineer to make and present to the common council an estimate of the cost of such improvements, stating therein the proportion of such estimated cost which shall be required to construct such improvements in front of abutting lands, which cost shall not in case of sewer exceed the cost of eight-inch street mains in front of any such abutting lands, and the proportion thereof required to construct the same across streets, lanes and alleys and in front of lands not subject to assessment, and also the excess of cost in case of sewers over and above the cost of such ordinary sewers, also a list of the several lots and parcels of land fronting upon such proposed improvements, with the number of feet front of each extending along such improvements, together with the names of the owners of the several parcels as nearly as the city engineer can determine; a record of the reception of such report shall be made in the official proceedings of the common

council, and there shall be published in the official city paper a brief statement of the proposed improvements over the signature of the city recorder, which shall be held to be sufficient notice to all persons concerned; and such report shall lie over without any assessment being made until the next regular meeting of the council, which shall not occur for at least one (1) week after the reception of such report and publishing of such notice; but the common council, in its discretion, may direct the city engineer to advertise for and receive, in the meantime, bids for doing work and furnishing the material required to construct the complete such improvement, and report the same to the common council at such meeting as it may designate or to which such report is laid over; the common council may consider such estimate and list and any further communications from the city engineer respecting the matter, and under such rules as it may make may hear all persons interested in the matter of such improvements, who may desire to be heard, and the council may adhere to its resolutions of making such improvements, or may modify the character of the same or abandon it. If the common council shall determine to go on with such improvements, whether modified or not, it may, either before or after having contracted for the construction of such improvements, estimate and fix upon the cost thereof, and the proportion or amount of such cost which is required to construct such improvements, not exceeding, in case of sewer, the cost of eight-inch sewer when larger sewers are constructed, opposite to or in front of the lots and parcels of land described in the list so made by said engineer, and may assess and levy such proportion, or amount of such cost, upon the same lots and parcels of land upon the ~~xxx~~ basis of an equal sum per front foot of each lot or parcel, measuring along the line of such improvements, and the common council shall cause to be made, and shall adopt, an assessment roll thereof, which may be in the following form, or any other form which the common council may deem proper:

The common council of the City of Austin does hereby assess and levy upon and against the several lots and parcels of land below described, the respective sums of money set opposite each lot or

parcel. The assessment is made to defray the expense of \_\_\_\_\_ in the city of Austin along \_\_\_\_\_, and said lots and parcels of land are assessed upon the basis of an equal sum per front foot along the line of such improvement:

Name of Owner if Known	Description of Land	Lot	Block	Amount
				: Dollars
				: Cents
				:

Passed at a regular meeting of the common council of the city by a vote of the "yeas" and "nays" this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_ Yeas \_\_\_\_\_ Nays \_\_\_\_\_.

APPROVED

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Recorder.

ASSESSMENT OF CORNER LOTS.

Sec. 12. The common council may, in its discretion, in cases where any lots, fronting on two streets, have been previously assessed, and the assessment paid, for laying and watermain or sewer pipe upon a different street from the one through which such proposed improvement is to be extended, remit from the assessment of such corner lot such portion of such second assessment, not exceeding the amount of assessment for a frontage of sixty-six feet on such lot, as it may be deemed just under all the circumstances of the case, but the discretion of the common council in such matter shall be final, and the refusal or failure of said council to make such remission shall not be a ground for setting aside such assessment in any court or proceeding.

ASSESSMENT FOR BUILDING AND REPAIRING SIDEWALKS.

Sec. 13. Whenever the common council shall, by resolution, order the construction, laying, relaying or repairing of any sidewalk, and shall by ordinance or otherwise have prescribed the manner of doing and constructing said work, they shall cause notice to be given to the several owners of the lots, blocks and parcels of land along which said sidewalk is to be constructed, laid, relaid or repaired by publishing the resolution once in the

official paper of said city, such resolution stating the character of the work and the manner in which it is to be done and the time within which the same shall be completed, which statement may be made in said resolution, or by reference to any ordinance or resolution of said council then or theretofore published; said resolution shall state upon what street, lane or alley and in front of and adjacent to what lots, tracts or parcels of land said work is to be done, and the name of the owner or occupant of such land need not be given or stated therein. If any owner or owners of the lots, pieces or parcels of land, along and in front of which said sidewalk is to be constructed, laid, relaid or repaired, shall refuse, or for a period of two weeks following the time within which said work is ordered to be completed and following the publication of said resolution, neglect to construct, relay or repair the same according to the order of the common council, the city engineer shall report to the common council a description of each lot or parcel of land along which said sidewalk has not been constructed, laid, relaid or repaired, and his estimate of the cost of doing the said work along each of such lots and parcels; such estimates shall not be binding upon the common council, but advisory merely, and the council may obtain any other information as to such cost, and the council shall fix upon and designate the cost of constructing, relaying or repairing such sidewalk in front of each lot or parcel of land, and thereupon the common council shall assess and levy against such lot and parcel of land so reported (after correcting mistakes, if any) along which such sidewalk has not been constructed, laid, relaid or repaired, such sum as will cover the cost of constructing, laying, relaying or repairing such sidewalk along and fronting upon such lots and parcels of land respectively, and shall cause to be made an assessment roll thereof. Assessments for constructing sidewalks may be in the following form, or in any other form which the council may adopt:

The common council of the city of Austin does hereby assess and levy upon and against the several lots and parcels of land below described, the respective sums of money set opposite each lot or parcel. This assessment is made to defray the cost of \_\_\_\_\_



a sidewalk along the \_\_\_\_\_ side of \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_  
 in accordance with the resolution of the common council passed  
 and approved on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_, and duly  
 published in the official paper of said city on the \_\_\_\_\_ day of \_\_\_\_\_  
 A. D. \_\_\_\_\_. The amount assessed against or levied upon each lot or  
 parcel being the amount necessary to build such sidewalk along and  
 fronting upon such lot or parcel of land.

Name of Owner if Known	Description of Land	Lot	Block	Amount	
				Dollars	Cents
:	:	:	:	:	:
:	:	:	:	:	:
:	:	:	:	:	:

Passed by a vote of the "yeas" and "nays" at a regular meet-  
 ing of the common council held on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_.  
 Yeas \_\_\_\_\_ Nays \_\_\_\_\_.

Approved. \_\_\_\_\_ Mayor.  
 Attest: \_\_\_\_\_ City Recorder.

ASSESSMENTS FOR REPAIRING SIDEWALKS.

Sec. 14. Assessments for repairing or relaying sidewalks  
 or any other form  
 may be in the following form which the common council may adopt:

The common council of the City of Austin does hereby  
 assess and levy upon and against the several lots and parcels of  
 land below described, the respective sums of money set opposite each  
 lot or parcel. This assessment is made to defray the cost of  
 repairing or relaying sidewalks fronting each lot or parcel, which  
 work the respective owners have neglected to do, and which has  
 been made by the street commissioner, or under his direction, since  
 the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_. The amount assessed against  
 and levied upon each of said lots and parcels of land is the actual  
 cost of repairing sidewalks abutting upon such lot or parcel, and so  
 repaired by the street commissioner.

Name of Owner if Known	Description of Land	Lot	Block	Amount	
				Dollars	Cts.

Passed by a vote of the "yeas" and "nays" at a regular

meeting of the council held on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_

Year \_\_\_\_\_ Month \_\_\_\_\_.

Approved.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Recorder.

#### STREET SPRINKLING.

Sec. 15. Whenever the common council is petitioned by a majority of the owners and occupants along any street, or any portion thereof, not less than one block, to sprinkle such streets or parts of streets the council may, by ordinance or resolution, determine what territory in said city shall be sprinkled, and the time and manner in which the same shall be done. If, however, the council shall deem it impracticable to designate the exact length of time during which such sprinkling shall be done in any season, such council may reserve the right to designate the beginning and ending of such sprinkling season, and shall have the power to order the beginning of said work on three days' notice, and shall likewise have power to order said work to cease for the season.

Prior to the passage of any resolution for the letting of a contract for sprinkling, the expense of any part of which is to be assessed upon abutting lots, pieces or parcels of land, the common council shall designate a time not less than twenty (20) days' distant, and a place at which it will meet and take action in relation to the doing of the proposed work, and shall direct that notice be given, by the city recorder, of the time and place of such meeting, by publishing such notice once in each week for two weeks in the official city paper, and that in the meantime sealed proposals for the doing of such work will be received by such recorder. Such notice shall state the streets or parts of streets proposed to be sprinkled and the length of time for which it is proposed to sprinkle them; at such time and place of hearing opportunity shall be given to all persons interested, to be heard for or against such proposed work, and in the presence of the council the recorder shall open and read all sealed proposals which have been received for the doing of such work, and the furnishing of labor, appliances

and water therefor, and the common council shall then act upon said matter, and may, by a majority vote of all of its members, authorize and order the doing of the proposed work ~~and any part~~ or any part thereof, and may accept the bid of the lowest responsible bidder for the doing of such work and direct that a written contract be made with him or them therefor, or may reject any or all proposed offers and re-advertise for bids for the doing of such work, or may, in its discretion, postpone the consideration and decision of the whole matter or any part thereof to a future time. Provided, that nothing herein contained shall prevent the common council from furnishing the water and doing the sprinkling by and through its own water plant and employes, whenever in the judgment of the council it will be cheaper and to the better interest of the people affected thereby so to do, but if it is proposed by the common council to do such sprinkling through its own employes and to furnish the water therefor, the intention of the council so to do shall be stated in the notice provided to be given to the persons affected by such sprinkling, and they shall have an opportunity to be heard in relation thereto.

The expense of such sprinkling shall be chargeable to and assessed upon and against the lots, pieces and parcels of land abutting upon the streets, lanes, alleys, avenues and public grounds in which such sprinkling is done; such assessment to be apportioned among the several lots or parcels of land as hereinafter provided. Provided, that the common council may, by resolution or otherwise, determine what proportion of the cost of such sprinkling shall be borne by the city, and in such case the proportion so designated shall not be included in the assessment and shall be paid out of the general fund of the city.

Upon the approach of the completion of the seasons sprinkling, the common council, or a committee appointed by it for that purpose, shall determine what part of the cost of such sprinkling shall be borne by each, lot, piece or parcel of land and make an assessment thereof in writing, giving a description of each lot, piece or parcel so assessed and the amount so assessed against each lot, or tract, and shall present the same to said council at its next regular meeting,

which shall not be later than the first regular meeting of said council in September of each year, and in making such assessment the council shall take into consideration the benefits accruing to each piece or parcel of land so assessed.

Upon receipt of said assessment the council shall direct the same to be placed on file, with the city recorder, and notice may be given to all persons interested, either by mail or by one publication in the official city paper, that such assessment list is on file and ~~that~~ all persons interested in the same may inspect the roll, and may make payment of the amount assessed against their respective pieces or parcels <sup>of property</sup> at any time prior to the third Friday in September of each year.

On the third Friday in September of each year the common council shall meet at its accustomed place and consider said assessment, and listen to any objections that may be made thereto, and correct such errors, if any, as may be pointed out to the common council, and immediately proceed to confirm the assessment so corrected as to all lots, pieces or parcels of land which may not be paid, and said assessments so confirmed and established shall be final, conclusive and binding upon all persons interested, and no appeal shall lie in any case from such confirmation.

All assessments levied hereunder shall be a specific lien upon the real estate upon which the same are imposed and shall be taxed as any other special improvement, and the assessment for sprinkling may be in the following form, or in any other form which the common council may adopt:

The common council of the City of Austin does hereby assess and levy upon and against the several lots, blocks and parcels of land below described, and the buildings and improvements thereon, the respective sums of money set opposite each lot, block and parcel. This assessment is levied to defray the cost and expense of sprinkling the streets fronting the said lots and parcels of land from \_\_\_\_\_ A D 19\_\_ to \_\_\_\_\_ A D 19\_\_, according to a resolution of the common council passed and approved on the \_\_\_\_\_

day of        19   , and said assessment is proportioned <sup>in</sup> accordance to the benefits derived from the various pieces and parcels of property, buildings and improvements thereon fronting on the portion of the street so sprinkled.

Name of Owner if Known	Description of Land	Lot	Block	Amount	
				Dollars	Cents

Passed by a vote of the "yeas" and "nays" at a regular meeting of the common council held on the        day of        A D 19   .  
 Yeas        Nays         
 Approved.

-----  
 Mayor  
 -----  
 Attest:  
 -----  
 City Recorder  
 -----

In all cases where there shall be irregularity in the proceedings or in the assessment whereby any court shall hereafter cause the assessment to be declared void or set aside, the common council shall, without unnecessary delay, make a re-assessment to defray the expense of such sprinkling, which reassessment shall be made in conformity with the requirements hereof, and enforced and collected in the same manner that other assessments are enforced and collected under this charter.

PROCEEDINGS WHEN AWARDS ARE SET ASIDE.

Sec. 16. Whenever any portion of any award made by commissioners and confirmed by the common council under the provisions of sections six (6) and eight (8) of this chapter, shall be annulled by the court upon appeal as hereinbefore provided, the common council may again appoint commissioners to view the property which was affected by such appeal, and appraise and amend the compensation and damages to be paid for the taking or appropriation of the same, and the like proceedings shall be had so far as applicable, as is described in section thirteen (13), except that such commissioners shall make no new assessments of costs and expenses. They shall, however, in arriving at the compensation and damages to be awarded, take into consideration and offset any benefits which, in their judg-

ment, the contemplated improvements will be to the remainder of the property, part of which may be taken or appropriated, and report their award to the common council, whereupon the same proceedings may be had, as far as applicable, as upon an original award, and if such award shall again, upon appeal, be annulled by the court, still another commission may be appointed and award made in the same manner, and so on until a valid award shall be made, but no new assessment for benefits shall be made merely by reason of any change in the amount of the sum awarded for compensation and damages, and any sum which may be lacking to pay the award shall be paid from the general fund.

#### RE-ASSESSMENT.

Sec. 17. If any special assessment heretofore made by ~~the~~ common council, or under its direction, to defray the expense of any local improvement, has been or shall be, either in whole or in part, annulled, vacated or set aside by the judgment of any court, or if the common council shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected, or if the common council shall have omitted to make such assessment at or before the making of such improvement when it might or should have been done, the common council shall anew, or hereafter compute and determine upon the cost of making such improvement in a gross amount, upon such data as it shall deem sufficient, not exceeding in the case of sewers the cost of an eight-inch sewer pipe; and the common council may then proceed to cause a new assessment of the cost of such local improvements to be made, either on the property fronting such improvements or on the property benefitted by such improvements according to the character of such improvements, following as nearly as may be the provisions of the city charter in force at the time of making such improvements in determining the property to be assessed, and the form and manner of proceeding subsequent to the determination of the cost of the improvement, and in case such second assessment shall be annulled, the common council may proceed to make other assessments until a valid assessment shall be made, but nothing in this section shall authorize any new assessments in cases where such courts shall deter-

mine that the lots and lands are not subject thereto.

After such new assessment roll shall have been completed the city recorder shall note thereon, against any piece or parcel of land upon which a former assessment for the same improvement has been made the words, "paid on former assessment", which shall cancel such assessment on that parcel.

#### HOW ASSESSMENT ROLLS SHALL BE RECORDED AND RETURNED.

Sec. 18 The city recorder shall record all assessment rolls of special assessments in books, <sup>to be</sup> kept by him for that purpose, and shall, on or before the first day of October of every year, deliver to the County auditor of the County of Mower, all such assessment rolls, and the said county auditor shall extend the assessment in proper columns, <sup>against the</sup> ~~ix~~ property assessed, and such assessment shall be collected and the payment thereof enforced with and in like manner as state, county and other taxes are collected and the payment thereof enforced; such assessment when collected shall be paid over by the county treasurer to the treasurer of the city, together with all costs, penalties and interest collected thereon, at the time of making payment of city taxes to the city treasurer.

#### NO INFORMALITIES TO AFFECT THE VALIDITY OF ASSESSMENTS.

Sec. 19. No omission, informality or irregularity in proceedings in, or preliminary to, the making of any special assessment shall affect the validity of the same, where the assessment roll has been adopted by the common council. And the assessment roll, and the record thereof kept by the city recorder shall be competent and sufficient evidence that the assessment was duly levied and the assessment roll duly made and adopted, and that all other proceedings antecedent to the adoption of such assessment roll were duly had, taken and performed, as required by this chapter. And no failure of the city recorder to record the assessment roll, or deliver the same to the county auditor on or before the time prescribed for such delivery, or to do any other act or deed by him required, shall in any way invalidate any assessment; and no variance from the directions herein contained as to the form or manner of any proceedings, shall be held material, unless it be clearly shown that

the party objecting was materially injured thereby.

#### EXCESS OR DEFICIENCY OF ASSESSMENT.

Sec. 20. No special assessment shall be questioned or held to be invalid because the amount of such special assessment shall happen to be either more or less than the money actually required for the improvement for which such assessment shall be made. If the amount raised by such special assessment shall happen to be less than the amount required for such improvement, the balance shall be paid from the improvement fund except, in case of water-mains and sewers, where such balance shall be paid from the permanent improvement fund; and if there shall happen to be any surplus from any such special assessment, the same shall be carried to the credit of the same fund from which a deficiency would have been supplied, or be otherwise disposed of as the council may deem just towards the persons upon whom such special assessment has been levied; and upon any assessment roll or other papers made or used in any of the proceedings, it shall not be necessary that the words <sup>shall</sup> be written out in full, but abbreviations, letters, figures and recognized characters may be used whenever their use shall be convenient, and no error or mistake as to the name of the owner of the property shall be regarded as material in the proceedings under this act.

#### ASSESSMENTS-- WHEN DELAY MAY BE MADE IN MAKING.

Sec. 21. The common council may, in its discretion, in any case, instead of causing the special assessment to be made entirely upon estimates as hereinbefore provided for, wait until the letting of the contract for such improvement, or until such improvement has been made, before determining and fixing upon the cost and expense of such improvement, and appointing commissioners to make assessment.

#### CONTRACT.

Sec. 22. Whenever the common council shall have determined upon making any proposed improvement involving the doing of any work or the furnishing of any material, according to the provisions of this chapter, the said council shall direct the city re-



order to advertise for proposals for doing such work or furnishing such materials; a plan and profile of the work to be done, accompanied with the specifications for doing the same, in all cases where such plans, specifications and profiles may be necessary for perfect description of the work to be done, being first placed on file in the office of the city recorder, which plans, specifications and profiles shall at all times be open for public inspection. The common council may, for the sake of convenience or equity in making assessments as herein provided, divide the proposed work and improvements into several divisions or sections and indicate the same in their determination in relation to such improvement; and in such case the plans, specifications and profiles shall correspond, as nearly as may be, with, and indicate such divisions <sup>or</sup> ~~and~~ sections. Bids for doing any work or making any improvements as provided herein, shall name a gross sum for the whole work or improvement, or some specified division or section thereof, and the contract, when awarded, shall be for the doing of the work or making the improvement, or some specified section <sup>portion</sup> or division thereof, at a gross sum for the whole or for such specified part thereof. Upon being directed to advertise for proposals the city recorder shall cause an advertisement to be published for at least two (2) weeks in the official paper of said city, stating briefly, in general terms, the character of the work to be done, stating where the plans, specifications and profiles may be seen and examined, and within what time bids for such work will be received, and such other information as the council shall have imposed, reserving the right to reject any or all bids. Such bids shall be directed to the common council of the City of Austin and shall be accompanied by a certified check, or a deposit of cash to said city, in a sum equal to five (5%) per cent of the amount of the bid, as liquidated damages, to be retained by the city if the successful bidder shall fail to enter into a contract, or furnish other required papers or security designated by the council, and which shall be forfeited to said city immediately upon the failure of the successful bidder to execute such contract upon presentation. Said bids shall be opened by the common council at their

next meeting after the time for receiving bids shall have expired, or at any <sup>other</sup> appointed regular or special meeting thereafter and thereafter. Upon the opening of such bids, or at any time thereafter, the council shall award the doing of the work or any part thereof to the lowest reliable and responsible bidder or bidders, who shall have complied with the above requirements, unless the council shall deem all of said bids unreasonably high, and by resolution reject all bids in connection with such improvement.

Upon the acceptance of any bid by the common council, the successful bidder shall be immediately notified thereof by the city recorder, and there shall be prepared by, or under the direction of the city attorney, a contract to be made and executed by the successful bidder, and the mayor and recorder on behalf of said city, reciting the terms and conditions for the performance of such work and improvement, and the successful contractor shall also be required to give a bond, conditioned for the faithful performance of his contract and such other conditions as the common council may require, and upon the execution of such contract by the contractor, and after authority duly granted by resolution duly passed and approved by the council, the mayor and city recorder shall execute said contract on behalf of said city. In case any person or persons with whom such contract has been made shall fail or neglect to complete the same within the time and in the manner prescribed, the common council may, at any time after such default, in its discretion and at its election, either cause action to be brought for the recovery of the amount thereof on account of such default, or declare such contract forfeited, and in the latter case the common council may then complete the work by contract or otherwise, at the cost and expense of the said contractor, and the cost of completing the same shall be considered as forfeited and liquidated damages, between such contractor and the city, for the breach of such contract, and shall be deducted and withheld from the contract price, which the contractor was to have received for the doing of the whole of such work.

**COST OF IMPROVEMENT MAY BE ADVANCED.**

Sec. 23. The common council may, at the time of ordering

any improvement, for which any assessment may be made, or at any time thereafter, determine whether to proceed at once with such improvement or wait the collection of such assessment, and no appeal or appeals that may be taken as provided in this chapter shall alter or interfere with such determination, nor shall any such appeal or appeals limit or alter in any way the right of the common council so to determine.

**MONEY COLLECTED TO BE KEPT SEPARATE.**

Sec. 24. In case any assessment for improvement is collected before the making of such improvement, the money so collected shall be credited to the improvement fund and kept separate from other funds of the city and not devoted to any other purpose than such improvement, and as soon as a majority of the assessments for such improvement are paid, the common council shall forthwith cause such improvement to be made.

**ASSESSMENTS MAY BE PAID TO CITY TREASURER.**

Sec. 25. After a special assessment shall have been adopted by the common council, and before the same shall have been delivered to the county auditor for assessment and collection, any assessment thereon may be paid direct to the city treasurer; and upon the production of the city treasurer's receipt therefor, the city recorder shall enter upon such assessment roll, opposite the assessment so paid, the words "paid to the city treasurer", which entry shall cancel the assessment so paid. If interest shall have been included in such assessment, so much thereof as shall not have accrued on such assessment at the time of payment shall be deducted therefrom.

Money received by the city treasurer under the provisions of this section shall be credited, kept and disbursed as provided in section twenty-five *four*

**FORMER ASSESSMENTS NOT SUSPENDED.**

Sec. 26. Nothing herein shall interrupt or interfere with any assessments which have been heretofore made, but the collection thereof shall proceed accordig<sup>~</sup> to the provisions of the charter of said city in force at the time of making such assessments.

#### ASSESSMENT LIENS TO HAVE PRIORITY.

Sec. 27. No sale under execution or other proceedings upon a judgment, decree, foreclosure or lien, and no transfer or mortgage shall divest or effect the lien of any assessment for any tax, or for any improvement chargeable to or assessed against the property under this charter, although the confirmation of such assessment may be subsequent to the lien of such judgment, decree or other lien, or to such transfer or mortgage.

#### BENEFITS AND DAMAGES.

Sec. 28. All assessments provided for in this chapter shall be made in the manner herein provided, upon the real property deemed to be especially benefitted by the doing of the work or the making of the improvement in proportion, as nearly as may be, to the benefits resulting thereto, to the extent of the special benefit deemed to be derived by such real property therefrom.

#### BALANCE OF COST PAID BY CITY-- WHEN.

Sec. 29. When the damage to be paid for the condemnation or appropriation of any property in pursuance to the provisions of this charter shall have been ascertained and determined in the manner herein prescribed, or in case an appeal shall have been taken as provided in this chapter, and such damages shall have been made upon the real property deemed to have been especially benefitted by the doing of the work or the making of the improvement in proportion, as nearly as may be, to the benefits resulting thereto, the balance of the cost of such improvement over and above the amount realized by such assessment shall be chargeable upon and paid by the city at large.

PAYMENT IN INSTALLMENTS--CERTIFICATES.

SECTION 30. The common council shall have power and authority by a majority vote thereof, whenever any special assessments have been made under the provisions of this chapter, by ordinance or resolution duly passed to provide that such assessments may be paid in annual installments of any number, not exceeding ten, with interest upon such deferred installments, payable annually, at a rate not exceeding six (6) per cent per annum. When any such improvement shall have been fully completed and the cost thereof ascertained and assessed to the property as hereinbefore provided, the common council shall, by resolution, determine the number of such installments, if any, in which such assessment may be paid, which resolution shall form a part of such assessment and shall be substantially in form as follows, viz: Resolved, that each and every of the respective sums so as aforesaid assessed upon the tracts or lots of land above respectively above described may be paid in \_\_\_\_\_ equal annual installments, with interest thereon payable annually at the rate of \_\_\_\_\_ per cent per annum until paid. The city recorder shall within ten (10) days after making any such assessment cause a copy of such resolution to be published together with a copy of the assessment, once in the official paper of such city, together with a notice, attached thereto signed by the city recorder, notifying the owner, owners or other persons interested therein that he may, at his election pay the sum assessed against such tract or parcel in one sum, and at any time, instead of in installments as by such resolution provided.

Any person electing so to pay in one payment shall within ten (10) days after the publication of such notice, pay the same or to the city treasurer, or file with the city recorder a notice in writing of his election so to pay. Such recorder shall within five (5) days after the expiration of said period of ten (10) days, make and file in the office of the county auditor of the County of Mower, a certified copy of such assessment and resolution, and shall attach

thereto a tabulated statement containing a description of each and every tract or parcel of land described in such assessment, and the amount of principal and interest of such assessment which will become due upon each tract or lot during each and every year in which any installments of such assessments will become due. Upon the filing of such copy of such assessment and resolution in the office of said county auditor, the amount assessed upon and against each and every tract or lot of land in such assessment described shall forthwith be and become a first lien upon such tract or lot, which lien shall continue until such assessment be fully paid.

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SECTION 31. The county auditor shall on or before the first day of January next succeeding the filing in his office of such assessment, resolution and tabulated statement, enter upon the tax lists of said county, as a special assessment upon each and every of the tracts or lots in said assessment and statement described, the amount set opposite such tract or lot as first coming due, and on or before the first day of January in each and every year thereafter, until such installments be fully paid, he shall in like manner enter upon such tax lists the amount of such installment next to become due. Such assessments shall be collected in the same manner as is provided for the collection of other state, city and county taxes.

The city recorder shall on or before the tenth day of October in each year, file in the office of said county auditor a statement containing a description of each and every tract or lot of land upon which the next maturing installment of such assessment has not been paid and the amount of principal and interest which will next become due upon such assessment.

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SECTION 32. For the purpose of providing funds in advance of the collection of the moneys to be derived from any such assessment

the common council may from time to time issue the certificates of indebtedness of the city, conditioned to be paid out of the moneys to be collected from any such assessment.

Such certificates shall bear date of the day when actually issued and delivered, shall be under the corporate seal of the city signed by the mayor and countersigned by the city recorder, and may be in such sums as the council may from time to time determine, not exceeding in the aggregate the amount of such assessment, shall be payable at the office of the city treasurer at such time or times as the council may determine and out of the funds to be derived from the assessment in such certificate specified, with interest payable annually as hereinbefore provided.

The installments of interest accruing upon such certificates shall be evidenced by coupons or orders thereto attached, signed in like manner. Such certificates shall not be sold, negotiated or disposed of by the city or by its common council at less than the par value thereof.

All moneys collected from any such assessment shall be set apart for, and applied to, the payment of the bonds or certificates issued upon such assessment, and shall not be applied in any other way or to any different use whatever.

No error or informality in any action taken by the common council in the ordering or dividing of such assessments into installments, or the execution, delivery or issue of any such certificates shall in any manner affect the validity thereof.

CHAPTER IX.

FIRE DEPARTMENT.

The power to establish fire limits.

Section 1. The common council for the purpose of guarding against calamities by fire shall have the power, by ordinance, to ~~pre~~scribe the limits within which wooden buildings or buildings of other material, the material or construction of which shall be regarded as not fire proof, or as dangerous to surrounding property shall not be erected, enlarged, placed or repaired, and to direct and prescribe that any and all buildings within such limits shall be built and constructed in such manner and of such material and subject to such inspection as may be, by ordinance, prescribed. Any buildings hereafter erected, enlarged, rebuilt, replaced or repaired in violation of the provisions of any ordinance passed pursuant to this chapter, is hereby declared and shall be deemed a common nuisance, and the common council, in addition to other penalties, may provide for the abatement of such nuisance.

POWER TO PREVENT FIRE.

Section 2. The common council shall have the power, by resolution, to order any building, structure or material therefor, erected or in the process of erection, of which the construction or material shall be dangerous to surrounding property, and any building, structure or material erected or repaired, or in the process of erection or repair, contrary to the provisions of any ordinance passed under the provisions of this chapter, to be taken down or removed beyond the fire limits of said city. Upon the passage of such resolution the common council shall prescribe a notice to be given and served upon the owner, occupant or agent in charge thereof, or person erecting, building or repairing the same, embodying a copy of such resolution, and direct such owner, occupant or agent erecting the same to remove or take down such building, structure or material within the time therein stated, said time to be not less than two days,



which notice shall be signed by the city recorder under the seal of the city, and shall be served by an officer in the manner of serving a summons in civil action, and in case the same is not taken down or removed after the service of such notice, and in pursuance thereof, beyond the fire limits of the city within the time stated in such notice, the police of said city shall immediately take down, or cause to be taken down, said building, structure or material, or remove the same beyond the fire limits of said city.. The resolutions provided for in this section shall be enforced immediately upon their passage by the common council and approved by the mayor, and prior to the publication thereof, but the same shall thereafter be published as in the case of other resolutions.

#### FURTHER POWERS TO PREVENT FIRES.

Section 3. The common council shall have the power, by ordinance, to prevent the dangerous construction and conditions of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers and apparatus used in and about any building, and to cause the same to be removed or placed in a secure condition when considered dangerous. To

To compel the use of spark-arresters in all smokestacks connected with apparatus where light fuel is consumed; to regulate and prevent the operation of manufactories dangerous in causing and promoting fires.

To prevent the deposit of ashes in streets, highways and alleys and in the storing of inflammable and explosive materials such as gasoline, naphtha, kerosene, benzine and other explosive products of coal-oil, and gun-powder, nitro glycerine, dynamite and other explosives, and <sup>the</sup> use of fireworks and firearms; to control and prevent the sale or keeping for sale or use of any fireworks, Chinese crackers, rockets, torpedoes or other explosive contrivances, and to provide for the seizure and destruction thereof.

To compel the owners or occupants of buildings to have scuttles in the roofs and stairs or ladders to the same, and to compel <sup>owners</sup> or occupants of buildings, of three or more stories in height, to maintain ladders or fire escapes and to regulate the number and location

thereof; to regulate the location and construction of smoke houses and to prohibit them where they shall be deemed dangerous to other buildings and to make such other and further provisions to guard against the spreading of fire as the common council may deem proper. To authorize the mayor, councilmen, fire wardens, chief of the fire department and other officers of the city to keep away all idle and suspicious persons and to compel all bystanders to aid in the extinguishment of fires and require the inhabitants to provide and keep as many fire buckets at such time, place and in such manner as they shall prescribe.

#### FIRE APPARATUS AND COMPANIES.

Section 4. The common council shall have the power to purchase, keep and maintain fire engines, hose, carts, wagons, extension ladders and such other apparatus as they may deem necessary or required for the extinguishment of fires and the protection therefrom. To acquire by purchase, donation or condemnation, under the provisions herein contained for the acquisition of property under power of eminent domain, of necessary sites and grounds for the erection and maintenance of engine houses for the keeping and protection of ~~the~~<sup>the</sup> fire apparatus and the accommodation of the fire companies; to erect and maintain fire alarm telegraph lines; to authorize the formation of fire engine, hook, ladder and hose companies; and to provide for the proper support, compensation and regulation of the same, and to order such companies to be disbanded, their public meetings prohibited and their apparatus surrendered to said city, and to employ firemen; and shall have exclusive control of the regulation of its fire department and of the government of the individuals constituting the same.

## FIRE CHIEF AND OFFICERS

Section 5. The common council may by resolution, remove or discharge the chief of the fire department or any officer or man thereof for cause duly shown; Provided, that before the passage of any such resolution the party affected shall be given at least ten (10) days notice in writing of the charges against him, and he shall have a right to appear and answer thereto at a time and place to be fixed by the council.

### PENALTY FOR REFUSING TO OBEY ORDERS AT FIRES.

Section 6. Whenever any person shall refuse to obey any lawful order of any officer, fire warden, councilman or police officer, at any fire, it shall be lawful for the officer giving such order to arrest, or to direct any constable, police officer, watchman or citizen to arrest such person and confine him temporarily in any safe place until such fire shall be extinguished. And any person who shall refuse to obey such lawful order, or who shall refuse to arrest or aid in arresting any person refusing<sup>to</sup> to obey, shall, upon conviction before a justice of the peace, be punished by a fine of not exceeding Fifty Dollars (\$50.00) and costs of prosecution, or by imprisonment not exceeding thirty (30) days; provided, that the officers of the city shall be exempt from the provisions of this section.

### PENALTIES.

Section 7. The common council may, by ordinance, prescribe penalties for the violation<sup>of any</sup> of the provisions of this chapter, or of any ordinance made or enacted to carry out the provisions of this chapter not exceeding one hundred dollars (\$100.00) or imprisonment for a period not exceeding ninety (90) days, which penalties may be imposed by any justice of the peace, having jurisdiction, upon the complaint of any citizen.

CHAPTER X.

FRANCHISES

POWER TO GRANT.

Section 1. The common council of said city shall have, and hereby is granted, subject to the provisions and limitations ~~stated~~<sup>herein</sup> stated, the power to grant and provide for regulating and controlling the exercise by any person, company or corporation of any public franchise or privilege in any of the streets or public places in said city, whether said franchises or privileges have been granted by said city or by or under the State of Minnesota, or any other authority, but no perpetual franchise or privilege shall ever be granted, nor shall any exclusive franchise or privilege be granted to any person, <sup>or</sup> company or corporation at any time for any term whatever; provided, that every franchise or privilege granted under the provisions <sup>herein</sup> shall, where no term is expressed in such grant, expire within ten (10) years; and provided further, that no franchise or privilege of any kind shall ever be granted for a longer term than twenty five (25) years; provided, however, that if an application for a longer term than twenty five (25) years be submitted to the council the question of granting such franchise or privilege shall be submitted to vote to the people, and it shall thereupon become the duty of the city recorder to call an election therefor in the manner provided for calling special elections, and the same shall be conducted in the manner of other special elections provided for in this charter; except that such questions may be submitted at any general election occurring within a reasonable time after such application is filed. In case a majority of legal voters voting thereon at a general or special election vote in favor of such application, the same shall be granted, and it shall thereupon become the duty of the council to grant the same accordingly.

NOT TO BE GRANTED AT FIRST MEETING.

Sec. 2. No public franchise or privilege shall be granted to any person, company or corporation at the first meeting at which the application for the same is made, nor until the same shall have

laid over at least one regular meeting after the formal application for such franchise or privilege shall have been presented, nor unless such application is granted by a vote of at least three fourths of all the members of the council, and in case the granting of such franchise or privilege is vetoed by the mayor, in the exercise of the veto power vested in him, the same shall not be passed over such veto unless four fifths of all the councilmen vote in favor of the same upon the vote to pass the same over such veto; provided, however, that in case any person, company or corporation shall make application for a franchise or privilege under the provisions of this act in competition with or in respect to any public utility then existing, or for which a franchise or privilege has been granted to any other person, company or corporation, and is then in force, the same may be granted to such competing persons, company or corporation by a majority vote of all the members of the council; and provided further, that if such application shall fail to receive a majority vote then and in that case such application shall, upon filing with the city recorder an agreement to pay all <sup>the</sup> costs of an election, and a bond in a sufficient amount with good and sufficient sureties, to be approved by the common council, conditioned to pay all costs of such election as soon as the same are ascertained, be entitled to have the question of granting such a franchise or privilege submitted to a vote of the people; and it shall be the duty of the city recorder to call an election therefor in the manner provided for calling special elections, and the same shall be conducted in the manner of other special elections provided for in this charter, except that such question may be submitted at any general election occurring within a reasonable time after such application is filed, in which case the applicant shall not be required to pay the expenses of such an election.

#### LICENSE FEES.

Sec. 3. All public franchises and privileges granted to any person, company or corporation in any of the streets or public places in said city, shall be subject to and conditional upon the payment of an annual license fee to the city of Austin, as a consideration for the granting of such franchise or privilege based upon the gross earnings of such person, company or corporation obtaining such franchise or privilege at the following rates, to-wit:

When ever in any one year the gross earnings of any such person, company or corporation holding such franchise or privilege amounts to \$25,000, or less, one-half of one percent on the entire gross earnings.

Whenever in any one year such gross earnings amounts to \$25,000, and do not exceed \$50,000, one percent of the entire gross earnings.

Whenever in any one year such gross earnings amount to \$50,000 and do not exceed \$100,000, one and one-half percent. on the entire gross earnings; provided, however, that if at any time such franchises and privileges are assessed and taxed as property, under the general laws of this state now existing or hereafter adopted, then in that case the persons, company or corporation obtaining or holding such franchise or privilege shall not be required to pay the license fees herein provided to be paid so long as said franchises or privileges are otherwise so taxed. Said gross earnings, license, tax or fees shall not be taken or considered in lieu of any tax or taxes to which the property of such person, company or corporation, other than such franchise or privilege, would otherwise be subject or liable.

#### HOW COLLECTED.

Sec. 4. Such license fee shall become payable by virtue of the provisions of this chapter without reference to any of the terms, provisions or stipulations embraced in any such franchise or privilege, or the charter of such person, company or corporation obtaining the same, and shall be collected and paid in the manner and

under such regulations as the common council may, by ordinance or resolution prescribe, but failure on the part of the common council to make or prescribe such regulations shall not relieve any such person, company or corporation from the payment of the said annual license fees.

Every person, company or corporation doing business in said city under any franchise or privilege granted by the city under the provisions of this charter, shall during the first week in January in each and every year, make and file with the city recorder of said city, an accurate and sworn statement <sup>and</sup> ~~of the~~ report of the gross earnings of such person, company or corporation for the year immediately preceding the date thereof, and shall, upon the demand of the common council or its committee, exhibit and produce to said council or its committee its books and papers showing such gross earnings, and shall satisfy the council or its committee in all matters regarding such report; and failure to file such report at said time, or to produce such books and papers, and to submit to any further examination required by the council in relation thereto, at such time or at such other or different times as the council may direct shall be sufficient ground to forfeit such franchise or privilege.

#### REFUSAL TO PAY- FORFEITURE.

Sec. 5. Any person, company or corporation, failing, neglecting or refusing to pay said license fee within the time and in the manner prescribed by said council, shall forfeit the franchise or privilege granted, and shall not be entitled to have the same reinstated by mere payment of such fees, but must, in order to again obtain such franchise or privilege, make a new application therefor in the same manner and subject to the same provisions as if no franchise or privilege had been previously granted.

TO BE BASED ON EARNINGS IN CITY LIMITS.

Sec. 6. In case any franchise or privilege is granted to any person, company or corporation for the doing or conducting of any business carried on partly within and partly without the limits of said city, such gross earnings license fee to be collected from and paid by the holder of such franchise or privilege shall be based upon the earnings of the business transacted or conducted within the limits of said city.

EXEMPTIONS - WHEN.

Sec. 7. In case any franchise or privilege is granted to any person, company or corporation under the provision of this chapter for the conducting and carrying on of any business or enterprise in competition with any person, company or corporation possessing a franchise or privilege, within said city, exempt from the payment of such license fee under existing laws, ordinance or regulations, then such person, company or corporations receiving such franchise or privilege shall not be subject to the payment of such gross earnings license fee on such competing business during the life of such existing franchise or privilege, nor until such existing franchise or privilege of such competitor shall have expired or have been cancelled or determined.

RIGHT TO PURCHASE - RESERVED.

Sec. 8. Said city shall have the right, and the same is hereby expressly reserved to said city, to purchase the property of any person, company or corporation operating and doing business in said city under a franchise or privilege granted by said city, at the end of ten (10) years from the granting of such franchise or privilege, and at the end of each successive term and period of five (5) years thereafter, by paying to the owner thereof the reasonable value of the property employed in and connected with such business, but without paying or making any allowance for the franchise or privilege. Such value, unless the same is agreed upon between the city and the owner shall be ascertained and determined by condemnation pro-



ceedings conducted in the manner prescribed in this charter for acquiring private property for public use.

#### RIGHTS TO REGULATE RATES AND CHARGES.

Sec. 9. The council of said city shall have and possess full power and authority at all times to regulate the rates and charges of every person, company or corporation engaged in public service and utility business in said city operating under any franchise or privilege granted by said city, and to require the same to be made and kept on a fair, reasonable and just basis at all times; and to that end shall have and possess full power and authority to make and enact all needful ordinances, rules and regulations that may be requisite and necessary to give full force to the provisions thereof.

#### RIGHTS TO REGULATE USE BY COMPETING LINES.

Sec. 10. The common council of said city shall have the right and power at all times to regulate and provide for the use of any and all railroad, or street railroad line or lines, track or tracks on any street or other highway in said city by any competing line or lines and make all needful and reasonable rules and regulations therefor.

#### CHARTER TO BE PART OF FRANCHISE.

Sec. 11. The acceptance of a charter or privilege from said city by any person, company or corporation, shall be an acceptance of all the provisions of this charter, whether the same are specifically referred to or not, and all the provisions herein shall constitute and be a part of such franchise or privilege without any express reference being made thereto.

#### LIMITATIONS AND RESTRICTIONS

Sec. 12. In granting any franchise or privilege, the council shall impose such limitations and restrictions not therein specifically mentioned as the nature of the business and the best interest of the public may require.

TERM "FRANCHISE" DEFINED.

Sec. 13. The term "franchise" or "privilege" whenever the same is used or employed in this charter shall mean special privileges conferred by the city upon any individual, company or corporation which do not belong to citizens of the country of common right.

CHAPTER XI

WATER, ELECTRIC, GAS AND POWER DEPARTMENT.

BOARD CREATED.

Section 1. There is hereby created and established a board of water, electric, gas and power commissioners, which shall have the control and management of the water works system and the electric light plant of the city of Austin. Said board shall consist of five (5) persons, each of whom shall be a citizen, qualified voter and freeholder of said city, who shall be appointed by the mayor by and with the consent of the common council of said city as follows, and who shall serve without compensation; one of said commissioners shall be appointed for one (1) year, one for two (2) years, one for three (3) years and one for four (4) years and one for five (5) years, and annually thereafter the mayor shall appoint one commissioner qualified as above for the term of five (5) years to fill the place of one whose term expires, and each commissioner shall continue to act until his successor is appointed and qualified.

All vacancies by resignation or otherwise shall be filled by the mayor.

The said board of water, electric, gas and power commissioners shall elect annually from among their own number a president and shall elect or appoint a secretary who shall not be a member of the board, and may make by-laws and regulations for their government not inconsistent with the provisions of this chapter.

A majority of said board shall constitute a quorum, and all contracts, engagements, ~~and~~ acts and doings of the said board within

the scope of their duty and authority, shall be obligatory upon and in law binding as if done by the common council of said city. Each member of said board, shall, before entering upon the discharge of his official duties take and subscribe an oath of office and give a bond in the sum of One Thousand Dollars (\$1,000.00) to the city of Austin, to be approved by the common council, conditioned that he will faithfully and honestly discharge the duties of his office or appointment; and the said board may require from the persons employed by them official bonds for the faithful discharge of their duties, which bonds shall be subject to the approval of the board; provided, however, that the bond of the secretary of the board shall be in the sum of at least Five Thousand Dollars (\$5,000.00)

The salary and compensation of the secretary and employees of said board shall be such as may from time to time be fixed by said board.

#### POWERS.

Sec. 2. Said board of water, electric, gas and power commissioners may sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute unto final judgment in any court, or elsewhere in the name of said board of water, electric, gas and power commissioners, have a common seal and alter the same at pleasure. They may employ all proper engineers, surveyors, clerks or other agents or assistants necessary or convenient for accomplishing the purposes contemplated by this chapter, and may enter upon any land or water for the purpose of making surveys for alterations or extensions for the same. They may prosecute any action in the name of the said board, against any person or persons, for money due for the use of water, electricity, gas, heat and power; for the breach of any contract, express or implied, touching the execution or management of the water works, electric and gas plant, or any other system

of lighting, power or for heating, and the distribution of water, electricity or gas, or any promise or contract made to or for them, and also for any injury, trespass or nuisance done, caused or procured to be done or caused to the water courses, and pipes, public electric wires, lines, conduits and machinery, and gas pipes and mains or any other apparatus belonging to or connected with any part of the water works and electric light and power plant, and gas plant or for any improper use or waste of water or gas.

Sec. 3. <sup>That</sup> The said board of water, electric, gas and power commissioners may, from time to time, for the purpose of furnishing a full supply of water to the inhabitants of the City of Austin, extend said water works or make new lines of works, and as it shall from time to time extend its said works or make new lines of works, it may draw water from any lake, spring or creek by means of pipes, drains, conduits, aqueducts or other means of conducting water so as to connect such lakes, springs or creeks with its water works, and may erect and construct dams, bulk-heads, gates and other needed structures and means of controlling of water and its protection; and may also for the purpose of furnishing electricity for lighting the streets of the city, and for commercial lighting and power, extend its electric lines, poles and wires and erect such poles, lines and wires, and purchase such new or additional machinery as it may deem necessary for the purpose of furnishing electricity for uses in said city, both for lighting and power purposes; and may also, for the purpose of furnishing gas for lighting or heat, for the street or commercial uses, build and construct a gas plant, lay and extend pipes and mains for conducting gas, and purchase such machinery, pipes and other materials as may be necessary for such construction, extension and operation; and may also for heating purposes, in connection with the water works and electric plant, construct pipe lines for conducting hot water to <sup>the</sup> various parts of the city, and to that end purchase pipe, machinery and appliances necessary for such

construction, extension and operation, and in general do any other act necessary or convenient for accomplishing the purpose contemplated by this chapter.

#### PROCEEDINGS IN CONDEMNATION

Section 4. Whenever at any time said board shall propose to extend its said works so as to connect with any of the said lakes, springs, or creeks or to divert the water of any stream, spring, creek or body of water, it shall proceed as follows: said board shall cause to be made a survey of the line along which it is proposed to extend its works, and of all land or other property to be affected by flowage, drainage or otherwise, and for the purpose it may, by its officers and agents enter upon ~~the~~<sup>any</sup> lands doing no unnecessary damage thereto. After such survey shall have been made and such line located, it shall cause to be made, a map or plat showing the location of said line and the lands necessary to be taken for such extension, and of lands or other property to be affected by flowage, drainage or otherwise. Said map or plat shall be signed and acknowledged by the surveyor making the same, and by the president of the board, and shall be filed as a record in the office of the register of deeds of the proper county. And after making compensation as hereinafter provided to the owners or persons interested in the lands to be taken, and for damages by reason of diverting the waters of any stream, spring, creek or body of water, said city shall have an easement in said land designated on said map or plat for all the purposes contemplated in this chapter, which said easement shall include the right of passage without doing any unreasonable damage from any public highway to and from the land included or covered by said easement. The damage for such right of passage shall be extended in apportioning the amount of damages to be paid for such easement.

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Sec. 5. Said board shall make application to the common council of said city for the appointment of three (3) commissioners to assess the damages which the owners of, or persons interested in the lands to be taken, or any other person may sustain by the reason of the taking of such lands, or of the construction, use and operation of such work. Notice of such application shall be given by publishing the same in the official city paper at least twenty (20) days before the day of making such application, which notice shall specify the time and place when and where such application shall be made, the points between which it is proposed to extend said works, and state the date of filing the map or plat. At the time and place specified in said notice the common council shall, upon proof by affidavit of the due publication of said notice, proceed to appoint three (3) commissioners to assess said damages. Such commissioners shall take and subscribe an oath or affirmation that they will faithfully and fully examine the matter in question and make a report thereof according to the best of their skill and understanding. They shall appoint a time and place of meeting for the purpose of making such examination, and give notice thereof by publishing such notice in the official city paper, at least ten (10) days before the day so appointed, and also by serving upon each of the parties interested, a copy of such notice in the same manner as is provided for the service of summons in the district court; provided, such interested persons are residents of Mayor County. On the day so appointed they shall proceed to view the lands to be taken and hear any evidence as to damages which any person may sustain by the taking of the same, or by the construction, use and operation of the works of the city, and shall continue their examination until the same shall have been completed. They shall make a just and equitable estimate of such damages, and shall make and file in the office of the city recorder,

a report in writing, signed by them, or any two (2) of them, in which they shall state the amount which said board shall pay to such person or corporation who may sustain any damage by reason of the taking of such land; or by reason of the construction, use or operation of such works. Upon said report being filed the said board may deposit with the city treasurer, for the use of the persons entitled thereto, the several amounts so awarded by said report, and thereupon said city shall have and hold said lands and rights for the purpose aforesaid, and the board may proceed to construct, use and operate thereon said works and extensions thereof. Such report and findings of said commissioners shall be final and conclusive as against all persons or corporations who shall not appeal therefrom within thirty (30) days after the filing of said report. Any person or corporation interested may appeal, from said report and findings of said commissioners, within the time afore said, to the district court by filing with the clerk of the district court in and for Mower County a notice of appeal, specifying the nature of his or its claim, and the amount thereof, and also by filing a bond in the sum of Fifty Dollars (\$50.00) with at least two (2) sureties to be approved by the court, conditions for the payment of the judgment and of any costs which may be awarded against said appellant, a copy of said notice to be filed with the city recorder at the time of taking such appeal. Said board may likewise take an appeal within the time aforesaid, upon the finding of said commissioners in favor of any person or corporation, by filing with the city recorder a notice of such appeal, the appeal shall be entered upon the calendar for the next succeeding term of the court and shall be tried and judgment therein given and like costs allowed as in actions brought in said court. If the board appeals and the same, or greater damages be received than shall have been awarded by the commissioners, it shall be liable for costs. If any other person or corporation be appellant and do not recover

greater damages than shall have been awarded by the commissioners, such appellant shall be liable for the costs; but no appeal taken shall prevent the city from having and holding said land as aforesaid or the board from entering upon and proceeding to construct, use and operate said works or any part thereof.

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Sec. 6. The city recorder of said city shall attach together and keep on file in his office, the notice of application with the affidavit of publication thereof, the appointment of said commissioners, their oath or affirmation, the notice given by them with an affidavit of publication thereof, their report and a copy of the notice of appeal, and upon the filing of the copy of the notice of appeal, the city recorder shall forthwith file with the clerk of the district court certified copies of all such papers. If no appeal is taken a copy of the award of damages, certified by such city recorder may be recorded in the office of the register of deeds of said county and the papers so filed; said record or certified copy of each shall in all cases be received as evidence of the facts therein stated. If an appeal be taken the clerk of said district court shall attach together and keep on file in his office the duly certified copy of all the aforesaid papers, together with the notice and bond of appeal, a certificate of any final judgment on appeal, and his certificate or certificates of the payment to him by said board of any moneys awarded to any person or corporations. A copy certified by said clerk of such papers upon the determination of such appeal may be recorded in the office of the register of deeds of said county, and the papers so filed; said record or a certified copy of either shall in all cases be received as evidence of the facts therein stated.

RESURVEY-- RELOCATION.

Sec. 7. Said board is hereby authorized to resurvey the line of its work heretofore or hereafter to be located and to re-locate



said line or any portion thereof the same as though said line had not heretofore been located. In case of making such new survey or re-location said board shall proceed in the same manner as is provided in sections four (4), five (5) and six (6) of this chapter and all the provisions of said sections shall in all respects be made applicable to the proceedings for such re-survey or re-location, and the effects thereof, and of constructing, using and operating its works over said re-located line. It may join its proceedings for such re-survey and re-location with any proceedings for extending its said works; provided, that if said board shall, in the proceedings heretofore or hereafter to be had for locating its said line, have paid unto said city treasurer the amount awarded to any person by the commissioners in said proceedings, the amount so paid shall be deemed a payment to such person upon the amount which may be awarded in the proceedings hereby authorized.

#### CONDEMNING PROPERTY FOR POLE LINES, ETC.

Sec. 8 The board is hereby authorized to condemn, take and acquire private property, in the manner prescribed in this chapter for condemning and acquiring possession of private property for water supply or additions thereto, when ever it shall be deemed necessary for the construction of additional buildings, the extension of its pole lines, the stretching of its wires, the placing of its conduits, or the laying of gas or hot water pipes, to take or cross any private property either with such poles, wires, conduits, pipes or otherwise the provisions of sections four (4), five (5), six (6) and seven (7) are hereby made applicable, and when proceeded under the said board shall have full power and authority to take and use such private property.

#### PENALTIES.

Sec. 9. Any person who shall wilfully and without authority from the said board, break, remove or damage any drain, bulkhead, gate, gate house, conduit, air-vent, air-box, cover, main pipe or culvert, fill or partially fill up any excavation, or raise or open

any gate, break down or force open any door of said works, or break down, injure, destroy or remove any electric light pole, wire, conduit lamp, electric machinery or appliance, gas pipes, fittings or machinery or injure, destroy or remove anything connected with the water, electric, gas and power plant constructed and maintained for the purposes specified in this chapter, shall, on condition thereof be punished by a fine not exceeding One Hundred dollars (\$100.00) or imprisonment in the county jail not exceeding ninety days (90

SAME.

Sec. 10. Any person who shall without authority from said board, lay any main or service pipe and take water, hot or cold therefrom, or open or shut any service cock or fire hydrant, or remove or unscrew wholly or partially the cap from any fire hydrant or enter or form any connection with, or turn water into any tunnel, excavated or used by said board for the purpose of laying its pipes, or who being authorized by said board to take water from any main or service pipe into any specified building, or upon any specified premises or to be used for any specified purpose shall, without authority from said board use such water for any other than such specified purpose, or permit any other person to use the same for any other than such specified purpose, or to take the same out of such buildings; and such other persons so using or taking such water; and one who without lawful authority shall dig or excavate within six (6) feet of any water main, water or gas pipe, gate, hydrant or blow-off, of said works; and any person who shall without authority of said board, erect any poles and place thereon any electric wires, for the purpose of tapping any electric wires and mains extending from the said works, electric, gas and power plant, or who shall in any manner or in any place, tap the electric wires or the gas mains without the consent and authority of the board and use electricity or gas therefrom, or who, not being a duly appointed fireman of the City of Austin, shall cut or disconnect any electric wire or wires, shall be deemed guilty of a misdemeanor and shall upon con

violation thereof be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment in the county jail for a term not exceeding ninety (90) days.

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Sec. 11. IF any person or persons shall maliciously or willfully divert the water or any portion thereof from said works, or shall corrupt or render the same impure, or shall destroy or injure any canal, aqueduct, pipe, conduit, machinery or other property used or required for procuring or distributing the water hot or cold, or shall divert the electric current or any part thereof, or shall destroy or injure the electric wires, or conduits, or other property used in procuring the distribution of electricity, or shall tap the gas pipes and divert the gas or any thereof, such person or persons and their aids or abettors, shall forfeit to the said board, to be recovered in a civil action treble the amount of damages ( besides costs of suit ) which shall appear on the trial to have been sustained and all such acts are hereby declared to be misdemeanors, and the parties found guilty thereof may be further punished by a fine not exceeding One Hundred Dollars (\$100.00) or by imprisonment not exceeding thirty (30) days.

#### RIGHTS TO USE XXX STREETS AND HIGHWAYS.

Sec. 12. The said board, in behalf of the City of Austin, and all persons acting under their authority, shall have the right to use the ground or soil under any road, railroad, highway, street, lane, alley, court or public park for the purpose of constructing, enlarging, improving or repairing the works contemplated by this chapter, on condition that they shall cause the surface of such road, railroad, highway, street, lane, alley, court or public park to be restored to its original state, and all damages done thereto, to be repaired.

## BONDS.

Sec. 13. The bonds and certificates of indebtedness heretofore issued by the said City of Austin, for the purchase and improvement of the water works and electric plant of the City of Austin, or in refundment thereof, are hereby declared to be legal and valid bonds and obligations of said City.

## POWER TO REGULATE DISTRIBUTION.

Sec. 14. The said board shall regulate the distribution and use of the water, electricity, gas and heat in all places and for all purposes where the same shall be required for either public or private use, and fix the price and rates there<sup>for</sup>; provided, however, that in the case of fire hydrants for the extinguishment of fires and the public fountains and watering places, the board shall fix and locate the same as the common council of said city may direct. And said board is hereby authorized and required to restrain and prevent any and all wastin<sup>age</sup>g of water, and to that end may, when in its judgment necessary turn off the water, or take such action as in its judgment may be proper.

## DAMAGE TO PIPES-- PAID BY CITY.

Sec. 15. In case of damage to water pipes or works, electric poles, wires, or machinery, or gas pipe<sup>s</sup> appliances caused by the change of grade or operation of any department of the city, such damage shall be paid out of the general fund of said city.

## COLLECTION IN ADVANCE.

Sec. 16. Said board shall have full power and authority to require payment in advance for the use of water, electricity and gas furnished by them in or upon any building, place or premises, and require meters to be used for measuring all water and electricity, and in case prompt payment for the same shall not be made, they may shut off the water, electricity or gas from such building, place or premises without regard to the purpose for which it is ~~to be~~ used, and shall not be compelled again to supply said building, place or premises with water, electricity or gas, until such arrears, with interest thereon, together with such penalties, costs and expense of

turning the water, electricity or gas off and on, as may be fixed by the board, shall be fully paid.

DETAILED STATEMENT-- ASSESSMENT.

Sec. 17 .Said board shall make and file with the common council of said city on or before the first day of September in each and every year, a detailed statement, duly certified to by the president and secretary of said board under its seal, of the taxes received and placed to its credit during the preceeding year, of all water, electric and gas rents received, and likewise all disbursements made by said board in the operation and management of said water, electric and gas plant, and shall, at the same time, transmit to the council, an estimate of the amount necessary to be levied for the ensuing year for the maintenance and support of such plants, after taking into account the amount of money it is estimated will be received from the rentals of both plants,<sup>and</sup> which sum so estimated to be required by the board, shall be by the council, added to and made a part of the general tax levy, and when the tax is collected all sums arising therefrom, shall be credited to the account of the board of water, electric and gas commissioners, and shall be subject to the order of said board, and to their order only,<sup>and</sup> which sum so raised by general taxation shall pay for the hydrant rentals for fire purposes, for all public drinking fountains, and fountains in parks, for all electric or gas lights required to be used on the streets of said city, and in the offices and city buildings thereof; provided, that all water for sprinkling purposes ( if the supply of water shall be sufficient) shall be furnished free; and the board shall also, at the same time, report to the common council in detail the amount of unpaid water, electric and gas rentals. The board shall also on or before the first day of April of each year,, make a report to the council of the condition of the works under their charge with a general summary of receipts and disbursements.

POWER TO MAKE AND ENFORCE BY-LAWS, ETC.

Sec. 18. Said board is hereby invested with full power to make and enforce such by-laws, regulations and ordinances as may be necessary to carry into effect the object and intent of this act, and to enforce any and all resolutions, regulations and ordinances which are now in force relating to the water works and electric plants, All of which resolutions and ordinances shall be deemed and considered as adopted by the board and to be of full force and effect until they shall have been repealed, altered or amended by the board; and the board may supply any power or mode not already specified herein, and shall cause all bylaws, regulations and ordinances to be entered and recorded in a book to be kept for that purpose, and signed by the president and secretary, which, when so entered, recorded and signed, shall be evidence in any court of justice; provided, that all resolutions, regulations and ordinances heretofore passed by the common council of said city, relating to the water works and electric plant, shall be sufficiently recorded in said records, by referring to the number and date of passage and approval of such regulations, resolutions and ordinances.

OFFICERS.

Sec. 19 The treasurer of the City of Austin is hereby declared to be ex-officio the treasurer of the said board. It is made the duty of the secretary, under the direction of the said board, to collect, receive and pay into the city treasury all moneys due on account of the operation of the said water, electric and gas plants except the frontage tax and proceeds from the sale of bonds, and to keep a set of books which shall contain a full and complete statement of the conditions and operation of said works and plant, of all moneys received and paid out by order of said board, and all debts due and owing said board for any cause whatever, together with an accurate account of all the expenses of said board; and the said

secretary may appoint an assistant , for whose acts he shall be responsible, who shall only be authorized to act in the absence or disability of the said secretary; and in the case of <sup>the</sup> disability from absence or other cause, of said secretary, the board may appoint a secretary pro-tem to perform the duties of such secretary. It is made the duty of the treasurer of said board to receive all moneys which may be paid into the treasury on account of said board, from any source whatever, and all moneys so received shall be retained by said treasurer and credited to the account of the board, and paid out only upon the orders of said board, signed by its president and secretary, except such money as may be received from the sales of bonds and frontage tax, which shall be credited to the general account of the city and paid out upon the order of the mayor and city recorder, and shall keep a detailed and exact account thereof, in such manner as to show at all times the exact financial condition of said board. The books of said board shall be open to the examination of any person or persons appointed for that purpose, or to any member or committee of the common council or other person interested in the affairs of said city.

#### CONTRACTS.

Sec. 20. All contracts for material for the construction of any part of said works which shall involve the expenditure of the sum of three hundred dollars (\$200.00) or more, shall be in writing and in duplicate, one of which shall be filed with the city recorder and the other with the secretary of the board; provided, that in the event of any extraordinary and sudden injury, whereby great damage might ensue by reason of any delay, the said board may cause the break and damage to be repaired without a contract and in such a manner as the commissioners may deem for the best interests of the city.

WATER, ELECTRIC AND GAS LIGHT AND POWER.

Sec. 21. The said board shall establish such water, electric and gas rates as will at all times insure to the city a proper income, sufficient if possible, to pay the interest and to provide a fund to pay the principal of all bonds to be issued, or heretofore issued, in connection therewith as well as to pay all the expenses and costs of maintaining and keeping in repair said works; provided, however, that such rates shall not be exorbitant or unreasonable, or so as to prevent the proper and extended use thereof; provided, also, that the present established rates shall continue until modified, changed or discontinued by act of the board; and <sup>it</sup> is hereby declared to be a misdemeanor, punishable by a fine not exceeding Fifty Dollars (\$50.00) for said board knowingly to omit to charge any person the amount properly due from him for water, electric and gas light and power, or to neglect or refuse to collect the same.

EXCLUSIVE USE OF RIGHT OF WAY AND EASEMENTS.

Sec. 22. In all cases where rights of way and easements have been or may be hereafter acquired, either by purchase or condemnation, for the laying of any conduit, supply pipe, electric poles, wires or mains, or gas mains or other appliances or works for supplying water electricity and gas as contemplated in this chapter, such rights of way and easements shall be paramount and neither the said city of Austin, the County of Mower, or other county or municipal body or corporation, nor other corporation or persons shall enter thereon, use and occupy the same for any purpose other than said purpose for which said right of way or easement was or may be acquired as aforesaid, except with the consent in writing of said board, and upon such terms and in such manner as may be agreed upon. The board is hereby authorized to make and enter into any agreement in that behalf which it may deem necessary and expedient.



#### ACTIONS AGAINST THE BOARD.

Sec. 23. Any and all causes of action, either at law or in equity, which may now exist or which may hereafter arise by reason of any act or omission by or on the part of said board, or any of its servants, agents or employees, shall be brought and maintained by such claimant or claimants against said board, anything in the Statutes of the State of Minnesota to the contrary notwithstanding, and any and all judgments recovered against said board shall be paid out of any moneys in the hands of the city treasurer belonging to the credit of said board the same as other indebtedness is paid.

#### PRESENT CLAIM- LIMITATION OF TIME.

Sec. 24. Before any action shall be maintained in any court of this state having jurisdiction thereof, against said board of commissioners, for any cause whatever, the subject matter thereof together with a statement thereof, showing the amount claimed, the ground of such claim and the party claimant, must be first presented and submitted to said board in writing for its investigation and approval, and that within thirty days (30) after said cause ~~cause~~ of action accrues. If, upon and after such investigation by said board, the same shall by it be rejected, an action if brought there on must be commenced within one year (1) thereafter, or forever be barred.

#### MEANING OF TERMS.

Sec. 25. The term "real estate" as used in this chapter shall be construed to signify and embrace all uplands, lands under water, the water of any lake, pond or stream, all and every estate, interest and right, legal and equitable, in lands or water, including leases for a term of years and liens thereon by way of judgment, mortgage or otherwise, and also all claims for damage to such real estate.

#### LAYING OF WATER MAINS- LIMITATION.

Sec. 26. No water mains shall be laid ~~by the board of commissioners~~ until a sufficient number of residents along the line upon which it is proposed to lay such mains shall have subscribed to an agreement to take the water into their premises, and to pay therefor at the

rate established by the board so that the income therefrom shall produce an income of at least <sup>five</sup> ~~ten~~ percent of the costs of such construction,

#### COMMON COUNCIL MAY REMOVE.

Sec. 27. Said board or either of them may be removed from office by the common council of said city, if it shall appear upon a petition of ten (10) or more reputable freeholders of said city that any member of said board has been guilty of a misdemeanor or malfeasance in office; provided, that upon the filing of any such charges the city recorder shall immediately notify such member of the board of that fact, together with a copy of such charges; and he shall also be notified of the time and place when the council will meet to consider such charges, which notice shall be given at least ten (10) days before the meeting, and at such meeting said member shall have a right to be present and produce evidence and be heard in his own behalf.

#### CHAPTER XII.

#### PARKS AND PARK WAYS.

#### PARK BOARD CREATED.

Section 1. There is hereby created and established a park board, which shall have the control and management of the public parks of the city of Austin, said board shall consist of five (5) persons, each of whom shall be a citizen, qualified voter and freeholder of said city, and who shall be appointed by the mayor of said city, by and with the consent of the common council as follows; and who shall serve without compensation: One of said commissioners shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years, and annually thereafter. The mayor shall appoint one commissioner, qualified as above for the term of five years to fill the place of one whose term expires and each commissioner shall continue to act until his successor is appointed and qualified.

All vacancies by resignation or otherwise, shall be filled by the mayor, by and with the consent of the common council.

The said park board shall annually elect a president and secretary from among their number, and may make by-laws and regulations for their government not inconsistent with the provisions of this chapter.

A majority of said board shall constitute a quorum and all contracts, engagements, acts and doings of said board within the scope of their duty and authority shall be obligatory upon and in law binding, as if done by the common council of said city. Each member of said board shall, before entering upon the discharge of his duties, file a written acceptance of his appointment and an oath of office, with the city recorder of said City of Austin; and the secretary of said board shall also give a bond in the sum of Five Hundred Dollars (\$500.00) to said city, to be approved by the common council, conditioned that he will faithfully discharge the duties of his office and account for any and all moneys which may come into his hands as <sup>such</sup> secretary.

The compensation of all employees of said board who may be entitled to compensation, shall be such as may be fixed from time to time by said commissioners.

#### POWERS

Sec. 2. Said park board may sue and be sued, plead and be impleaded, answer and be answered unto, appeal and prosecute unto final judgment in any court or elsewhere in the name of said board, may have a common seal, and alter the same at pleasure. They may call upon the city surveyor, or if there be no such surveyor or engineer, employ one, in the proper laying out and improvement of the parks of said city. They may prosecute any action in the name of said board for the breach of any contract, express or implied, touching the management of the parks, and also for any injury, trespass or nuisance done, caused or procured to be done, but no commissioner shall be interested in any contract made by the board, or in any lands to be by them acquired, except that if any commissioner shall be interested in any lands which may be designated or appropriated for the use of this act, he shall be entitled to receive

compensation for his interest therein, but he shall not act officially in respect to any matter in which he is pecuniarily interested. The board is authorized to receive and expend any donation for park purposes.

#### DUTIES.

Sec. 2. The park board herein appointed and their successors, shall have power and it shall be their duty, to devise and adopt a system of public parks and park ways within the limit and for the use of the city of Austin, taking under their control all public parks which now exist, and designating such other lands and grounds hereafter to be used and appropriated for such purposes; to cause the same to be surveyed, platted, and a plat thereof filed and recorded in the office of the city recorder, and the register of deeds of Hovey county; and to lay out and improve according to such plans as the board may, from time to time, adopt. It shall also be the duty of the park board on or before the first day of September, in each and every year, to prepare and furnish to the common council, an estimate in writing of the amount necessary to be expended during the ensuing year for the purpose of beautifying, maintaining and extending said parks and park ways; provided, that the amount of such estimate shall not in any one year, exceed the sum of One Thousand Dollars (\$1,000.00). It shall thereupon become the duty of the common council to cause said estimate to be inserted in and made a part of the annual budget, to be transmitted to the mayor of the said city, who may, within five (5) days after such delivery to him, veto any item in said estimate, in ~~the~~ whole or in part, or may approve ~~the~~ the whole thereof; it shall then be signed by the mayor and the city recorder, and the amount named therein shall be certified to the county auditor to be extended as a part of the general tax of said city, and when the amount has been collected, it shall be set apart to be appropriated to the park fund; and the city treasurer shall keep a separate account thereof, and it shall be

paid out of the treasury only upon the orders of the park board, signed by the president and secretary. The common council may appropriate to the park fund such further sum or sums during ~~the~~<sup>each</sup> year as may be considered necessary and proper and when so appropriated, shall be credited to the said fund, to be drawn out only in the same manner. It shall be the further duty of the board annually, on or before the first day of March, in each year, to report to the common council, a detailed statement showing the moneys received and disbursed, and from what source received and for what purpose used, which report shall be in writing and a duplicate thereof filed with the city recorder; and if the board shall have received any donations, the amount thereof shall be reported with a statement of the expenditure thereof.

#### BOULEVARDS AND GRASS PLOTS INCLUDED.

Sec. 4. There is hereby expressly included within the park system, all boulevards which have been or may hereafter be laid out in said city, also all grass plots on streets or lanes in front of private property and within the street limits, together with the trees and shrubbery thereon; and the park board shall have authority to spend money out of its funds thereupon, except as herein otherwise provided.

#### CONTROL AND MANAGEMENT OF PARKS.

Sec. 5. The board shall have the exclusive control and management of all lands or real property and improvements thereon, which now are or may hereafter be acquired, set apart or dedicated to the use of the people of the city as public parks or pleasure grounds.

The board shall have authority to purchase all articles and materials for, and have all work and labor performed upon said parks and pleasure grounds, and to that end may appoint, remove, discharge or suspend superintendents, laborers and all other persons employed upon or about said parks and pleasure grounds.

The board shall have authority to direct and regulate the planting, trimming, pruning and care of shade or ornamental trees and shrubbery in any and all of the public parks of said city, and to cause the removal of unnecessary ~~and~~<sup>or</sup> objectionable trees and shrubbery from such parks. The board shall have authority, whenever the owner of the property fronting on any street or any portion of any street not less than one (1) block in length in said city, shall have constructed any grass plots between the sidewalk and the road of such street, to assume the care and management thereof, and to see that the grass and the weeds upon such plot are kept out and that said grass plots are otherwise cared for and beautified, and whenever upon ten (10) days notice in writing, the owner of any property, upon which such grass plot fronts shall fail or neglect to cut the grass, it shall be the duty of the board to cause such grass and weeds to be cut and cared for, and the expense of such work shall, in the first instance, be paid out of the general fund of the City of Austin, upon bills certifying the cost thereof, being filed by the board with the city recorder.

It shall be the duty of the park board, at all times to keep an accurate account of the cost of cutting and caring for the grass in front of each parcel of land fronting on such grass plots, and on or before the first day of October of each year the said board shall assess the cost and expense of such work as has been done in front of each such lots or parcels of land since the first day of October in the preceeding year, including a proportionate part of the cost of making such assessment, upon such lot or parcel of land. Provided, however, that no greater assessment shall be levied than one cent for each lineal foot of frontage of such lots or such grass plots. Upon making such assessment and on or before the third day of October of each year, said board shall transmit to the city recorder a detailed statement of all such assessments, designating the lots, pieces

and parcels of land affected thereby.

It shall be the duty of the city recorder to certify such assessments to the county auditor for extension against the property in the same manner as <sup>is</sup> provided for assessments for repairing and rebuilding sidewalks. When such assessments shall have been collected the amount thereof shall be paid to the city treasurer and credited to the general fund of the city for the purpose of reimbursing that fund.

If any such assessment shall be set aside as to any real estate for any cause, by <sup>the</sup> decision of any court, or if for any cause it is found to be irregular or defective, the park board may make a re-assessment as to such property, from time to time and as often as needed until such lot or parcel of real estate has paid the cost of the cutting the grass and weeds in front thereof, together with its proportionate part of <sup>the cost of</sup> making such assessment.

The park board shall have authority to prune and cut and all shade trees now growing, or which may be hereafter planted and growing, along in front of any public or private property outside the sidewalk line within said city; provided, however, that the said board shall not have authority to arbitrarily or unreasonably trim, cut or remove any such trees, but when trimmed it shall be done in a skillful manner so as not to injure or unnecessarily destroy any tree or render the same unsightly or ugly, and no trees shall be trimmed within said city by any other persons than the owner of the property on which they front except by the authority and under the direction of said board; and said board shall have exclusive authority to determine as to the necessity of trimming or removing any trees; provided, that no trees shall be cut down and removed by said board unless by the express consent of the owner, until the notice of the intention so to do shall have been served by the board upon the property owner at least ten days (10) before a meeting of the board, at which the matter is to be considered and where the owner may appear in reference thereto, and not then except by a vote of two thirds of all the members of the board.

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The park board may, upon a petition of a majority of the owners of the property fronting upon any street or any portion of any street, not less than one block in length, at its discretion, cause suitable shade trees to be planted along or upon any street or alley in said city, and may cause to be assessed upon the pieces or parcels of land abutting upon such street or alley benefited by such improvements, the cost of purchasing and planting such trees together with such sum as may be deemed necessary for the purpose of properly caring for such trees for the period of three (3) years after such planting; the sum so assessed shall not exceed twelve and one half (12-1/2) cents per front foot upon any piece or parcel of land; and any tree dying within three (3) years after having been planted by said board, shall be replaced by the board without additional assessment.

Said board shall by resolution, direct the amount to be assessed against each piece or parcel of land, and the proceeding for assessment thereof shall be the same as hereinbefore contained for the assessment to meet the cost of cutting and taking care of the grass and weeds; provided, that the cost of such improvement shall, in the first instance, be paid out of the general fund of the city, upon bills certified by the board, and the tax, when collected, shall be credited to the said general account in reimbursement thereof.

#### LIMIT FOR EXPENDITURES.

Sec. 6. Said board shall not expend or incur indebtedness in any one year chargeable to its fund, in excess of the aggregate sum appropriated and set apart to the park fund for that year under the provisions of this chapter.

#### COMMON COUNCIL MAY REMOVE.

Sec. 7. Said commissioners, or either or any of them may be removed from office by the common council of said city if it shall appear upon a hearing, notice having <sup>first</sup> been given to such commissioner or commissioners of such a meeting at least ten (10) days prior thereto <sup>and</sup> upon a petition of ten or more reputable freeholders of said city, presenting sworn charges, that said commissioner or



commissioners have been guilty of a misdemeanor or malfeasance in office.

#### ATTENDANCE OF MEETINGS- VACANCY, HOW DECLARED.

Sec. 8. The office of any commissioner under this act, who shall not attend the meetings of the board for three successive months, after having been duly notified of said meetings, without reasons satisfactory to the board, or without leave of absence obtained from the board, may be, by said board, declared, and thereupon shall become, vacant.

#### MAY ADOPT RULES.

Sec. 9. The power and jurisdiction of the park board shall not extend to the police control within the parks or park ways, except that the said board shall have authority to adopt any rules affecting the quiet ~~and~~ ordinary and suitable use and enjoyment of said grounds by the people of the City of Austin, and the police control over said grounds shall be and remain where it is, or where it may be vested by the charter of said city.

#### CHAPTER XIII.

#### PUBLIC LIBRARY.

#### PUBLIC LIBRARY BOARD CREATED.

Section 1. There is hereby created and established a library board, which shall have the control and management of the free public library of the City of Austin. Said board shall consist of nine (9) persons, each of whom shall be a citizen, qualified voter and freeholder of said city (provided that women may be members of the board, if qualified voters whether freeholders or not) and who shall be appointed by the mayor of said city by and with the consent of the common council as follows, and who shall serve without compensation. By reason of the fact that a library board was on the eighteenth day of July, 1902 elected under and pursuant to the general laws of this state, three of which said members were elected for one (1) year, three for two (2) years, and three for three (3) years, all

appointments herein provided for shall not take effect, nor shall any member of the board appointed assume his office until the term of office of each of said board members elected has expired, except any such member or members shall resign or the office become otherwise vacant. Subject to this limitation there shall be appointed three of said board, in the year of 1905 for the term of three (3) years each, and annually thereafter there shall be appointed three members of said board for a term of three years each and each member of said board shall continue to act until his successor is appointed and qualified.

All vacancies by resignation or otherwise shall be filled by the mayor, by and with the consent of the common council for the unexpired term of the member of said board, whose office becomes vacant.

Said library board shall annually elect a president and secretary from among their number and may make such by-laws as they may deem expedient for their government not inconsistent with the provisions of this chapter.

A majority of said board shall constitute a quorum, and all contracts, engagements, acts and doings of said board within the scope of their duty and authority, shall be obligatory upon and in law binding as if done by the common council of said city. Each member of the board shall, before entering upon the discharge of his duties, file a written acceptance of his appointment and oath of office, with the city recorder of said city, and the secretary of said board may also be required to give a bond if the board shall deem it expedient and such bond shall be in such sum and with such sureties as the board shall determine, and shall be conditioned for the faithful performance and discharge of the duties of the office of such secretary, and the payment to the city treasurer of all moneys which come into his hands as such secretary.

The compensation of all employees of said board who may be entitled to compensation, shall be such as may be fixed from time to time by said board.

#### POWERS.

Sec. 2. Said library board may and lawfully shall, and be authorized to do, and shall have the power to lease and appropriate rooms for the use of the said library board, to appoint a suitable librarian and necessary assistant, and fix their compensation, with power to remove such appointees, and shall have such other and further powers as are granted to library boards by the General Laws of this state, including the power to receive donations for library purposes and to make requisite contracts or agreements in connection with such donations. They may prosecute any action in the name of said board for the breach of any contract, express or implied, touching the management of the library, and also for any injury, trespass, damage or nuisance done, caused, or procured to be done, and also for the enforcement of any fine or penalties imposed on the board, but no action shall be maintained in any contract made by the board.

#### TITLES.

Sec. 3. The board shall have the right to be and shall be the legal and sole authority to manage, supervise and control the free public library of the city of Boston, taking under their control all property which has now been set apart to the existing library board, and all improvements thereon, and all books, periodicals, manuscripts and other articles of whatsoever character belong to and forming a part of such library, and all books, papers or portions of libraries which may be hereafter acquired either by purchase or donation; and to provide for the proper, convenient and suitable use of such books, manuscripts and periodicals as the library may contain from time to time, under such rules and regulations and subject to such conditions as the board may deem proper, and in all things, control and maintain said

library. And it shall be the duty of said board through its proper officers to make an annual report to the common council of the city of Austin, reciting the number, and in general the character of the books, manuscripts and periodicals in the library, also the amount of money expended during the then preceding year and the amount which will be required in addition to the fixed charges and requirements heretofore agreed upon with Andrew Carnegie, the donor of said library, in order to maintain said library and keep the building open for public use, which amount, however, together with the amount required to be raised by said agreement with Andrew Carnegie, shall not exceed in any one year a tax of one and one fourth (1-1/4) mills on the taxable valuation of the City of Austin. Upon the receipt of such report from the library board, and on or before the time provided for the making of the budget and tax levy under this charter, the common council shall levy a tax upon the taxable property of the city of Austin; first, in a sufficient sum to produce twelve hundred dollars (\$1200.00) for the use of said library, as is provided in the agreement heretofore entered into between the City of Austin and the Honorable Andrew Carnegie, which said agreement is made and entered into, and as expressed by ordinance, is hereby confirmed and approved, and such further sum, not exceeding a tax of one and one fourth (1-1/4) mills upon said taxable property as the common council shall determine to be levied; and such proposed tax shall be subject to the approval of the mayor in the same manner as in this charter provided for the levying of other taxes, except as to the levying of a tax sufficient to raise the sum of twelve hundred dollars (\$1,200.00) for said library purposes, the levying of which tax is hereby made mandatory. Such tax when so levied, shall be certified by the city recorder to the county auditor to be extended as a part of the general tax levy <sup>but</sup> ~~and~~ said city, and when the amount has been collected, it shall be set apart and appropriated to the library fund, and the city treasurer shall keep a separate account thereof,

and it shall be paid out of the treasury only upon the order of the library board signed by its president and secretary. The common council may appropriate to the library fund from the general fund, such further sum or sums during any year, as may be determined by the council, and when so appropriated, such sum shall be credited to said fund to be drawn out only in the manner herein provided.

#### CONTROL AND MANAGEMENT OF LIBRARY.

Sec. 4. The library board shall have the exclusive control and management of all real estate and improvements which now are, or may hereafter be acquired, set apart or dedicated to the use of the city of Austin for library purposes.

The board shall have authority to purchase or acquire by donation or otherwise, all such books, periodicals, manuscripts and supplies for library purposes, and in connection with the library, as they may deem proper, and may appoint, remove, discharge or suspend, the librarian, janitor or other employees or laborers necessary and proper in and about the management of the library, and make such rules and regulations regarding the use of the library building, or any part thereof, affixing penalties for the violation of any such regulations as they may deem proper.

It shall be the duty of the library board at all times, to keep an accurate account of the costs of all buildings and improvements made upon the library property, and of all books, periodicals, manuscripts and supplies, purchased in connection therewith, which account shall be open for the examination of the council or any member of said board, or to any citizen and tax payer of the city of Austin at all times.

#### LIMIT OF EXPENDITURES.

Sec. 5. Said board shall not expend or incur indebtedness in any one year, chargeable to its fund in excess of the aggregate sum appropriated and set apart to the library fund for that year under the provisions of this chapter.

THE COMMON COUNCIL MAY REMOVE.

Sec. 6. Any member of said board may be removed from office by the common council of said city, if it shall appear upon a hearing or upon a petition of ten (10) or more reputable freeholders of said city presenting sworn charges, that any such member of the board has been guilty of a misdemeanor or of malfeasance in office; provided, however, that notice shall first be given to such member of the board at least ten (10) days before the time of the meeting at which such charges will be heard and considered, and such notice shall be accompanied with a copy of such charges, and such member shall have the right to appear and be heard in person, or by council, before the common council in relation thereto.

ATTENDANCE ON MEETINGS.- VACANCIES HOW DECLARED.

Sec. 7. The office of any member of the board under this act, who shall not attend the meetings of the board for three successive months after having been duly notified of said meetings, without giving satisfactory reasons to the board, or without leave of absence obtained from the board, may be by said board declared, and thereupon shall become vacant.

PENALTIES.

Sec. 8. Any person who shall wilfully commit any breach of peace in or upon the property under the control of said board, remove any book, books, manuscripts, periodicals or other supplies of said library without permission of the board or its librarian, damage or destroy any such book, books, manuscripts, periodicals or other things about said library, or injury, damage or destroy any article or furniture, lamp, chandelier or other things about said library building or shall disregard any lawful rule and regulation made and imposed by the library board, and which shall be printed and posted in said library building, shall upon conviction thereof, be punished by a fine not exceeding one hundred dollars (\$100.00)

and upon default in the payment of such fine and costs, may be  
committed to the county jail for a term not exceeding ninety (90)  
days.

C H A P T E R XIV.

MISCELLANEOUS PROVISIONS.

VALIDITY OF ORDINANCES.

SECTION 1. All ordinances and resolutions heretofore made and published by the common council of the city of Austin and not inconsistent with the provisions of this act, shall remain in force except as altered, modified or repealed, and except as may be hereafter modified or repealed by the common council; and all books or pamphlets published, or that may hereafter be published, purporting upon their title page to be published by the authority of said common council, and purporting to contain the ordinances of said city, standing rules of said common council, or either, are hereby declared to be competent prima facie evidence of the contents of such ordinances, standing rules and orders, or of any resolution or other matters purporting to be the act of said common council which may be found printed thereon, and of due adoption, approval and publication thereof, notwithstanding the supersedure or repeal by this act of the act incorporating the city of Austin, and acts amendatory thereof. It is not intended that any rights vested shall be lost hereby; but in all cases affecting past taxes not yet collected, liens for the same, rules of evidence and rights of every kind inchoate or perfected, the provisions of such acts as are hereby suspended or repealed, and of all ordinances passed by the council of said city shall be deemed to continue in force.

SECTION 2. All outstanding indebtedness against the city of Austin, either in the form of bonds, refunded bonds, certificates of indebtedness, or orders issued by the common council of said city and which is now unpaid, whether created under and by virtue of general or special laws, or by the common council in the course of general, special or extraordinary proceedings, or in aid of industries and improvements or schools, is hereby declared to be a legal, valid and existing indebtedness against the city of Austin, and the faith and credit of said city is hereby irrevocably pledged to the payment thereof.



PENALTY IN FAVOR OF CITY--HOW REMITTED.

SECTION 3. No penalty or judgment in favor of the city of Austin shall be remitted or discharged except by a vote of two-thirds of all of the aldermen elect, but nothing contained in this section shall be construed to prohibit any justice of the peace from remitting or reducing any penalty or judgment rendered by him, nor to prohibit said court from suspending execution of sentence in its discretion.

PROSECUTIONS--HOW INSTITUTED.

SECTION 4. In all prosecutions for violations of this charter the first process shall be by warrant on complaint being made; provided, that no warrant shall be necessary for the arrest of any person or persons while in the act of violating any law of the State of Minnesota, ordinance or regulation of the city, but a person or persons so arrested may be proceeded against, tried, convicted and punished, or discharged in the same manner as if the arrest had been made by warrant. All warrants, process or writs issued by a justice of the peace for the violation of any ordinance or resolution of said city may be directed to the chief of police or any police officer of said city, or as generally directed under the laws of this state, but may be served by any person authorized to serve process in this county.

IMPRISONMENT--WHEN ALLOWED.

SECTION 5. In all cases of the imposition of any fine or penalty, or the rendering of any judgment by a justice of the peace of said county, pursuant to any statute of the State of Minnesota, or pursuant to any ordinance or resolution of the city as punishment for any offense, the offender shall be forthwith committed to the city prison of said city, or if there be no city prison, or for any reason it be impracticable to use such city prison, to the common jail of the county, and be there imprisoned for a period not exceeding

three (3) months in the discretion of the justice, and under such further restrictions and prohibitions contained in this act, unless the said fine or penalty be sooner paid or satisfied; and from the time of the arrest of any person or persons for any offense whatever until the time of trial, the person or persons so arrested may be imprisoned in the city prison or the common jail of the county.

#### CITY NOT LIABLE FOR SHERIFF'S FEES AND BOARD--COUNTY JAIL.

SECTION 6. The City of Austin shall not be liable in any case for the board, sheriff's fees or jailer's fees of any person who may be committed to the jail of Lower County, under the laws of this state.

#### ACTIONS TO BE IN THE NAME OF THE CITY.

SECTION 7. All actions brought to recover any penalty or forfeiture under the ordinances, resolutions, police or health regulations made in pursuance thereto, and all actions in behalf of said city, shall be brought in the name of the City of Austin.

#### PROCESS--HOW SERVED AGAINST THE CITY.

SECTION 8. When any suit or action shall be commenced against said city, all and every process and notice whatever affecting said city, shall be served upon the mayor, or in case of his absence from the city, upon the alderman-at-large, and a copy thereof shall be filed in the office of the city recorder; provided, that when the issues have been joined in any action or proceeding all further notices or papers proper to be served in such matter shall be served upon the city attorney, who shall file a report thereof with the city recorder.

#### RIGHT OF CITIZENS TO PROSECUTE OR DEFEND SUITS.

SECTION 9. In any action pending in which the City of Austin is a party, either plaintiff or defendant, any citizen and taxpayer, or any number of citizens and taxpayers, after it has been shown and determined that such citizen or citizens, taxpayer or taxpayers have

an interest in the subject-matter of the action, may intervene, and appear and defend or prosecute the same in the name of said city in the manner hereinafter provided. Such citizen or citizens and taxpayer or taxpayers so intending to intervene, shall make application to the district court of said Mower County in such cause for leave to intervene and defend or prosecute such action, setting forth in said petition the facts showing their interest in said cause. Notice of a hearing upon such application shall be given and served upon the city attorney at least ten (10) days before the hearing thereof. Such application shall be determined in such manner as the district court may direct and the city may resist such application. The decision upon such application by said district court shall be final as to the right of such applicant to so intervene. If the right of intervention shall be granted by said court, such applicant or applicants may appear and prosecute or defend said cause in the name of said city, and all acts in that behalf which the said city might or could do; provided, that such intervenors shall be required to file in such cause such bonds as may be directed by said court indemnifying the city of Austin against any costs which may be awarded against it in the action subsequent to the date of such intervention; and provided, that such intervention shall not be construed to prevent the city of Austin from prosecuting or defending the action on its own behalf. And any citizen, citizens, taxpayer or taxpayers may bring and prosecute any action in the name of, and in behalf of, the city of Austin against whosoever such cause may exist and in any court, and may obtain in said action any and all relief in behalf of said city which the city might or could obtain if the city prosecuted such action. Such citizen, citizens, taxpayer or taxpayers shall, before commencing such action, obtain leave of the court in which such action is commenced in the same manner as heretofore provided in case of an intervention, and shall file in said cause, a bond, of an amount to be fixed and approved by the court,

indemnifying the city against any judgement which may be obtained against it in said action. If judgement shall be obtained in favor of said city in such action so brought, said person so bringing such action shall be reimbursed by said city for his reasonable costs and expenses in the prosecution thereof; provided, that nothing herein shall be construed to prevent the city from bringing or prosecuting said action in its own behalf, or from appearing in and prosecuting any action so brought, and the city may appear and prosecute therein without obtaining leave of the court.

CHARTER NOT REPEALED BY STATE LAW.

SECTION 10. No law of this state concerning the provisions of this charter hereafter passed, shall be considered as repealing, amending or modifying the same.

TERMINATION OF OFFICE OF PRESENT ALDERMEN--REPEALING CLAUSE.

SECTION 11. For the purpose of putting this charter into better effect the office of each alderman of the City of Austin whose term of office does not sooner expire, shall terminate and expire on the 1st day of May, A.D., 1904, or as soon thereafter as their successors have been duly elected and qualified, and at the same time all offices heretofore filled by the common council and which shall not sooner become vacant by limitation of appointment, shall become vacant.

All acts and parts of acts inconsistent herewith shall, upon the passage of this charter, be deemed to be repealed.

CHARTER TO BE PUBLIC LAW.

SECTION 12. This charter is hereby declared to be a public act and may be read in evidence in all courts in this state, and need not be pleaded or proven.

The foregoing is a draught of the proposed charter of the City of Austin, Minnesota, made, framed and adopted by the commission appointed by the district court of the Tenth judicial district of

the state of Minnesota, under and pursuant to section thirty-six (36), article four (IV.) of the constitution of the state of Minnesota, as amended by that certain amendment proposed by the Legislature of the state of Minnesota, in an act of said Legislature known as chapter two hundred eighty (280) of the General Laws of Minnesota for one thousand eight hundred and ninety-seven (1897), and duly adopted at the general election of said state held in the year one thousand eight hundred ninety-eight (1898), and chapter three hundred fifty-one (351) of the General Laws of the state of Minnesota for the year one thousand eight hundred ninety-nine (1899); and said instrument of said proposed charter of the city of Austin, is hereby returned to the Honorable Charles H. Johnson, Mayor of the city of Austin, according to law, signed by the undersigned majority of said commission.

Dated this 3<sup>d</sup> day of March, A.D., one thousand nine hundred and three (1903).

Charles L. Vest

President

Arthur W. Wright

Secretary

John L. Giddens

Charles J. Johnson

Lafayette French

Robert A. Avery

J. M. Greenman

E. L. Kinney

J. D. Sheedy

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