

[No. 7, S.]

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CHAPTER 26.**AN ACT to incorporate the city of Fountain City.***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***CHAPTER I.**Corporate
name.

SECTION 1. From and after the first Tuesday of April, 1889, the district of country in the county of Buffalo contained within the limits and boundaries hereinafter described, shall be a city by the name of the "city of Fountain City," and the people now inhabiting, and those who shall hereafter inhabit the district of country herein described, shall be a municipal corporation by the name of the "city of Fountain City," and shall have the general powers possessed by municipal corporations at common law, and under the constitution and statutes of the state of Wisconsin, and in addition thereto such as are herein specially granted, and the authorities thereof shall have perpetual succession, shall be capable of contracting and being contracted with, of suing and being sued, pleading and being impleaded in all courts of law and equity, and shall have a common seal, and may change and alter the same at pleasure.

Corporate
limits.

SECTION 2. All that district of country in the county of Buffalo included in the following sections shall comprise the territory and limits of the city of Fountain City, to-wit: Sections eight, nine, fifteen, sixteen, seventeen, twenty-one, twenty-two and twenty-seven, of township number nineteen north, of range number eleven west.

Wards.

SECTION 3. The city shall be divided into two wards, as follows: All that part of said city lying south and east of the center line of Liberty street, thence running in a northeasterly direction, making one continuous straight line with Liberty street until it intersects with the section line of sections eight and nine, in township nineteen, range eleven, thence running due north along said section line until it reaches the city limits, shall constitute and be known as the first ward.

All that part of said city lying west and north of the first ward shall constitute and be known as the second ward.

SECTION 4. The corporate authority of said city shall be vested in one principal officer, styled the mayor, and one board of aldermen, consisting of three members from each ward, who, with the mayor, shall be denominated the common council, and such other officers as are hereinafter provided for or may be created under this act.

CHAPTER II.

SECTION 1. The annual election for ward and city officers shall be held on the first Tuesday of April of each year, at such place in each ward as the common council shall designate. Ten days' notice shall be given by the city clerk of the time and place of holding such election, and of the officers to be elected, by publication in some newspaper published in the city, or by posting up two written or printed notices in each ward. The inspectors and clerks of election in each ward shall be the same as is provided by law for holding general elections for state and county officers, excepting that at the first election, which is to be held on the first Tuesday in April, 1889, the electors present shall, at the opening of the polls, elect three inspectors and two clerks of election, whose duties shall be the same as those of inspectors and clerks at general elections for state and county officers. The place of election in each ward at such first election shall be designated by the president and trustees of the village of Fountain City at least five days prior to such election, and five days' notice thereof shall be given by the village clerk of said village in the manner above provided. The polls of election held under this act shall be opened and closed at the same time of day as is required by law for general elections held for state and county officers. The qualifications of voters at all elections under this act shall be the same as at such general elections. Each ward officer shall be a qualified elector in the ward in which he is elected or appointed, and each city officer shall be a qualified elector in the city.

City officers.

SECTION 2. The officers to be elected by the people shall be a mayor, an assessor, and a city treasurer, from the city at large, three aldermen, one supervisor, one constable and one justice of the peace from each ward. A city clerk, a marshal and one street commissioner, and all other necessary officers shall be appointed by the common council. All elective officers, except aldermen and justices of the peace, shall unless elected to fill a vacancy, hold their respective offices for one year, and until their successors are elected and qualified; provided, however, the council shall have power, for due cause, satisfactory to them, to expel any of their own number, and to remove, by a two-thirds majority of all members of the council, from office any officer or agent of the city, except justices of the peace, due notice and an opportunity for a hearing having been first given to the officer proposed to be removed. The terms of every officer elected under this act shall commence on the second Tuesday of April in the year in which such officer is elected, and the term of office of all appointed officers shall be one year. At the first election under this act there shall be elected in each ward one alderman for one year, and one for two years and one for three years, and thereafter there shall be elected one alderman in each ward for the term of three years. Justices of the peace shall hold their offices for two years, and until their successors are elected and qualified.

Vacancy, how filled.

SECTION 3. Whenever a vacancy shall occur in any office, it shall be filled by the council. The person appointed to fill a vacancy, excepting in the office of alderman and justice of the peace, shall hold his office and discharge the duties thereof for the unexpired term, with the same rights and subject to the same liabilities as the person whose office he may be appointed to fill. The person appointed to fill a vacancy in the office of alderman or justice of the peace shall hold his office until such vacancy shall be filled by election at the next succeeding charter election, and shall, during that time have all the rights and be subject to the same liabilities as the person whose office of alderman or justice of the peace he may be appointed to fill.

SECTION 4. In all elections by the people a plu-

reality of votes shall constitute an election. In case two or more candidates for an elective office shall receive an equal number of votes for the same office, the election shall be determined by casting of lots in the presence of the council at such time and in such manner as it may direct. In case of a tie.

SECTION 5. Whenever any officer shall cease to possess the qualifications necessary for his election or appointment, his office shall be deemed vacant, and any officer who shall neglect or refuse to qualify within ten days from the time he shall be notified of his election or appointment, shall be deemed to have vacated his said office. When office deemed vacant

SECTION 6. Whenever any election shall be held under this charter, the inspectors of election shall forthwith make their returns, stating the number of votes cast for each person for each and every office, to the city clerk. Within four days after an election the council shall meet and canvass said returns, and declare the result, as it shall appear from the same. The clerk shall thereupon immediately give notice to the persons elected of their election. After the first election under this act, the said inspectors shall forthwith make like returns to the city clerk of the city of Fountain City, and within four days after said first election, the mayor and common council shall meet and canvass said returns of said first election, and declare the result, as it shall appear from the same, and the said city clerk shall immediately thereafter give notice to the persons elected of their election. Election returns.

CHAPTER III.

OFFICERS AND THEIR POWERS.

SECTION 1. Every person elected or appointed to any office under this act, except justices of the peace, shall, before he enters upon the duties of his office, take and subscribe an oath of office, and file the same duly certified by the officer taking the same with the clerk of the city; and the clerk, marshal, constables and such other officers as the common council may direct, shall severally, before they enter upon the duties of their respective offices, execute to the city of Fountain City a bond, with at least two sureties, Officers to take oath and execute a bond to the city.

who shall swear that they are each worth the penalty specified in said bond over and above all debts, exemptions or [and] liabilities, and said bond shall contain such penal sum and such conditions as the council may deem proper. The treasurer, before entering upon his duties, shall also execute a bond, with at least two, nor more than ten sureties. The penal sum expressed in such bond shall exceed the amount of the last annual tax roll, and each surety shall swear that he is worth a certain amount over and above all debts, liabilities or [and] exemptions, and the aggregate of such amounts shall at least exceed the penal sum specified in the bond. The council may, from time to time, require new or additional bonds from the treasurer or other officer of the city; and the council may remove from office any officer refusing or neglecting to give the same. Justices of the peace shall qualify in the same manner as in towns, except that their bonds shall be approved by the common council.

Duties of the
mayor.

SECTION 2. The mayor shall, when present, preside over the meetings of the common council. He shall take care that the laws of the state and the ordinances of the city are duly observed and enforced, and that all other executive officers of the city discharge their respective duties; he shall from time to time give the common council such information and recommend such measures as he may deem advantageous to the city. The mayor shall be the chief executive officer and head of the police of the city; and in case of a riot or other disturbance, he may appoint as many special or temporary constables as he may deem necessary. He shall have the authority to remove the marshal for inefficiency or neglect of duty, and appoint some one to fill the vacancy, but such removal and appointment shall be subject to the ratification or approval of a majority of the common council. The mayor shall have a vote in the council only in case of a tie. He shall have power to veto any ordinance or resolution passed by the common council by notifying the common council of his objections thereto at any time within seven days after the passage of such ordinance or resolution. In case of no session of the common council on any day after the passage of the same, and before the expiration of the said

seven days such notification shall be made by filing with the clerk a copy of his objections; and in case the council shall not, within one week after the receipt of such objections, or such filing, with the clerk, re-enact such ordinance or pass such resolution by the votes of two-thirds of the aldermen elect, the same shall be null and void.

SECTION 3. At the first meeting of the council after their election in each year, it shall proceed to elect, by ballot, one of its members president, and in the absence of the mayor the said president shall preside over the meetings of the common council; and during the absence of the mayor from the city, or his inability, for any reason, to discharge the duties of his office, the said president shall exercise all the powers and discharge all the duties of the mayor. In case both the mayor and president shall be absent at any meeting of the common council, it shall proceed to elect a temporary presiding officer, who, for the time being, shall discharge the duties of the mayor. The president or temporary presiding officer, while presiding over the board or performing the duties of mayor, shall be styled, acting mayor; and any acts performed by them shall have the same force and validity as if performed by the mayor. But the president of the council, as acting mayor, shall sign no order, warrant or other proceeding whatever, which the mayor has refused to sign, and communicated such refusal to the council.

President of
the council.

SECTION 4. The clerk shall keep the corporate seal and all papers and records of the city, and keep a record of the proceedings of the common council, at whose meetings it shall be his duty to attend, and copies of all papers filed in his office, and transcripts from the records of the common council, certified by him under the corporate seal, shall be evidence in all courts in like manner as if the originals were produced; he shall draw and countersign all orders on the treasury in pursuance of any order or resolution of the common council, and keep a full and accurate account thereof in books provided for that purpose. Whenever the clerk shall be absent from any meeting, the common council may appoint a clerk pro tem. The city clerk shall have power and authority to administer oaths and affirmations,

Duties of city
clerk.

and may appoint a deputy in writing under his hand, and file such appointment in his office, and such deputy, in case of absence or disability of the clerk, shall act in his place.

Duties of treasurer.

SECTION 5. The treasurer shall perform such duties and exercise such powers as may be lawfully required of him by the ordinances of said city or the laws of this state. He shall receive all moneys belonging to the city, and keep an accurate and detailed account thereof, together with an account of all disbursements, in such manner as the common council shall direct. He shall report to the common council as often as required, and annually, at least ten days before the annual election, a full and detailed account of all receipts and expenditures since the date of the last annual report; and also of the state of the treasury, which statement shall be filed with the clerk. The city treasurer shall be collector of taxes in said city, and in addition to the powers and duties already specified, shall have the same powers and duties, and be subject to the same liabilities as treasurers in towns.

Powers and duties of the marshal.

SECTION 6. The marshal shall possess all the powers of a constable in towns and be subject to the same liabilities. It shall be his duty to execute and return all writs and processes to him directed by any justice of the peace, and when necessary in criminal cases, or for the violation of any ordinance of said city or laws of this state, may pursue and serve the same in any part of the state of Wisconsin. It shall be his duty to suppress all riots, disturbances and breaches of the peace, to apprehend any person in the act of committing any offense against any ordinance of said city or the laws of this state, and forthwith bring such person before competent authority for examination, and for such service he shall receive such fees as are allowed to constables for like service. He shall do and perform all such duties as may lawfully be enjoined on him by the ordinances of said city.

Duties of assessor.

SECTION 7. The assessor shall be a freeholder of said city, and shall assess all the taxable property of said city as required by the general laws of this state, and receive for such services such compensation as the common council may allow, other-

wise to receive the same compensation as is allowed by law to town assessors.

SECTION 8. The justices of the peace elected by virtue of this act shall have and exercise the same powers and duties and be subject to the same liabilities and regulations as justices of the peace of towns, and they shall, in addition to their powers as above stated, have sole and exclusive jurisdiction in cases for the violation of any of the provisions of this act or of any ordinance, by-law, rule, regulation or resolution of said city.

Powers and duties of justices of the peace.

SECTION 9. The common council shall have power from time to time to require other and further duties to be performed by any officer whose duties are herein prescribed, and to appoint such other officers as may be necessary to carry into effect the provisions of this act, and to prescribe their duties, and to fix the compensation of all officers where the compensation is not fixed by the statute or this act. The council shall, at least thirty days before the annual charter election in each year, fix by resolution the salary which shall be paid to said officers for the ensuing year and such salary shall not be increased or diminished during the term of the officer elected or appointed; neither shall extra compensation be granted except by unanimous vote of the council approved by the mayor. For the year 1889, such compensation of such officers shall be the amount already fixed by the mayor and common council of the city of Fountain City.

Common council may require further duties from officers.

SECTION 10. If any person, having been an officer in said city, shall not within ten days after notification and request, deliver to his successor in office all property, books, papers and effects of every description in his possession belonging to said city or pertaining to the office he may have held, he shall forfeit and pay to the use of the city one hundred dollars, besides all damages caused by his neglect or refusal so to deliver, and such successor may recover possession of such books, papers and effects in the manner prescribed by the laws of the state.

Officer to deliver to his successor books, papers, etc.

Penalty.

SECTION 11. No alderman shall be a party to or interested in any job or contract with the city, nor shall any alderman or the mayor receive any compensation for his services, committee work included, unless by unanimous consent of mayor

No alderman shall be a contractor with the city.

and common council, on forfeiture of double the amount received in violation thereof, which forfeiture may be recovered against any alderman or against the mayor violating the provisions of this section by any freeholder of the city under the provisions of this charter, if the amount shall be within the jurisdiction of justices of the peace, or before any court of competent jurisdiction, under the provisions of the statutes of this state relating to the collection of forfeitures, in case such amount shall exceed the jurisdiction of justices of the peace, and the amount so recovered in any action brought for the recovery of such forfeiture shall be paid to the freeholder bringing such action, in case the same shall be collected.

Officers of the
peace.

SECTION 12. The mayor or acting mayor, and each and every alderman, justice of the peace, marshal, constables and watchman, shall be officers of the peace, and may command the peace, and suppress in a summary manner all rioting and disorderly behavior within the limits of the city; and for such purposes may command the assistance of all by-standers, and other citizens; and if any person, by-stander or citizen shall refuse to aid in maintaining the peace, when so required, every such person shall forfeit and pay a fine of five dollars; and in cases where the civil power may be required to suppress riotous or disorderly behavior, the superior or senior officer present, in the order above mentioned in this section, shall direct the proceedings.

All actions
shall be
brought in
the corporate
name

SECTION 13. All acts to recover any penalty or forfeiture under this charter, or the ordinances, by-laws, police and health regulations made in pursuance thereof, shall be brought in the corporate name of the city, and may be heard and determined by or before any justice of the peace in the city. All fines and penalties collected by any justice in such cases shall be paid over to the city treasurer, except those for refusing to work upon the highways, which shall be paid over, on demand, to the street commissioner. Each justice shall report to the common council on the first Monday in January, April, July and October in each year a statement of all such fines and penalties collected by him, and at the same time pay over the amount thereof to the city treasurer, except as above mentioned.

SECTION 14. Any officer may resign his office ^{Resignation.} by filing his written resignation with the clerk, and such resignation shall take effect and his office shall be deemed vacant from the time such resignation shall be accepted by the common council.

SECTION 15. No alderman or other city officer shall be accepted as surety upon any bond, note or obligation made to the city, nor shall any officer required to give bonds as aforesaid, enter upon the discharge of the duties of his office until such bond shall have been filed and approved, as by this act provided. ^{No alderman shall be surety to the city.}

CHAPTER IV.

THE COMMON COUNCIL—ITS POWERS AND DUTIES.

SECTION 1. The mayor and aldermen shall constitute the common council, and the style of all ordinances shall be: "The mayor and common council of the city of Fountain City do ordain." ^{The common council.} The common council shall meet at such time and place as it shall fix upon. A majority of the aldermen shall constitute a quorum.

SECTION 2. The common council shall hold stated meetings. ^{Council meetings.} The common council shall determine the rules of its own proceedings, and be the judges of the election and qualifications of its own members, and have power to compel the attendance of absent members, and to enforce its rules, to punish by fine, and by a vote of two thirds of its members, any member for disorderly or contemptuous conduct, and by a vote of two-thirds of its members, may expel any member for cause.

SECTION 3. The common council shall have the management and control of the finances and of all the property of said city, and shall likewise, in addition to the power herein vested in it, have full power and authority to make, enact, ordain, establish, publish, enforce, alter, modify, amend and repeal all such ordinances, rules and by-laws for the government and good order of the city, for the suppression of vice, for the prevention of crime and for the benefit of the trade, commerce and health thereof, as it shall deem expedient, declaring and imposing penalties and to enforce the same against any person or persons who may vio- ^{Finances.}

late any of the provisions of such ordinances, rules or by-laws; and such ordinances, rules and by-laws are hereby declared to be and have the force of law; provided, that 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 ordinances, resolutions or by-laws:

License
showmen, etc.

First. To license and regulate the exhibition of common showmen, or shows of any kind, or the exhibition of caravans, circuses or theatrical performances, billiard tables, bowling saloons, and to provide for the abatement and removal of all nuisances under the ordinances or at common law, and to grant licenses and regulate groceries, taverns, victualing houses, and all persons vending or dealing in spirituous, vinous or fermented liquors.

Prohibit
gaming and
fraudulent
devices.

Second. To restrain and prohibit all descriptions of gaming and fraudulent devices and practices, and playing of cards, dice or other games of chance, for the purpose of gaming in said city; and restrain any person from vending, giving or dealing in spirituous, fermented or vinous liquors, unless duly licensed by the common council.

Riots.

Third. To prevent any riots, noise, disturbance or disorderly assemblages; to suppress and restrain disorderly houses or groceries, and houses of ill-fame, and to authorize the destruction of all instruments used for the purpose of gaming.

Unwholesome
places.

Fourth. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or other unwholesome or nauseous house or place, to cleanse, remove or abate the same, from time to time, as often as it may be necessary for the health, comfort and convenience of the inhabitants of said city.

Location of
slaughter
houses.

Fifth. To direct the location and management of slaughter-houses and markets, and to regulate the storage, safekeeping and conveying of gunpowder or other combustible materials.

Encumbering
streets and
sidewalks.

Sixth. To prevent the encumbering of the streets, sidewalks, lanes or alleys with carriages, carts, wagons, sleighs, boxes, lumber, firewood, or any other material or substance whatever.

Horse racing.

Seventh. To prevent horse-racing and immoderate riding or driving in the streets, and to regulate

the places of bathing and swimming in the waters within the limits of said city.

Eighth. To restrain and regulate the running at large of cattle, swine, sheep, poultry and geese, and to authorize the distraining and sale of the same. Running at large of cattle.

Ninth. To prevent the running at large of dogs and to authorize the destruction of the same in a summary manner when at large contrary to the ordinances. Dogs.

Tenth. To prevent any person from bringing, depositing or having within the limits of said city, any putrid carcass, or other unwholesome substance, and to require the removal of the same by the owner thereof or by the person who shall have upon his premises any such substance or putrid or unsound beef, pork, fish, hides, or skins of any kind, and on default to authorize the removal thereof by some competent officer at the expense of such person or persons. Putrid carcasses.

Eleventh. To regulate and license hacks, cabs, drays, carts, and the charges of hackmen, cabmen, draymen and cartmen in the city. License hacks, cabs, etc.

Twelfth. To establish and regulate boards of health, provide hospitals and cemetery grounds, regulate the burial of the dead, and the return of bills of mortality, and to exempt burial grounds set apart for public use from taxation. Boards of health.

Thirteenth. To regulate the assize and weight of bread, and to provide for the seizure and forfeiture of bread baked contrary thereto. Bread.

Fourteenth. To prevent all persons from riding or driving any horse, ox, mule, cattle or other animals on the sidewalks in said city, or in any way doing any damage to such sidewalks. Driving on sidewalks.

Fifteenth. To prevent the shooting of fire-arms or crackers, and to prevent the exhibition of any fire-works in any situation which may be considered by the council dangerous to the city or any property therein, or annoying to any citizen thereof. Shooting fire arms.

Sixteenth. To restrain drunkards, immoderate drinking or obscenity in the streets or public places, and to provide for arresting, removing and punishing any person or persons who may be guilty of the same. Drunkards.

Seventeenth. To restrain and regulate runners and solicitors for stages, public houses and other Solicitors and police.

establishments, and to regulate the police of said city.

Public markets. Eighteenth. To establish public markets and to make rules and regulations for the government of the same; to appoint suitable officers for overseeing and regulating such markets, and to restrain all persons from interrupting or interfering with the due observance of such rules and regulations.

Butcher's stalls. Nineteenth. To license and regulate butchers' stalls, shops and stands for the sale of game, poultry, butchers' meat, butter, fish and other provisions.

Selling fuel, hay and lime. Twentieth. To regulate the place and manner of the weighing and selling of fuel, hay and lime, and to appoint suitable persons to superintend and conduct the same.

Snow and rubbish on sidewalks. Twenty first. To compel the owners or occupants of buildings or grounds to remove snow, dirt or rubbish from the sidewalks, street or alley opposite thereto, and to compel such owners or occupants to remove from the lot owned or occupied by them, all such substances as the board of health shall direct; and on their default to authorize the removal or destruction thereof by some officer of the city, at the expense of such owners or occupants.

Contagious diseases. Twenty-second. To regulate, control and prevent the landing of persons from cars or stages wherein are contagious or infectious diseases or disorders; and to make such disposition of such persons as to preserve the health of said city.

Auctioneers and transient dealers. Twenty-third. To license auctioneers and transient dealers, and to regulate the time, place and manner of holding public auctions or vendues, and to require the payment into the city treasury of a certain percentage of amount received from sales by auctioneers and transient dealers.

Watchmen. Twenty-fourth. To appoint watchmen and prescribe their duties.

Poll tax. Twenty-fifth. To tax annually each male inhabitant of said city above the age of twenty-one and under fifty years, one day's labor, or in lieu thereof, one dollar and fifty cents (to be denominated a poll tax), and to be appropriated to the improvement of the streets, crosswalks and roads of said city, under the direction of such persons

as they may appoint, and to provide for the collection of said tax.

SECTION 4. All ordinances shall be passed by Ordinances. an affirmative vote of a majority of the common council, and shall be signed by the mayor, and shall be published in a newspaper selected by the council, before the same shall be in force, and within fifteen days thereafter they shall be recorded by the city clerk in books to be provided for that purpose; but before the said ordinances shall be recorded, the publication thereof respectively, within the said time, shall be proved by the affidavit of the foreman or publisher of such newspaper, and the said affidavit shall be recorded therewith, and at all times shall be deemed and taken as sufficient evidence of the time and manner of such publication.

SECTION 5. The power conferred upon the said Nuisances. council to provide for the abatement or removal of nuisances, shall not bar or hinder suits, prosecutions or proceedings according to law. Gambling houses and houses of ill-fame are hereby declared and shall be deemed public or common nuisances.

SECTION 6. The common council shall examine, Accounts of officers. audit and adjust the accounts of the clerk, treasurer, and street commissioner of each ward, marshal and all other officers and agents of the city, at such time as it may deem proper, also at the end of each year; and before the term for which the officers of said city are elected or appointed shall have expired. And the common council shall require each and every such officer and agent to exhibit his books, accounts, moneys and vouchers for such examination and settlement; and if such officer or agent shall refuse to comply with the orders of the council in the discharge of his duties in pursuance of this section, or shall neglect or refuse to render his accounts, or present his moneys, books and vouchers to said council, it shall be the duty of the common council to declare the office of such person vacant; and the common council shall order suits and proceedings at law against any officer or agent of said city who may be delinquent or defaulting in his accounts, or in the discharge of his official duties, and shall make a full record of all such settlements and adjustments.

CHAPTER V.

OPENING OF STREETS, ALLEYS, ETC.

Public streets
and alleys.

SECTION 1. The common council shall have power to lay out public squares, grounds, streets and alleys, and to enlarge and extend the same, and to use the land in said city for the purpose of constructing and repairing sewers and drains, as follows: Whenever ten or more freeholders residing in the city shall, by petition, represent to the common council that it is necessary to take certain lands within the city for public use, for the purpose of laying out public squares, grounds, streets or alleys, or enlarging or widening the same, or to use certain lands within the city for the purpose of constructing and repairing sewers and drains, giving the course and distances, metes and bounds of the lands proposed to be taken or used as aforesaid, together with the names and residences of the owners of such premises, if the same shall be known to the petitioners. The common council shall, if it deem it necessary to take and use such lands for the purpose specified in such petition, cause notice of such application to be given to the owner or owners of such land, in case such owner or owners shall reside in the county of Buffalo, and to the occupant or occupants of such land, if any there be, which notice may be served personally or by leaving the same at the place of business, or at the residence of such owner or owners, occupant or occupants; or if a portion of said lands shall not be in the actual occupation of any person, then the common council shall cause such notice, describing as near as may be the premises proposed to be taken, to be published in a public newspaper printed in the county of Buffalo, for four successive weeks, at least once in each week.

SECTION 2. Such notice shall state that on a day therein to be named, not less than ten days from the service of such notice or the expiration of such publication, as the case may be, application will be made to the county judge of the county of Buffalo, for the appointment of six jurors to view said premises, and to determine whether it will be necessary to take or use the

same for the purposes specified in said petition, and, if so, to assess damages. Should any of the lands proposed to be taken or used belong to the county judge, the application shall be made to the sheriff of the county.

SECTION 3. Upon the presentation of such application, and upon proof of the publication or service of the notice hereinbefore required, the said judge or sheriff, as the case may be, shall thereupon appoint as jurors six reputable freeholders, residents of the city, and not interested in the result of such application. The said judge or sheriff shall thereupon issue his precept, directed to said jurors, requiring them within thirty days from the date thereof to view such premises to be specified in said precept, and to make return under their hands to the common council, whether in their judgment it is necessary to take or use said premises for the purposes specified in such application.

Jurors to view premises.

SECTION 4. If any juror so appointed shall be disqualified from acting, or shall refuse to act, at any time before the completion of their final award, the judge or sheriff shall appoint others in their place, and a memorandum of such substitution shall be endorsed on the precept.

Who shall be jurors.

SECTION 5. The said jurors having first taken the oath hereinafter provided for shall, at such times as they may agree, proceed in a body to view the premises in question, and shall hear such testimony as may be offered by any party interested, which testimony shall be reduced to writing by one of the jurors; and either of the jurors shall be authorized to administer the necessary oaths to witnesses.

If any juror be disqualified.

SECTION 6. After viewing the premises and hearing such testimony as may be offered, the jurors shall make a report of their proceedings, which shall be signed by them respectively, and which shall state whether in their judgment it is necessary to take or use the premises in question for the public use, which said report, testimony and precept shall be returned to the common council within the time limited therein.

Jurors to hear testimony.

SECTION 7. Should the jurors report that it is necessary to take such premises, the common council shall, if it approves such report, enter an order among its proceedings confirming said

Jurors shall report.

Council to confirm said report

report, and directing the same jurors, within one month thereafter, or such further time as may be necessary, to again view said premises for the purpose of ascertaining and determining the amount of damages to be paid to the owner or owners of the property proposed to be taken, and to assess and return within the time limited, such damages to the common council.

Jury to estimate value of building to be removed.

SECTION 8. If there should be any building standing, in whole or in part, upon the lands to be taken, the jurors, before proceeding to make their assessments, shall first estimate and determine the whole value of such building to the owner aside from the value of the land, and the injury to him in having such building taken from him; and secondly, the value of such building to remove.

Notice to be given owner.

SECTION 9. At least ten days' personal notice of such determination shall be given to the owner or his agent, if known, and a resident of the city, or left at his usual place of abode. If not known or a non-resident, notice to all persons interested shall be given by the publication in a newspaper published in Buffalo county three successive weeks; such notice shall specify the building and the award of the jurors. It shall also require the parties interested to appear by a day to be therein named, and give notice of their election to the common council, either to accept the award of the jurors and allow such building to be taken, with the land appropriated, or of their intention to remove such building at the value set thereon by the jurors to remove. If the owner shall agree to remove such building, he shall have such time for that purpose as the common council may allow.

Building may be sold.

SECTION 10. If the owner refuse to take the building at the value to remove, or fails to give notice of his election as aforesaid within the time prescribed, the common council shall have power to direct the sale of such building at public auction for cash, giving ten days' notice of such sale. The proceeds shall be paid to the city treasurer for the use of the owner and shall thereafter be paid over to the owner on his application therefor; provided, it shall be necessary to remove such buildings for the proper use of the lands so taken or used.

SECTION 11. The said jurors, within the time limited, shall view and examine the premises proposed to be taken and used, and after hearing such testimony as may be offered, and which shall be reduced to writing by one of said jurors, they shall proceed to make their assessment, and to determine and appraise to the owner or owners the value of the real estate so proposed to be taken or used, and the injury arising to them respectively in consequence of the taking or using thereof, which shall be awarded to such owners respectively, as damages, after making due allowance therefrom for any benefit which such owners may respectively derive from such improvement. In the estimate of damages to the lands the jurors shall include the value of the building or buildings (if the property of the owners of such lands) as estimated by them as aforesaid, less the proceeds of the sale thereof; or if taken by the owner at the value to remove; in such case they shall only include the difference between such value and the whole estimated value of such building or buildings.

Damages awarded to owners.

SECTION 12. The jurors shall assess the damages to every person separately, so that their return shall show how much is to be paid for each, and the amount shall be placed opposite their respective names.

Jurors to assess damages to separate owners.

SECTION 13. If the lands or buildings belong to different persons, or be subject to lease, judgment or mortgage, or other incumbrance, or if there be any estate in it less than an estate in fee, to such person or interest respectively, the injury done shall be awarded to the person entitled thereto, by the jurors, less the benefits resulting to such interests respectively, from the proposed improvements.

In case of mortgage or other incumbrance.

SECTION 14. The award of the jurors shall be signed by them and returned, together with the testimony taken to the common council within the time limited, in this order of appointment, and shall be final, unless appealed from in the manner hereinafter provided, and the damages allowed by such award shall be a legal charge against the city.

Award of jurors shall be final unless appealed.

SECTION 15. The lands required to be taken or used for the purposes mentioned in this act, shall not be appropriated until the damages awarded

Damages to be awarded before land is appropriated.

therefor to the parties interested shall be paid or tendered to them or their agents, or in case said parties or agents cannot be found, or are unknown, deposited to their credit, in some safe place of deposit, to be determined by the common council; and then, and not before, such lands may be taken or used, and appropriated for the purposes required, and the lands shall thereafter be subject to all the laws and ordinances of the city, in the same manner as streets, alleys and public grounds heretofore opened or laid out, except in cases where the lands are only used for the purpose of sewers and drains, and then, in that case, the said city shall have power to go upon said premises at any and all times for the purpose of examining and repairing said sewers and drains.

When the land is taken by virtue of this act.

SECTION 16. When the whole of any lot or tract of land or other premises, under lease or other contract or incumbrance, shall be taken or used by virtue of this act, all the covenants, contracts or liabilities relating to the same or any part thereof, shall after the expiration of the time for appeal, as hereinafter provided, respectively cease and be absolutely discharged.

When only part of premises is used.

SECTION 17. When only part of the lot or tract of land or premises so under lease or other contract or incumbrance, shall be taken or used for the purposes aforesaid, such covenants, contracts or incumbrance shall be absolutely discharged as to the part thereof so taken or used, but shall remain valid as to the residue thereof; and the rents, liens and payments due from or on account of the same, shall be so appropriated that the part thereof justly and equitably payable for such residue and no more, shall be paid or recoverable for, or in respect to the same.

Damages to be paid within one year.

SECTION 18. The damages assessed on each separate lot or tract, shall be paid, or tendered, or deposited, as herein required, within one year from the confirmation of such assessment and report, and if not so paid, tendered or deposited, all the proceedings in any such case as to any lot or tract on which they are so unpaid shall be void.

Guardian may be appointed.

SECTION 19. When any known owner of lands or tenements affected by any proceedings under this act shall be an infant, or labor under disability, the judge of the circuit court of Buffalo county, or the county judge may, upon the appli-

cation of the common council, or of such party by his next friend, appoint a guardian for such party, and all notices required by this act shall be served upon such guardian in the same manner as if he were the party interested.

SECTION 20. The jurors mentioned in this act shall, before entering on the discharge of their duties, severally take an oath before some competent officer that they are freeholders of said city and not interested in the premises proposed to be taken or used, and that they will faithfully and impartially discharge the trust reposed in them. If any juror shall neglect or refuse to serve after the return of the precept above mentioned, the county judge shall have power to appoint new jurors in place of those who shall so neglect or refuse to serve.

Jurors to take oath.

SECTION 21. The city council or any party interested may, within twenty days from the return of the jurors to the common council of the benefits and damages so assessed, appeal to the circuit court of Buffalo county from the decision of said jurors, so far as it affects the interests of said appellants. Notice of such appeal shall be filed by the appellant with the clerk of said court within twenty days above mentioned, and the issue on such appeal shall be made up and tried in said court in such manner as said court shall direct. If any party other than the common council shall file such notice of appeal, they shall, before the trial thereof, give a bond in such sum and with such sureties as shall be approved by said court, conditional to pay all costs of said appeal, together with a reasonable attorney's fee if the appellant shall fail to obtain a more favorable judgment than the award appealed from.

City council may appeal to circuit court.

SECTION 22. In case the amount of damages awarded by the jurors shall be increased or diminished upon the final determination of the appeal, the city clerk shall attach to said award a copy of the final judgment therein, and such award shall be considered (as to such difference) amended thereby.

In case of final judgment.

SECTION 23. Whenever any streets, alleys or public grounds shall be laid out or extended, or sewers or drains constructed under the provisions above, the common council shall cause an accurate

An accurate survey shall be made.

survey and profile thereof to be made and filed in the office of the city clerk.

Relating to
vacating
streets and
alleys.

SECTION 24. No street or alleys or part thereof shall be vacated except upon the petition of the owners of three-fourths of the front upon such street or alley in the block in or along which such street or alley runs, but the boundaries of streets may be changed upon petition to the council by the parties interested.

Unplatted
lands.

SECTION 25. The foregoing provisions shall not apply to unplatted lands. Roads or streets may be laid out by the common council through unplatted lands in the same manner as roads are laid out by supervisors in towns.

In case of
error.

SECTION 26. All the foregoing directions given in this chapter shall be deemed only directory, and no error, irregularity or informality in any of the proceedings under the provisions of this chapter of this act, not affecting substantial justice, shall in any way affect the validity of the proceedings.

CHAPTER VI.

OF SIDEWALKS.

Sidewalks.

SECTION 1. Upon the petition in writing of the owners of two-thirds of the lots on any street or part of a street, or on one or more sides of any block or blocks, the common council shall have power to levy and collect a special tax on the owners of the lots on such street or part of a street, according to their respective parts, for the purpose of making a sidewalk along the same, and in case the necessary signatures to such petition cannot be obtained by reason of refusal to sign or of non-resident owners, then the common council shall have the power to levy such tax without such petition, if in its opinion it shall be for the public good.

Council to de-
termine what
kind of walk.

SECTION 2. Before levying the tax above provided for, the common council, shall by resolution, determine what kind of a walk shall be laid and in what manner it shall be built, and shall make or cause to be made an estimate of the probable cost thereof, and shall levy the tax in accordance with such estimate.

SECTION 3. Whenever the common council shall

levy a tax for the building of any sidewalk in accordance with the provisions of this chapter, the city clerk shall make out, under its direction, a tax list with warrant attached, signed by the mayor and countersigned by the clerk, and directed to the street commissioner, which tax list shall contain a list of the persons and description of the property taxed, with the amount of the tax set opposite thereto, and shall be delivered to the street commissioner to whom it is directed.

Tax for sidewalks.

SECTION 4. Upon the receipt of such warrant the street commissioner shall, at once notify the persons named in such list, by publishing a notice in some public paper printed in said city, or posting the same in three or more public places in said city, which notice shall specify a time not less than ten nor more than thirty days from the date thereof, when they may pay their taxes in labor, materials or money, and such persons may, within such time and at such place as may be required by such street commissioner, pay their taxes in labor or materials; provided, that which they shall furnish shall be suitable, and such as the street commissioner may in his judgment require.

Tax may be paid in labor or material.

SECTION 5. At the expiration of the time stated in said notice, the street commissioner shall proceed to build said walk according to the specifications and in the manner provided by the common council, and in case any of the taxes contained in said list remain unpaid, he shall proceed to collect the same in the same manner as provided for the collection of delinquent street tax, and shall have the same authority so to do.

Sidewalk to be built in manner provided by the common council.

SECTION 6. Within sixty days from the receipt of said tax list, the street commissioner shall make return thereof, under oath, to the common council, showing the amount of taxes collected in labor and materials, and the amount collected in money, the manner in which it was expended and the items of such expenditure; also the taxes remaining unpaid, if any, and the persons and descriptions of real estate to which such unpaid taxes stand charged; and the clerk of said city shall, in making out the duplicate tax roll of said city next thereafter, enter such unpaid taxes therein, with twenty-five per cent. added thereto, opposite the names of the persons and descriptions of property against which the taxes so re-

Delinquent tax

main charged and unpaid; and they shall be collected in the same manner as the general taxes of said city are collected, and when so collected shall be paid over on the order of the common council; and when not previously applied shall be expended for the purpose for which originally designed.

May appropriate money from general fund.

SECTION 7. The common council may, when any tax has been returned unpaid by the street commissioner, by resolution, appropriate the amount thereof, from the general funds of the city to accomplish the purpose designed; and in such case the money so used shall be replaced when such tax is collected.

Duty of street commissioner;

SECTION 8. It shall be the duty of the street commissioner of said city, whenever in his opinion any portion of a sidewalk shall be out of repair or in a dangerous condition, to serve a written notice upon the owner or occupant adjacent to which such defective sidewalk shall be, if a resident of said city, to immediately repair the same; and if said owner or occupant fail to repair the same forthwith, then and in that case and in the case of non-residents, the same may be repaired by the street commissioner at the expense of the lot adjoining said defective sidewalk; provided, however, that the expense to be charged to any lot for any such repairs shall, in no case exceed the sum of five dollars, unless such repairs shall be according to and under the direction of the common council, which may by resolution require any sidewalk to be repaired, and order the street commissioner to proceed as above set forth, notwithstanding the cost of such repairs.

Service of notice.

SECTION 9. Service of such written notice at the residence of the owner or occupant of such lot, upon a member of his family of suitable age and discretion, or with the agent of the owner, shall be deemed service upon such owner or occupant; and in case the owner of such lot is not a resident of said city, or his residence is unknown, and such owner has no agent in said city known to the street commissioner, then and in that case it shall be the duty of the street commissioner to forthwith repair the same without notice to the owner of the adjoining lot, at the expense of such lot, as hereinbefore provided, and in case of the non-payment of the cost of such repairs, he shall

return the same under oath to the city clerk, who shall insert the same in the next tax roll of said city, in the same manner as provided for the return and insertion of delinquent sidewalk tax, and with the same per cent. added thereto.

SECTION 10. The street commissioner shall also have the same powers and duties in relation to removing obstructions from any of the sidewalks or streets in said city as town boards of supervisors have in removing obstructions from highways.

Street commissioner shall have power to remove obstructions.

CHAPTER VII.

FINANCE AND TAXATION.

SECTION 1. All funds in the city treasury, except school, state and county funds, shall be under the control of the common council, and shall be drawn upon the order of the mayor, countersigned by the clerk, duly authorized by a vote of the common council, and in no other manner; and all orders drawn upon the treasury shall specify the purpose for which they are drawn, and shall be payable generally out of any fund in the treasury belonging to the city. All orders shall be payable to the person in whose favor they may be drawn, or to the bearer thereof.

City funds.

SECTION 2. No debt shall be contracted against the city, or order be drawn on the city treasurer, unless the same shall be authorized by a majority of the common council, and the vote authorizing the same shall be entered by ayes and nays upon the journal of the council, and no money shall be appropriated for any purpose whatever, except such as is expressly authorized by this act, and for the payment of indebtedness now existing; nor shall the amount to be raised in any one year for the general city purposes, other than state, county or school taxes, and interest on the bonded indebtedness of said city, as authorized by law exceed one per centum of the taxable property to said city, as shown by the next previous assessment.

No debt shall be contracted unless authorized by the common council.

SECTION 3. All forfeitures and penalties accruing to the city for a violation of this act, or any of the ordinances, by-laws, rules and regulations

Forfeitures and penalties.

of the city, and all moneys received for licenses shall be paid into the city treasury, and become a part of the general fund, except as otherwise provided by this act. No penalty or judgment recovered in favor of the city shall be remitted or discharged except by a vote of three-fourths of all the aldermen elect.

Property, real
and personal.

SECTION 4. All property, real or personal, within the city, except such as may be exempt by the laws of this state, shall be subject to annual taxation for the support of the city government, and the payment of its debts and liabilities, and the same shall be assessed in the manner herein-after provided. The assessor appointed under this act shall have and possess the same powers and perform the same duties as are or may hereafter be conferred upon township assessors, except as far as they may be altered by this act; provided, however, that the common council may prescribe the form of assessment rolls and more fully define the duties of assessors.

Board of
equalization.

SECTION 5. The mayor and the senior alderman of each ward shall constitute the board of equalization, and shall meet at the office of the city clerk on the last Monday in June of each and every year at 9 o'clock in the forenoon, and shall proceed in all respects as town boards are required to proceed by law, and to perform the same duties and receive the same compensation. The city clerk shall act as clerk of the board of equalization, but shall have no voice in its proceedings.

Regarded as a
town in equaliz-
ing assessment
roll.

SECTION 6. The county board of supervisors shall have the right to regard the city of Fountain City as a town, in equalizing the assessment rolls of the several towns in Buffalo county, as provided by law; but in such equalization shall consider the assessment roll of said city as an entire roll, and shall not change the relative valuation of the different wards.

Relating to the
levy of taxes
by county
board.

SECTION 7. The said board of supervisors may levy a tax or taxes as now is, or may thereafter be provided by law, in relation to towns, but shall proceed therein without regard to the division of the city into wards, and shall cause the amount of taxes so levied to be certified to the city or city clerk, in the manner provided by law in relation to towns or town clerks; and in all transactions of

the board of supervisors of said county, said city shall be regarded as a town, except as herein otherwise provided.

SECTION 8. Upon receiving the statement of the amount of taxes so levied, the city clerk shall make out upon the assessment roll, in columns left for that purpose, or upon a copy thereof, a complete statement of the several taxes levied for state, county, city or other purposes, and all delinquent taxes, if any, of previous years, and all special taxes levied by the common council since the making out the last annual tax list, in such separate columns as may be necessary, with the total footing carried out opposite each tract or lot of land, or person named therein, which statement shall be called "the tax list of the city of Fountain City," and shall be preserved by said clerk as a record in his office, and shall have the same legal force and effect as the records of the common council.

Tax list.

SECTION 9. The tax list, made out and preserved as aforesaid, shall be prima facie evidence in every court of record in this state, that every act or thing required by law to be done, relating to assessing or levying of taxes, from the election of officers to the completion of the tax list, inclusive, has been done regularly, correctly, and as required by law.

Tax list
prima facie
evidence.

SECTION 10. Immediately after making out the tax list aforesaid, the clerk shall make out a duplicate copy thereof, to which shall be appended a warrant signed by the mayor and clerk, and sealed with the corporate seal of said city, directed to the treasurer, requiring and commanding him to collect the taxes and assessments specified in said duplicate copy of the tax list, in the manner provided by law; and the said clerk shall, on or before the first day of December of the same year, or as soon thereafter as practicable, deliver the same to the city treasurer for collection, and make a record of such delivery on the tax list preserved in his office.

Tax warrant.

SECTION 11. The city treasurer, upon the receipt of such duplicate copy of the tax list, shall proceed to collect the same in like manner, and shall have like powers and be subject to like requirements, liabilities and restrictions as town treasurers, except as otherwise provided in this act.

Fees of city
treasurer.

The city treasurer shall receive five per cent. fees upon all taxes collected after January 10, to be paid by him into the city treasury.

Delinquent taxes.

SECTION 12. On or before the fifteenth day of February of each year, unless the time be extended as provided by law, the city treasurer shall make out and return to the treasurer of Buffalo county a list of all lands, lots and personal property upon which taxes have not been paid, and shall also settle with and pay all moneys properly payable to said county treasurer in like manner as now is or may hereafter be required of town treasurers; and all the provisions of chapter 49, of the revised statutes and acts amendatory thereof, shall extend to and may be enforced to collect any delinquent personal property tax.

Delinquent lands.

SECTION 13. The county treasurer shall sell all delinquent lands and lots returned from the city of Fountain City, at the same time and in the same manner as other delinquent lands are sold in the county.

Relating to exempt real estate.

SECTION 14. All real estate exempt from taxation by the laws of this state shall be subject to all special taxes for the building of sidewalks and repairs thereof in front of the same.

Lands when not divided.

SECTION 15. All lands lying within the city limits not divided and laid out into lots or blocks and all out lots not subdivided and numbered by such subdivisions, shall not be subject to any special taxes for sidewalks or sewers.

No error to invalidate the tax.

SECTION 16. All the directions hereby given, except in section 8, of this chapter, for the assessing of lands and the levying, collecting and return of taxes and assessments and the sale thereof, shall be deemed only directory, and no error or informality in the proceedings of any of the officers entrusted with the same, not affecting the substantial justice of the tax itself, shall vitiate or in any wise affect the validity of the tax or assessment.

When special taxes may be levied.

SECTION 17. In addition to the amount herein limited for taxes for general city purposes, special taxes may be levied for the purchase of fire engines, cemetery grounds, public squares, gas purposes and other objects of public utility; but no such tax shall be levied unless the same shall first be recommended by the common council, and afterwards submitted to a vote of the people

and approved by them. Whenever the council shall recommend such a tax, it shall specify the amount to be raised and the object thereof, and cause notice thereof, and of the time and place of voting thereon, to be published in the same manner as in case of the annual city election. The common council are further authorized and empowered to raise annually such sum or sums of money as it may deem necessary or expedient for street, road, sewer or drain purposes, which tax may be expended for streets, roads, sewers and drains within the corporate limits of the city, as well as for roads leading to and from said city; provided, that any such tax for a sum exceeding one-half of one per centum upon the assessed value of the real and personal property of said city, as assessed the year previous, shall be first recommended by the common council and afterwards submitted to a vote of the people and approved by them. Whenever the council shall recommend such tax it shall specify the amount to be raised over and above one-half of one per centum, as hereinbefore mentioned, and cause notice thereof, and of the time and place of voting thereof, to be published in the same manner as in case of annual city elections.

SECTION 18. The city treasurer shall receive nothing but the lawful currency of the United States for taxes, licenses or other dues of the city, and is prohibited from receiving county, school or other orders in payment of city dues.

Lawful currency.

SECTION 19. It shall be the duty of the council to always provide for the prompt payment of all orders drawn on the city treasury, and it shall have power to negotiate temporary loans at the legal rate of interest, for the supplying of all funds to meet any deficiency in the treasury.

Prompt payment of orders.

SECTION 20. When the treasurer shall be unable to pay any orders drawn on the treasury, it shall be his duty to report the fact to the first regular meeting of the council. Thereupon the council shall direct its finance committee to examine the accounts of the treasurer and, if all the funds in his hands have been paid out, then the council shall take such action as will enable the city to preserve its credit.

When treasurer unable to pay order.

SECTION 21. Out of the taxes collected by the city treasurer, the state tax shall first be paid;

Order of payment of taxes.

then all school taxes; then county taxes; then judgments; then all special taxes in the order in which they were levied. Delinquent returns shall be received by the county treasurer in payment of county taxes in the manner prescribed by the general laws of the state.

Meeting prior to charter election.

SECTION 22. The common council shall meet on Monday evening two weeks previous to the holding of the charter election, for the purpose of disposing of its unfinished business, and shall not thereafter, during its term of office, allow any bills against the city, but may anticipate and provide for the payment of salaries of officers for the balance of its term.

Surplus funds.

SECTION 23. The council shall have power to direct that all surplus funds belonging to the city, not needed for immediate use, may be invested as the council may direct, or borrowed for the temporary use of the other funds of the city, and all interest and profits arising from such investment shall belong to the city, and shall be accounted for in the same manner as other funds are accounted for.

Special tax.

SECTION 24. The common council may, also, when occasion shall require, levy a special tax not to exceed three mills on the dollar of the taxable property of said city, for the purpose of building or repairing of bridges; such tax to be levied in the same manner and collected in the same way and at the same time as the general city taxes for that year.

CHAPTER VIII.

FIRE DEPARTMENT.

Fire department.

SECTION 1. The common council, for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden building, or buildings of other material that shall not be considered fire-proof, shall be erected, repaired or moved, and to direct that all and any buildings within the limits prescribed shall be made and constructed of fire-proof materials, and to prohibit the removal of any buildings into such fire limits, or the removal of any building or buildings situated or located within

such fire limits to any other lot or lots within such fire limits, and to prohibit the repairing of wooden buildings within the fire limits, when the same shall have been damaged to the extent of fifty per cent. of the value thereof, and to prescribe the manner of ascertaining such damages. Fire limits.

SECTION 2. The common council shall have power to establish a fire department, and to provide for the due and proper support and regulation of the same, and to appoint and direct the election of such officers for such department as it shall see fit, and to define their powers and duties, to provide protection from fire by the purchase of fire engines and all necessary apparatus for the extinguishing of fires, and by the erection of pumps and construction of water mains, reservoirs or other water works; to erect engine houses; to compel the inhabitants of the city to aid in the extinguishment of fires, and to pull down and raze such buildings in the vicinity of fires as shall be directed by them or any two of them who may be present at the fire for the purpose of preventing its spreading to other buildings; to regulate the storage of gunpowder and other dangerous materials; to require the construction of safe places for the deposit of ashes; to regulate the construction and cleaning of chimneys; to prevent bonfires and the use of fireworks and fire-arms in the city or any part thereof; to authorize fire wardens at all reasonable times to enter into and examine all dwellings, lots, yards, inclosures and buildings of every description in order to discover whether any of them are in a dangerous condition, and to cause such as may be dangerous to be put in safe condition; and generally to establish such necessary measures for the prevention or extinguishing of fires as may be necessary and proper; and to declare by ordinance the punishment for violation of any such ordinance or regulation. Fire department; officers, their powers and duties.

The fire company now and heretofore existing in the village of Fountain City, and its constitution, laws and by-laws, regulations and officers shall continue in full force in said city of Fountain City, and be supported by said city until the common council shall establish a fire department under the provisions of this act, and the proper officers now existing, shall, in the months of May and October in each year, make a report Ruffes

to the common council showing an estimate of what will be necessary and required for the maintenance of said department; and also a correct statement showing for what purpose moneys have been expended which may have been paid to said department by the city.

CHAPTER IX.

EDUCATION.

School district. SECTION 1. All the territory embraced in the corporate limits of said city of Fountain City shall constitute and be known as school district number one, of the city of Fountain City.

CHAPTER X.

ACTION TO RECOVER PENALTIES, ETC.

Action to recover penalties, etc.

SECTION 1. All actions brought to recover any penalty or forfeiture under this act or the ordinances, by-laws or police or health regulations made in pursuance thereof, shall be brought in the corporate name of the city. It shall be lawful to declare generally in debt for such penalty or forfeiture, stating the chapter and section of this act, or the section of the ordinance, by-law or regulation under which the penalty or forfeiture is claimed, and to give the special matter in evidence under it.

General statute.

SECTION 2. In all prosecutions for any violation of any of the provisions of this act, or any by-law, ordinance or regulation, the first process shall be a summons unless oath be made for a warrant as in criminal cases before justices of the peace under the general statutes of the state for the time being.

Form of summons.

SECTION 3. When the action is commenced by summons, such summons may be substantially in the following form:

County of Buffalo, }
City of Fountain City, } ss.

The state of Wisconsin, to the sheriff or any constable of said county, or to the marshal of the city of Fountain City:

You are hereby commanded to summon A. B.,

if he shall be found within your county, to appear before the undersigned, a justice of the peace in and for said city, at my office in said city, on the — day of —, A. D. 18—, at — o'clock in the — noon, to answer the city of Fountain City to the damage of said city, two hundred dollars or more.

Given under my hand, this — day of —, 18—.

C. D.,

Justice of the Peace.

SECTION 4. Such summons shall be made returnable and served in the same manner, as is now or hereafter may be prescribed by the laws of this state for the commencement of actions before justices of the peace by summons, and all the proceedings in the action, except as hereinafter provided, shall be governed by the laws of this state for the time being, relative to actions commenced by summons and triable before justices of the peace.

Relative to actions commenced by summons.

SECTION 5. When the action is commenced by summons, the complaint may be substantially in the following form:

Form of complaint when action is commenced by summons.

The city of Fountain City }
 against } In Justice Court,
 A. B. } before C. D., Justice
 of the Peace.

The plaintiff complains against the defendant, for that the defendant, on the — day of —, 18—, at the said city, did violate (section — of chapter —, of this act, or section — of an ordinance, or by-law, or regulation of said city, describing it by its title), which said — is now in force. By reason of such violation an action hath accrued to the city of Fountain City to recover of the defendant the sum of — dollars debt. Wherefore the plaintiff demands judgment against the defendant for the sum aforesaid, besides the costs of this action.

SECTION 6. In all cases where oath is made for a warrant, the complaint shall be made on oath of the complainant, and no other affidavit shall be necessary, which last mentioned complaint may be substantially in the following form:

Form of complaint when oath is made for warrant.

The city of Fountain City against A. B., before C. D., justice of the peace—County of Buffalo—ss.

Form of warrant.

E. F., being duly sworn, on oath complains to C. D., justice of the peace in and for the city of Fountain City, in said county, that A. B., on the

—day of—, 18—, at said city, did violate (section — of chapter — of this act, or section — of an ordinance or by-law, or regulation of said city, describing it by its title), which said — is now in force, as this complainant verily believes, and prays that A. B. may be arrested and held to answer to said city of Fountain City.

Sworn and subscribed to this — day of —, 18—.

It shall be sufficient to give the number of the section and chapter of this act, or the section of the ordinance, by-law or regulation violated, in the foregoing form of complaint, and said complaint may be sworn to before any officer authorized to administer oaths. Upon the filing of such complaint with the justice of the peace, he shall issue a warrant substantially in the following form:

County of Buffalo, }
City of Fountain City. } ss.

The state of Wisconsin, to the sheriff or any constable of said county, and to the marshal or any policeman of the city of Fountain City, greeting:

Whereas, — — has this day complained to me in writing, on oath, that A. B., on the — day of —, 18—, at said city, did violate (section — of chapter — of this act, or section — of an ordinance, by-law or regulation of said city, describing it by its title), which said — is now in force, as the complainant believes; therefore, you are commanded to arrest the body of the said A. B., and bring him before me, forthwith, to answer to the city of Fountain City, on the complaint aforesaid.

C. D.,

Justice of the Peace.

Upon the return of the warrant, the justice shall proceed summarily with the case, unless it be adjourned by consent or for cause. If the case be adjourned, the defendant, if required by the court so to do, shall recognize with security, to be approved by the court, for his, her or their appearance, in such sum as the court shall direct, or in default thereof, may be put in charge of the officer who made the arrest or be committed to the common jail of Buffalo county, and shall be received and kept therein the same as in criminal actions, except as modified by this (act) or the ordi-

nances of said city. The complaint made as aforesaid shall be the only complaint required, and the plea of "not guilty," shall put in issue all subject matter embraced in the action.

SECTION 7. A printed copy of an ordinance, by-law or regulation passed by the common council, and published in a newspaper or in pamphlet or book form, purporting to be published by authority of the common council, shall be prima facie evidence of its due passage and publication, and shall be received in evidence on trial of all cases cognizable before any court of this state.

Printed copy of ordinance to be evidence.

SECTION 8. Witnesses and jurors shall attend before the justice of the peace in all city and criminal suits, without the payment of fees in advance, or a tender thereof, upon process duly served, and in default thereof their attendance may be compelled by attachment.

Witness and jurors fees.

SECTION 9. In city prosecutions both plaintiff and defendant shall enjoy the right of trial by jury as in civil actions in justices' court, and the findings of the court shall be "guilty" or "not guilty." If guilty, the court shall render judgment thereon against the defendant for the fine, penalty or forfeiture presented in this act, or in the ordinance, by-law or regulation for the violation of which the person or persons shall have been adjudged guilty, and for costs of suit; but if not guilty, the costs of suit shall be taxed against the city. Upon the rendition of judgment against the defendant, and the non-payment thereof, the justice shall forthwith issue execution as in the cases of tort; in case the action was commenced by summons, and a commitment in case it was commenced by warrant, and shall, in either case, determine and enter upon his docket the length of time the defendant shall be imprisoned, which in no case shall exceed six months, and also insert such time in the execution or commitment. Such execution shall be in the following form:

Attendance of witness and jurors.

County of Buffalo, }
 City of Fountain City, } ss.

The state of Wisconsin, to the sheriff or constable of said county, or to the marshal or policeman of the city, and to the keeper of the common jail of said county, greeting:

Form of execution.

Whereas, the said city of Fountain City, on the — day of —, 18—, recovered a judgment be-

fore the undersigned justice of the peace in and for said city, against —, for the sum of — dollars, together with — dollars and — cents, costs of suit, for the violation of (section — of chapter — of this act, or section — of an ordinance, or by-law, or regulation of said city, describing it by its title): You are hereby commanded to levy distress of the goods and chattels of the said —, excepting such as the law exempts, and make sale thereof according to law, to the amount of said sums, together with your fees, twenty-five cents for this writ, and the same return to me within thirty days; and for want of such goods and chattels whereon to levy, to take the body of the said — and him convey and deliver to the keeper of the common jail of Buffalo county; and the said keeper is hereby commanded to receive and keep in custody in said jail the said — for the term of —, unless the said judgment, together with all the costs and fees, are sooner paid, or he be discharged by due course of law.

Given under my hand this — day of —, 18—.

C. D., Justice of the Peace.

The form of the commitment shall be substantially the same as that of the execution, omitting all that relates to the levy and sale and return of writ.

City to assume village rights.

SECTION 10. All actions, rights and penalties, fines and forfeitures in suits or otherwise, which have arisen or accumulated under the several ordinances or acts incorporating the village of Fountain City, shall be vested in and prosecuted by the corporation hereby created.

Summons to be left with mayor and clerk.

SECTION 11. When any suit or action shall be commenced against said city, the service thereof shall be made by leaving a copy of the process of the summons with the mayor or clerk of said city, and it shall be the duty of said mayor or clerk of said city so served forthwith to inform the common council thereof, or to take such demand or proceeding as by the ordinance or resolution of said council may be in such cases provided.

Penalties paid into city treasury.

SECTION 12. All penalties and forfeitures recovered and collected under and by virtue of this act shall be paid into the city treasury for the use and benefit of said city.

SECTION 13. In any case the defendant may ap-

peal from said judgment to the circuit court of the county of Buffalo; provided, that such defendant, within twenty-four hours, enter into a recognizance, with one or more sufficient sureties, to be approved by such justice conditioned to appear before said court and abide the judgment of the court therein. The justice from whose judgment an appeal shall be taken shall make a special return of the proceedings had before him, and shall forthwith cause the summons or warrant and return, together with the proceedings and a copy of the entries in his docket in the action, together with the recognizance, to be filed in the office of the clerk of said court; and the city may appeal from any such judgment as in other cases before justices of the peace.

Defendant may appeal.

SECTION 14. Said appeal shall stand for trial by jury, unless a jury be waived in the manner provided by law, in said circuit court, and the next term thereof after the day the judgment of the justice shall be rendered, and no notice of trial shall be required to be given to or by either party.

To be tried by jury.

SECTION 15. If the judgment of the justice shall be affirmed, or if, upon the trial, the defendant shall be convicted, the court shall inflict the penalty provided by this act, or the ordinance, resolution, by-law or regulation under which he or they are prosecuted, and enter judgment against him or them and their sureties for such penalty, together with the costs in both courts, and enforce the same by execution as in actions of tort.

Penalties in case of conviction.

SECTION 16. No person shall be an incompetent judge, justice, witness or juror by reason of his being an inhabitant of said city, in any proceeding or action in which the city shall be a party in interest.

Shall not work incompetency.

SECTION 17. All ordinances and regulations now in force in the village of Fountain City, and not inconsistent with this act, shall remain in force until altered, modified or repealed by the common council, after this act shall take effect.

Village ordinances to remain in force.

CHAPTER XI.

MISCELLANEOUS.

SECTION 1. The plats of the village of Fountain City and the additions thereto, are hereby adopted

Plats of the village to remain plats of the city.

as the plats of the city of Fountain City and additions thereto, and the real estate included in said plats may be hereafter described by lots and blocks as they appear on said plats, and by describing the plats as "the original plat of the village, now city of Fountain City," or "the plat of Buehler's addition to the village, now city of Fountain City," and in like manner with the plats or other additions; or in any other manner so as to describe the lands with reasonable certainty.

Support of the poor.

SECTION 2. All laws in relation to the support of the poor in towns shall apply and be in force in said city.

Village property transferred to proper city officers.

SECTION 3. All moneys, property, effects and credits belonging to the present village of Fountain City shall belong to the city of Fountain City, and shall be transferred to the proper officers of said city by the persons in charge of same as soon as such officer shall be elected and qualified.

Debt of village to become city debt.

SECTION 4. Any lawful debt, claim, demand or right of action against the village of Fountain City, shall be and become a lawful debt, claim, demand or right of action against the city of Fountain City.

Title to cemetery.

SECTION 5. All rights and title that the village of Fountain City may have on the first Tuesday of April, 1889, in and to any cemetery within the limits of said city, shall then vest in said city, and all obligations of said village in relation thereto, shall devolve upon and be assumed by said city.

No general law to repeal this act.

SECTION 6. No general law contravening the provisions of this act shall be considered as repealing, amending or modifying the same unless such purpose be expressly set forth in such law.

SECTION 7. This act shall take effect and be in force from and after its passage and publication.

Approved February 27, 1889.