

[Published March 9, 1877.]

CHAPTER 123.

AN ACT to revise, consolidate and amend the charter of the city of Oshkosh, the act incorporating the city, and the several acts amendatory thereof.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

CHAPTER I.

CITY AND WARD BOUNDARIES.

Name of city.

SECTION 1. All that district of country in the county of Winnebago, contained within the limits and boundaries hereinafter described, shall be a city by the name of "Oshkosh;" and the people now inhabiting and those who shall hereafter inhabit within the district of country herein described, shall be a municipal corporation by the name of the "city of Oshkosh," and by that name capable of suing and being sued in all courts of law and equity.

City boundaries.

SECTION 2. The territory included in the following boundary and limits, shall constitute the city of Oshkosh, to wit: Commencing at a point where the north line of section eighteen, town eighteen, range seventeen east, intersects the shore of lake Winnebago, running thence west along the section line and the continuation thereof, to the center of the Oshkosh and Winneconne highway; thence northwesterly along the center of said highway until it intersects the north line of fractional lot five, section ten, town eighteen north, range sixteen east; thence due west to the produced one-eighth line running north and south through the west half of section fifteen, town eighteen north, (range eighteen north), range sixteen east; thence south along said one-eighth line to the southwest corner of the southeast quarter of the southwest quarter of said section fifteen; thence east eighty rods, more or less, to the southeast corner of said southeast quarter of the southwest quarter of section fifteen; thence south to the southwest corner of the southwest quarter of the southeast quarter of section twenty seven, town eighteen north, range sixteen east; thence east to the northwest corner of fractional lot one, of section thirty-six, town eighteen north, range sixteen east; thence south to the southwest corner of said fractional lot one;

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thence east to the shore of lake Winnebago; thence northeasterly along the shore of lake Winnebago to the place of beginning.

SECTION 3. The territory included in the following boundaries and limits shall constitute the different wards of the said city of Oshkosh, to wit: Ward boundaries.

First ward. — All that portion of said city lying north of Fox river and west of the center of Main street, and south of the section line on the north side of sections twenty-three and twenty-four, shall constitute the First ward.

Second ward. — All that portion of said city bounded on the south and east by Fox river and lake Winnebago, and on the west by the center of Main street, and on the north by the center of Washington street, shall constitute the Second ward.

Third ward. — All that portion of said city which lies east of a line through the middle of Minnesota street from Fox river to the north line of the southeast quarter of the southeast quarter of section twenty-six (26), of town eighteen north, range sixteen east; thence east to the center of Oregon street, thence south through the center of Oregon street to the south line of the city, shall constitute the Third ward.

Sixth ward. — All that portion of said city which lies west of a line running through the middle of Minnesota street, from Fox river to the north line of the southeast quarter of the southeast quarter of section twenty-six, of town eighteen north, range sixteen east, and south of a line running thence east to the center of Oregon street, and also west of a line through the middle of Oregon street, from Eighteenth street to the south line of the city, and south of Fox river and south of a quarter line running east and west, through sections twenty-two (22) and twenty-three (23), township eighteen (18) north, of range sixteen (16) east, shall constitute the Sixth ward.

Fourth ward. — All that portion of said city lying north of the center of Washington street, and bounded on the west as follows: commencing at the northwest corner of section thirteen, town eighteen north, range sixteen east, thence south to the center of Irving street, thence east to the center of Main street, thence south until it intersects the center of Washington street aforesaid, shall constitute the Fourth ward.

Fifth ward. — All the residue of the said city shall be called the Fifth ward.

CHAPTER II.

RIGHTS AND POWERS OF THE CORPORATION.

General powers SECTION 1. The people now inhabiting, and who shall hereafter inhabit, the district of country described in the preceding chapter shall be a corporation of the name of the "city of Oshkosh," and shall have the general powers possessed by municipal corporations at common and statute law, and in addition thereto shall possess the right and privileges hereinafter specially granted.

CHAPTER III.

OFFICERS—THEIR ELECTION AND APPOINTMENT.

In whom power of government vested. SECTION 1. The power and government of said city and corporation shall be in the mayor and common council, subject to the reservations and exceptions hereinafter expressly contained.

How council composed. SECTION 2. The common council shall be composed of the mayor and aldermen.

City officers. SECTION 3. There shall be the following city officers elected annually by the qualified electors of the city at large: a mayor, a city clerk, a city treasurer, and three assessors.

Justices of the peace. SECTION 4. There shall be elected at the charter election to be held on the first Tuesday in April, 1877, and every two years thereafter, by and from the qualified electors of the First, Second, Fourth and Fifth wards, one justice of the peace, who shall be a resident of one of said wards, and shall hold his office in the First, second or Fourth ward, and there shall be elected at the charter election to be held on the first Tuesday in April, 1878, and every two years thereafter, by and from the qualified electors of the Third and Sixth wards, one justice of the peace, who shall be a resident of one of said wards and shall hold his office in the Third ward. Each of said justices of the peace shall hold his office for the term of two years, and until his successor is duly elected and qualified.

School commissioner. SECTION 5. There shall be elected at the annual charter election in 1877, one school commissioner from each the Second, Fourth and Sixth wards, and at the charter election in 1878, there shall be elected one school commissioner from each the First, Third and Fifth wards, and so alternately thereafter. Said commissioners shall be elected by the qualified electors of each ward for

their respective wards, and shall be residents of the ward for which they were elected.

SECTION 6. The terms of all such city officers shall be one year, except justice of the peace and school commissioner, which shall be for two years. Terms of office.

SECTION 7. There shall be three aldermen from each ward, to be elected by the qualified electors of each ward for their respective wards; two elected at each annual charter election, one for one year and one for two years. The ballots shall designate which alderman is voted for the term of two years. The alderman elected for two years at the last election, shall hold his office for the term for which he was elected. Aldermen.

SECTION 8. The qualification of each officer shall be that he is a qualified elector of and in said city. Qualification of officers.

SECTION 9. Vacancies in any of said offices shall be filled by the council, except in the office of justice of the peace, which may be filled by special election. Vacancies.

SECTION 10. Vacancies so filled, shall be to the next annual charter election, and in case of vacancy in any office filled by an election by the people for the term of two years, the same shall be filled at such election for the unexpired term. The same.

SECTION 11. Any person selected or elected for or to any of the aforesaid offices, before entering upon the duties thereof, shall subscribe, take and file with the city clerk an oath that he will honestly and faithfully discharge the duties of his office to the best of his ability; and may be required by the council at any time to give a bond or bonds to the city of Oshkosh, in such penal sum, with such conditions, such surety and qualifications as the council may require, to be approved by the council; and the council may, from time to time, require new, further or additional bonds from any such officer, and upon his neglect to give the same, may remove him from office; *provided further*, that the city treasurer shall not be deemed to have qualified until he shall have given a bond to the city, approved by the council; and *provided further*, that in the discharge of any of his duties he shall not be required and shall not give any bond other than to the city of Oshkosh. Officers to take oath and give bonds.

SECTION 12. All such officers shall hold until their successors are duly elected or selected, and duly qualified, except aldermen. Tenure of office

SECTION 13. Upon written charges and notice, the common council, by a two thirds vote of all present, may remove from office any such officer for negligence, malfeasance or misconduct in office. The mayor or Power of council to remove from office.

city clerk, upon the hearing and investigation by the council of such charges, shall be authorized to administer the necessary oaths to witnesses. Any justice of the peace of the city is authorized to issue subpoenas for witnesses to attend before said council, wherein the city shall be nominally plaintiff, and the party charged, defendant. In case of neglect or refusal of witness to attend and testify, the justice of the peace who issued the process of subpoena, shall have the same power to issue warrant or attachment and punish for contempt by law, as in cases in the justices' courts, where witness refuses or neglects to appear or testify.

When terms of office to commence.

SECTION 14. The term of office of such elective officers shall commence on the first Tuesday next after the annual charter election.

When office deemed vacant.

SECTION 15. If any officer shall fail to qualify, that is to say, to do what is required on his part to qualify, unless prevented by sickness or unavoidable absence, within ten days after notice of his election or selection, given by the clerk officially, his office shall be vacant.

Policemen may act as constables.

SECTION 16. The chief of police and any of the regular police of said city, regularly employed and paid by the city, may become a constable in and for said city by taking the oath and giving the bond required by law for the qualification of constables, the bonds to be approved by the council, said oath and bond to be filed with the city clerk. When such person shall cease to be policeman, he shall cease to be constable.

CHAPTER IV.

ELECTIONS.

Annual elections.

SECTION 1. The annual elections for city and ward officers shall be held on the first Tuesday of April of each year, at such places as the aldermen of the proper wards may designate; the polls shall be kept open from nine o'clock until twelve o'clock in the forenoon, and from one o'clock until sundown of the same day; and there shall be given ten days' previous notice, by publication in at least two papers published within the city, of the time and place of holding such election, and the city and ward officers to be elected.

The vote.

SECTION 2. All elections by the people shall be by ballot, and a plurality of votes shall constitute an election. When 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 common council, at

such time and in such manner as the common council shall direct. All votes for elective officers shall be upon one ballot and shall be deposited in one ballot-box.

SECTION 3. All persons entitled to vote for county and state officers, and who shall have been a resident within the ward where they offer to vote for ten days next preceding the time of holding the said election, shall be entitled to vote for any officer elected under this act; a residence shall be construed to mean the place where such elector lodges, and if required shall take the following oath: "I swear (or affirm) that I am of the age of twenty-one years; that I am a citizen of the United States, or (have declared my intention to become a citizen, conformably to the laws of the United States on the subject of naturalization); and have been a resident of this state for one year immediately preceding this election, and a resident of this ward for ten days immediately preceding this election; and I do further swear (or affirm) that I have made no bet or wager, or become directly or indirectly interested in any bet or wager depending upon the result of this election." All persons illegally voting, and all fraud, deceit or corruption at any election under this act, shall be punished according to the laws of this state made and provided for the punishment of illegal voting, fraud, deceit or corruption at any general election.

Qualifications
and oath of
electors.

SECTION 4. No person shall be eligible to hold any office mentioned in this act unless he shall be at the time a resident elector of the city, nor shall any person be eligible to any ward office unless he shall be at the time a resident elector of the ward in which such office exists; and provided further, that no resident elector of any ward shall be eligible to the office of alderman, school commissioner or fire warden, unless he be a resident freeholder of the ward in which the office exists.

Qualifications
of officers.

SECTION 5. The elections in said city shall be conducted by the aldermen of each ward, who shall be inspectors of election; they shall take the usual oath of affirmation, as prescribed by the general laws of this state for the inspectors of elections, and shall have power to appoint clerks of election, and to administer the necessary oaths. Vacancies in such ward, of inspectors, shall be filled in the same manner as provided by the laws of the state for vacancies on boards of inspectors at general elections.

How elections
to be conducted

SECTION 6. If any person offering to vote at any

Penalty for ille-

gal voting, and violation of duty as officer of election.

election pursuant to this act shall be challenged as unqualified by any elector, or by one of the inspectors, the inspectors before receiving such vote, shall require the party challenged to take the oath mentioned in section three of this chapter, and if any person shall take such oath falsely, he shall be deemed guilty of willful and corrupt perjury, and upon indictment or information in the circuit court of Winnebago county, shall suffer the penalties prescribed by law for the punishment of perjury. If any person who is not a qualified voter shall vote at any election herein provided for, or if any person shall vote in any other ward than the one in which he resides, or shall vote more than once at any one election, he shall be liable, and on conviction thereof shall forfeit and pay a sum not less than twenty-five nor more than one hundred dollars. It shall be the duty of the inspectors to keep a list of names of all persons voting, as well as of those whose votes may be challenged, and who shall swear in their votes, and if any inspector shall knowingly and corruptly receive the vote, or shall make any false statement or return of any election, or shall alter or change any vote, he shall be liable, and on conviction thereof forfeit and pay a sum not less than one hundred dollars, nor more than five hundred dollars. If any clerk shall not write down the name of every voter as he votes at any election under this act, or shall add to or diminish from the poll list kept by him or by his associates, or shall willfully make untrue or incorrect count and tally of votes, he shall be liable, and on conviction thereof, shall forfeit and pay a sum not less than one hundred nor more than five hundred dollars.

Canvass and return of votes.

SECTION 7. When the polls of an election shall have been closed, and the number of votes for such candidate or person voted for shall have been counted and ascertained, said inspectors and clerks shall make a return thereof duly signed, stating therein the number of votes for each person and the office designated, and the whole number of votes cast, and shall deliver such return, together with the oaths of the inspectors and clerks, and the poll list kept by them, to the city clerk, within three days after any election. Within one week after each and every annual municipal election held under this act, the common council shall meet and canvass said returns and declare the result as it appears from the returns, and the city clerk shall, within three days thereafter, give notice to each per-

son elected, of his election. Special elections to fill vacancies, or for any other purpose, shall be held and conducted by the aldermen of each ward, in the same manner, and the returns thereof shall be made in the same form and manner as of annual elections, and within such time as may be prescribed by ordinance. Any officer removing from the city, or any ward officer removing from the ward for which he is elected, or any officer who shall neglect or refuse for ten days after notice of his election or appointment to qualify and enter upon the discharge of the duties of his office, shall be deemed to have vacated his office, and the common council shall proceed to fill such vacancy as herein prescribed.

SECTION 8. All city and ward officers now in office shall hold their respective offices until their successors shall be elected or appointed and qualified under this act; and the term of every officer elected under this act, shall commence on the second Tuesday of April of the year for which he was elected, and shall, unless herein otherwise provided, continue for one year, and until his successor is elected or appointed and qualified. Should there be a failure by the people 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 of holding the election being first given. Terms of office

SECTION 9. The first election of officers under the provisions of this act shall be held on the first Tuesday in April, 1877. First election.

SECTION 10. Each ward of the city shall be represented in the board of supervisors of the county of Winnebago, by one supervisor; such supervisors shall be elected annually, by the electors of the wards, at the same time and in the same manner as ward aldermen are elected. County supervisors.

CHAPTER V.

DUTIES OF OFFICERS.

SECTION 1. The mayor, when present, shall preside over the meetings of the common council and see that the laws of the state and the laws and ordinances of the city are duly enforced, and that all 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 proper and advantageous to the city and shall perform all duties imposed on him by this act, or by the ordin- Duties of mayor

ances or resolutions of the common council. It shall be his duty generally to maintain the peace and good order of the city. He shall vote in the common council, only in case of a tie vote. The mayor shall have power to veto any ordinance or resolution passed by the common council, except such resolutions as are by special charters exempted from such veto power and shall have power to command and direct the chief of police and the policemen of the city, at all fires, riots, disturbances of the peace and tumultuous assemblages, and may, for disobedience of his orders, or misconduct of any member of the police force, verbally or in writing, suspend such member of the police force and stop his pay, until the common council shall take final action on the order of suspension.

President of
council.

SECTION 2. The council at its first meeting in each year, or as soon thereafter as practicable, shall elect one of its members president, who, in the absence of the mayor from its meetings, shall preside; and who in case of the absence of the mayor from the city, or his inability to discharge the duties of his office, for any reason, or in case the office of mayor shall become vacant, shall act as mayor, and discharge all the duties of his office. If both mayor and president are absent from any meeting of the council, the council may elect a temporary president; and while acting in their respective capacities shall have the power and discharge the duties of mayor, and shall be styled "acting mayor."

Duties of city
clerk.

SECTION 3. 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; he shall keep an accurate and detailed account of the financial condition of the city and of each ward as the common council prescribe; he shall so keep the books of said city that every subject of taxation shall be entered under its proper head, as state, county, schools, bridges and the like; he shall make copies of assessments of the city when required by the common council and shall make and complete all tax rolls; he shall also keep an accurate account with the city treasurer and charge him with all taxes levied and sums paid into the treasury; he shall make out a list of all outstanding city bonds and coupons, to whom, when and where payable; he shall report as often as the common council shall require, an estimate of the expenses of the city and of the several wards, and of

the revenue necessary to be raised for the current year; and shall countersign all contracts made in behalf of the city, and unless they be so countersigned they shall have no validity. He shall countersign all orders drawn on the city treasurer by order of the common council, and shall keep a correct record of the same. He shall, *ex officio*, be clerk of the board of education, clerk of the board of public works, clerk of the board of health, and clerk of the board of assessors. He shall attend the meetings of such boards, and keep a correct record of the proceedings thereof; he shall file in his office all chattel mortgages presented to him for that purpose and safely keep the same, receiving therefor the same compensation as clerks of towns, and all chattel mortgages so filed shall be as valid and legal as if the same had been filed in any town clerk's office in any town; and copies of all papers filed in his office, and transcripts from the records in his office, and of the common council, certified by him under the corporate seal, shall be evidence in all courts, in like manner as if the original were produced. The clerk shall have power and authority to administer oaths and affirmations.

SECTION 4. The treasurer 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 may direct; all money of whatever description, raised by tax, license, fine, penalty, forfeiture, or otherwise, for city purposes, shall be paid into the city treasury. He shall collect all taxes and assessments which may be levied or assessed upon the real and personal property in the city, and exercise the same powers, when not prescribed by this act, as control and govern treasurers of towns, and shall be subject to the same liabilities; *provided*, that he shall receive no fees for his services, except such salary as shall be paid him by the city. He shall pay all orders drawn upon the treasury by order of the common council, or as is otherwise authorized, out of the proper funds. He shall report to the common council quarterly, a full and detailed account of all receipts and expenditures after the date of the last quarterly report, which statement shall be filed with the city clerk; and at the expiration of his term of office, shall hand over to his successor all moneys, books, papers and property in his possession, belonging to said city. The books kept by said treasurer, shall be open to inspection by any person, at all reasonable times.

Duties of city treasurer.

Duties of city
attorney.

SECTION 5. The city attorney shall conduct all law business of said city, and the departments thereof, and all other business in which the city shall be interested, when so ordered by the common council; he shall furnish written opinions upon subjects submitted to him by the mayor or council, or any department of the corporation; it shall also be his duty to draft all ordinances, bonds, contracts, leases, conveyances and such other instruments in writing as may be required by the common council, and to perform such other duties as may be prescribed by the ordinances of the city or by any resolution of the common council.

Duties of city
surveyor.

SECTION 6. The city surveyor shall be a practical surveyor and engineer; he shall keep his office at some convenient place within the city, and the common council shall prescribe his duties and fix his fees and compensation for any service performed by him. All surveys, plans, profiles and estimates made by him for the city, shall be the property of the city, and shall be carefully preserved in the office of the surveyor, open to the inspection of all parties interested; and when required by the common council, he shall file copies of plans, profiles and estimates with the city clerk, and all books and papers appertaining to said office shall be delivered over by the surveyor, at the expiration of his term of office, to his successor or the common council.

Duties of chief
engineer.

SECTION 7. The chief engineer of the fire department shall in all cases have control of the different fire companies of the city, their engines, steamers and fire apparatus, and also the direction and control thereof, when called out on duty, subject only to the control of the common council; he shall see that the engines, steamers and apparatus of the fire department are kept in perfect order and readiness for immediate use, and cause all necessary repairs to be made, without letting the same by contract, and report the same to the common council for approval and allowance; he shall use his utmost endeavors in preventing and subduing fires and controlling the firemen thereat; he shall perform such other and further duties as are prescribed in other provisions of this act and by the ordinances of the common council.

Street superin-
tendent and
salary of same.

SECTION 8. The aldermen of each ward may have power to appoint some suitable person to act as street superintendent for their ward, who shall receive such compensation for his services as the aldermen aforesaid shall provide, to be paid out of the ward fund of the

respective wards for which he is appointed, and be subject to the control and discretion of said aldermen, and subject to removal by the aldermen of the ward for which he was appointed.

SECTION 9. The superintendent of schools shall be *ex-officio* president of the board of education, and in case of a tie shall give the casting vote; he shall have the superintendence of all public schools, school houses, books and apparatus; he shall visit all schools as often as his duties will require, and pay special attention to the clasification of the pupils in the several schools, and to the apportionment among the classes of the prescribed studies; he shall carefully observe the teachings and discipline of all teachers employed in the public schools, and shall report to the board whenever he shall find any teacher deficient or incompetent in the discharge of his or her duties; he shall attend all meetings of the board of education, when required, and shall keep the board constantly informed of the condition of the public schools, and the changes required in the same.

Duties of superintendent of schools.

SECTION 10. The chief of police shall attend all meetings of the common council, and shall perform such duties as shall be prescribed by this act, or by any ordinance of the city, for the preservation of the peace, for the health of the city, and the collection of fines and license money; he shall possess the powers of a constable, at common law or by the laws of this state, and shall receive like fees and be subject to the same liabilities; it shall be his duty to execute and return all writs and process to him directed, and when necessary in criminal cases, or for the violation of any ordinance of said city or law of this state, may pursue and serve the same in any part of the state of Wisconsin; he shall, under the direction of the mayor, be chief executive of the police department; he shall repair to all fires, riots and tumultuous assemblies, take charge of the police present, and use every exertion to protect property, disperse mobs, and cause to be arrested all persons engaged in disturbing 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 within reasonable time bring such person before competent authority for examination; he shall have power to direct the policemen to any place where he shall deem their services necessary; he shall promptly report to the mayor all complaints against the policemen, and cause to be obeyed all rules and

Duties of chief of police.

regulations prescribed for the police department; and, he or some policeman appointed by him, shall be keeper of the watch house, and keep the keys thereof.

Duties of
policemen.

SECTION 11. It shall be the duty generally of all policemen appointed by the common council, to faithfully perform such duties as shall be prescribed by the ordinances, laws and resolutions of the common council for the preservation of the public peace and health of the city, and they shall possess all common law and statutory power of constables; they shall faithfully abide by all ordinances prescribing the manner and extent of their duties, and the time in which duties are to be performed; they shall perform the duties of night watchmen for the city, if required, under such regulations as the common council shall prescribe.

Peace officers
and duties of
same.

SECTION 12. The mayor, sheriff of Winnebago county, each and every alderman, justice of the peace, chief of police, policeman and constable, shall be officers of the peace, and suppress in a summary manner, all riotous and disorderly behavior within the limits of the city, and for such purpose may command the assistance of all bystanders, and if need be of all citizens and military companies; if any person shall refuse to aid in maintaining the peace, when so required, every such person shall forfeit and pay a fine of fifty dollars. It shall be lawful for the mayor, any alderman, chief of police, every policeman or constable of the city, to arrest forthwith any person who shall be drunk, disorderly, riotous, or doing any act which shall by this act be construed to be a misdemeanor, or by warrant to arrest any person whom they or any of them shall find committing any violation of the laws or any ordinance of the city, and to take such person before a justice of the peace of the city, or if it be out of office hours, or for any other good reason an examination cannot be had, to confine such person so arrested in the watch house, until such time as an examination can be had.

Duties of fire
wardens.

SECTION 13. The several fire wardens of the city shall examine as to the construction of all chimneys, fire-places, hearths, stoves, stove-pipes, ovens, smoke-stacks, boilers and fire apparatus used in and about any building, and shall have power to prevent the improper construction thereof; and may cause them to be removed and placed in a safe and secure position. They shall prevent the depositing or keeping of ashes or any combustible material in any place except such as is safe; and they shall perform other and such further duties as may be ordered or prescribed by the common council.

SECTION 14. The justices of the peace, elected under this act, shall have the same jurisdiction and perform all duties of justices of the peace as provided by the general laws of the state, except that their official bond shall be approved by the common council; and they shall hold their offices at such places as the common council shall designate; and in addition thereto they shall have jurisdiction in all cases arising under the ordinances and laws passed by said city, unless otherwise provided.

Jurisdiction
and duties of
justices of the
peace.

SECTION 15. The three assessors elected under this act shall constitute the board of assessors, and shall in all things pertaining to their office, so far as practicable, be governed by such laws as assessors in the several towns in this state. Within ten days after qualifying, it shall be the duty of the assessors of the several wards to organize into a board of assessors, by electing one of their number chairman, who shall be authorized to administer such oaths as shall be authorized by this act; and within such time as the common council shall designate, the said assessors shall make out a complete and accurate assessment roll, and perform such other and further duties as are prescribed by this act, or shall be required by any ordinance or resolution of the common council. Any assessor who shall neglect to perform the duties of his office, or shall use any partiality in assessing the property of any individual, corporation or association, in anything pertaining to his office, shall, upon conviction, suffer and pay a penalty of not less than one hundred or more than five hundred dollars, at the discretion of the court before whom conviction is had.

Duties of board
of assessors.

SECTION 16. The aldermen of each ward of the city shall constitute a board of aldermen for their respective wards, two of whom shall be a quorum to act, whose meetings shall be held at the office of the city clerk. The city clerk shall be clerk of the board of aldermen. No alderman shall be a party to or interested in any job or contract with the city or any of the wards, except he may act as street commissioner, and be paid for such services, and any contract in which any alderman shall be so interested shall be null and void; and in case any money shall have been paid upon any such contract, the common council may sue for and recover the amount so paid from the parties to such contract and the aldermen interested in the same.

Boards of
aldermen.

SECTION 17. The common council shall have power, whenever deemed necessary, to appoint an inspector,

Inspectors of
boilers.

whose duty it shall be to inspect all boilers, engines and other apparatus deemed dangerous to life, used in and about any shop, manufactory or other building in the city, to examine the same and to report whether they are in a safe and secure condition; and for that purpose said inspector shall have authority to enter into any shop, manufactory or building in said city; said inspector shall receive such fees as the common council shall prescribe, to be paid by the owner or lessee of the engine, boiler or other such apparatus so inspected; and if said inspector shall report that any engine, boiler or other apparatus is in an unsafe or dangerous condition, the owner or lessee thereof shall immediately place the same in a safe and secure condition, and for every day's neglect to repair the same, while running such engine, boiler or other apparatus, such owner or lessee shall forfeit and pay a fine of not less than twenty nor more than one hundred dollars.

Printing and publication.

SECTION 18. The common council shall, at the first regular meeting of the new council in each year, or as soon thereafter as may be, order the city clerk to advertise for proposals for all the printing and publication necessary to be done by the city, except as otherwise provided herein; and said printing and publication shall be let to the lowest bidder, who shall be styled the city printer; *provided*, that said printing shall be let to the printer of some newspaper published in the city. The city printer or printers, immediately after the publication of any notice, ordinance or resolution, which by this act is required to be published, shall file with the clerk of the city a copy of such publication, with his or their affidavit, or the affidavit of his or their foreman, of the length of time the same has been published, and such affidavit shall be conclusive evidence of the publication of such notice, ordinance or resolution.

Further duties of officers.

SECTION 19. The common council shall have power from time to time to require further and other duties of 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 elected or appointed by the common council; such compensation shall, by resolution, be fixed at the time the office is created, or at the commencement of the year, and shall not be increased or diminished during the time such officer shall remain in office.

Penalty for refusal to deliver

SECTION 20. All city officers, at the termination of

their office, shall immediately deliver to their successors in office all property, money, books, papers and effects of every description, in their possession, belonging to the city or pertaining to the office they may have held; any person who may have held an office, neglecting or refusing so to do, shall forfeit and pay to the use of said city, one hundred dollars, besides all damages caused by such neglect or refusal, and such successor may recover the possession of such books, papers, and effects in the manner prescribed by the laws of the state for other officers.

books, etc., to successor.

SECTION 21. The mayor of the city of Oshkosh shall be *ex-officio* a member of the county board of supervisors of the county of Winnebago, and shall have and exercise the same power and privileges in said board as other members thereof are entitled to, and shall be paid the same compensation for his services as may be paid to any other members of the board.

Mayor to be member of county board of supervisors.

SECTION 22. Nothing herein contained shall be so construed as to change or interfere with the term of office of any officer now holding office in said city, but the term of all such officers shall continue the same as if this act had not been passed.

Terms of present officers.

CHAPTER VI.

COMMON COUNCIL—ITS GENERAL POWERS AND DUTIES.

SECTION 1. The mayor and the aldermen shall constitute the common council, and the style of all ordinances shall be "The mayor and common council of the city of Oshkosh do ordain," etc. The majority of the aldermen elect shall constitute a quorum. The common council shall annually meet on the second Tuesday of April, after the annual municipal election, at the council rooms in said city, and at such other times as they by resolution shall appoint. The mayor or a majority of the common council, for any good reason, may call special meetings by a notice to each of the members, to be served personally or to be left at their usual place of abode. The common council shall determine the rule of its own proceedings, and be the judge of the election and qualification of its members.

Meetings of common council.

SECTION 2. At the first meeting of the common council, or as soon thereafter as may be, the following officers shall be appointed by the common council: president of the council, superintendent of schools, city attorney, city surveyor, chief engineer, chief of police and policemen, inspector of hay and wood, sealer of

Appointment of officers at first meeting of council.

weights and measures, for the city at large; one fire warden for each ward of said city, and such other officers as the interests and welfare of the city may require.

When ordi-
nances to take
effect.

SECTION 3. Every ordinance or resolution of the common council (excepting those prescribing rules for their government and the appointment of officers) shall, before it takes effect, be presented to the mayor by the clerk. The mayor, if he approves of it, shall sign it, in which case it shall take effect immediately thereafter, unless otherwise provided for in the resolution or ordinance. If he does not approve of it he shall return it, with his objections in writing, to the city clerk, within five days after he shall have received it. The common council may then proceed to reconsider the same, and if two-thirds of all the members elect shall agree to pass the same, it shall take effect as law. In every such case the vote shall be taken by ayes and noes, and be entered upon the records of the proceedings. If such ordinance or resolutions shall not have been returned by the mayor within five days after he shall have received it, it shall take effect in like manner as if he had signed it; *provided*, that before such ordinances or resolutions shall be in force, they shall be published in the official paper of said city, and shall be recorded by the city clerk in books provided for that purpose. But before any of said ordinances or resolutions or by-laws shall be recorded, the publication thereof respectively may be proven by affidavit, and 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.

General powers
of council.

SECTION 4. The common council shall have the control and management of all the finances, and of all the property of the city; and shall likewise, in addition to the power herein vested in them, 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 trade, commerce and health thereof, and as they shall deem expedient, declaring and imposing penalties, and to enforce the same against any person or persons who may violate 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:

1st. To manage and regulate the finances, and to regulate, preserve and dispose of the property, real and personal, belonging to the city. Finances.

2d. To adopt all legal and requisite measures for levying and collecting taxes and assessments. Taxes.

3d. To license and regulate the exhibitions of common showmen or shows of any kind, or the exhibition of caravans, circuses, theatrical performances, billiard tables, and bowling saloons, and grant licenses for the selling of spirituous or fermented liquors, ale or beer, and to revoke the same for a violation thereof; to prescribe the amount to be paid for such license, and the time when such license shall expire; and may require of all persons applying for a license for the sale of spirituous, vinous or fermented liquors, ale or beer, a bond in such penal sum and with such provisions as the common council shall direct; *provided*, that no person so licensed shall give away or sell spirituous, vinous or fermented liquors, ale or beer, on election days or Sundays. Shows, etc.

4th. To license and regulate cartmen, runners, porters, hack, cab, truck, omnibus and stage owners and drivers, and all carriages or vehicles used for the transportation of passengers, merchandise, goods or articles of any kind, common criers, hawkers, peddlers, pawnbrokers and auctioneers; to prohibit non-licensed persons from acting in either of such capacities, and to require the owners to mark and number the drays, carts, carriages or vehicles, in such manner as the common council shall designate. Cartmen, runners, etc.

5th. To license, regulate and prohibit slaughter houses and markets, for the sale of fresh meat, fish, fruit, vegetables and provisions, and to prohibit the building or making the same, except at such places as the common council shall designate; to establish public markets and other public buildings, and to provide for their erection, and to determine their location and make rules for the government of the same; to appoint officers for regulating and overseeing such markets and public buildings, and to restrain all persons from interfering with or interrupting the due observance of such rules and regulations. Markets.

6th. To license and regulate the sale or storing of gunpowder or other combustible substances, and to prohibit the erection of buildings therefor, except at such places as the common council shall designate. Combustible substances.

- Wood, hay, etc.** 7th. To regulate the sale, and select places for the sale of wood, hay, straw, grain or other articles from wagons, sleighs or other vehicles, and to fix the fees for weighing and measuring the same.
- Pounds, wells etc.** 8th. To make and establish public pounds, pumps, wells, fountains, cisterns and reservoirs, and to prescribe the manner of draining fountains made by individuals, companies or corporations, and the height which such fountains shall be raised or lowered, and constructing of sewers, gutters and ditches; to erect lamp posts and to provide for lighting the streets, public grounds and public buildings, with gas or otherwise.
- Fire department.** 9th. To establish a fire department within the city and prescribe the duties of officers and members thereof.
- Precautions against fire.** 10th. To regulate the construction of chimneys and smoke stacks, and the cleaning thereof; to prevent the setting up or to require the removal of stoves, pipes, boilers and ovens deemed dangerous; to prohibit or regulate the deposit of ashes; to authorize any city officer, or any person designated by them, to inspect any place or places to ascertain whether the same are in safe condition, and if not, to require the same to be made so.
- The same.** 11th. To regulate the carrying on of manufactories dangerous in causing or promoting fires; to extend and define from time to time the grounds to be enclosed in the fire limits; to require, regulate or prohibit all such other acts to be done as they may deem proper to prevent the occurrence, or to provide for the extinguishment of fires.
- Squibs, etc.** 12th. To prohibit or regulate the firing of guns, pistols, squibs, crackers, fireworks, bonfires, the ringing or tolling of bells, blowing horns, crying of goods at auction or otherwise.
- Impounding of animals.** 13th. To restrain and prohibit the running at large of all cattle, horses, sheep, swine, geese, or other animals; to impose penalties upon the owner or owners thereof, and to regulate the impounding and sale of the same for penalties and costs; 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 ordinance.
- Removal of unwholesome substances.** 14th. To prevent any persons from bringing, depositing or having within said city any putrid carcass or other unwholesome substance, and to require the removal of the same by any person who shall have upon

his premises, any such substance, putrid or unsound beef, pork, fish, hides or skins, vegetables or other unhealthy, noxious substance or matter, and on default, to authorize the removal thereof by some competent officer, at the expense of such person or persons.

15th. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, brewery, distillery, 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 they may deem necessary, for the health, comfort and convenience of the inhabitants of the city, and to abate and destroy all nuisances. Nuisances.

16th. To grant by ordinance the right of way through any street or over any bridge of the city, to any corporation proposing to build thereon street railroads, the cars thereon to be propelled by horse power; and to grant them rights and privileges under such limitations and conditions as they may direct, and to regulate the running of the same, and to regulate, prohibit and control the running of engines and cars through the city, and the rate of speed of the same; to prevent horse racing, fast driving or riding in the streets, and to cause persons riding or driving at an immoderate pace in the streets to be stopped; to punish and prohibit the abuse of animals; to compel owners or drivers to fasten their horses, oxen or other animals while standing or remaining in the street. Street railroads

17th. To control and regulate the manner of erecting brick and stone walls for buildings, and the thickness of the same, and to prohibit the construction or require the removal of any such as they may deem dangerous to life or injurious to property, and prescribe penalties for the violation of such rules and regulations; to raze or demolish any building or structure which by reason of fire or any other cause, may become dangerous to life or health, or may tend to extend a conflagration. Erection of buildings.

18th. To prevent the encumbering of streets avenues, alleys, highways, sidewalks and crosswalks with railway cars, locomotives or engines, carriages, carts, wagons, sleighs, boxes, lumber, firewood, or any other substances or materials whatever, to compel the owner or occupants of buildings or grounds to remove snow, dirt or rubbish from the sidewalks, streets, alleys, avenues and highways opposite thereto, and to compel such owner or occupant to remove from the lot owned or occupied by him all such substances as the chief of Encumbering of streets.

police shall direct, and, in default of any such owner or occupant, to authorize the removal or destruction thereof by the chief of police at the expense of such owner or occupant, and to collect the expense thereof by fine, or in an action in the name of the city against the owner or occupant, as hereinafter provided.

Erection and removal of buildings, etc.

19th. To prevent or regulate the construction of any stoop, step, platform, bay window, cellar door, arrear stairs, descent or ascent into any building, any sign post, erection, or projection from any building or otherwise, in, over, and upon any street or sidewalk, or the removal of any building or house through the city, and to prevent and punish for the building, placing, or removing of any house or building on any street, alley, lane or avenue, or any public place, park or square.

Grading of lots.

20th. To direct the digging down and filling up of lots, wherever they shall deem the same to be necessary to prevent injury to the streets, side or crosswalks, or to the adjoining property at the expense of the owners thereof, and to prevent, prohibit and cause the removal of all obstructions and encumbrances in and upon all wharves, streets, lanes, alleys, sewers, gutters, ditches, streams and public squares, and the throwing of dirt, filth, rubbish or other things in and upon the same.

Sidewalks.

21st. To prevent the riding or driving of any horse, mule, cattle, hogs, sheep or any other animal or animals on the sidewalks in said city, or in any way doing any damage to said sidewalk; to prevent the hitching of horses, teams, oxen or cattle, to any fence, tree, lamppost or pump, and to prevent any injury to the same.

Piers, etc.

22d. To regulate the construction of piers, wharves, and docks extending into lake Winnebago and on the Fox river within the limits of said city, and to prescribe and control the prices to be charged for wharfage or pierage thereon.

Streams.

23d. To prevent persons from placing in any of the streams in or adjacent to said city, any putrid carcass, or other unwholesome substance.

Contagious diseases.

24th. To make regulations to prevent the introduction and dissemination of contagious or infectious diseases within the city; to provide a hospital for the reception and care of persons sick with such diseases.

Cemeteries.

25th. To provide and make regulations for cemetery grounds, within or without the city limits, and to do all acts and make all regulations that may be necessary or expedient for the preservation of health and the suppression of disease.

- 26th. To establish the assize and weight of bread Bread.
and to provide for the seizure and forfeiture of bread
baked contrary thereto.
- 27th. To provide by ordinance for a standard of Weights and
measures.
weights and measures, and for the punishment of the
use of false weights and measures.
- 28th. To suppress and restrain disorderly houses, Suppression of
disorderly
places.
houses of ill fame, the playing of cards or games of
chance, gaming tables, places where liquor is sold to be
drank, the keeping of ardent spirits and other intoxic-
ating drinks, except by persons duly licensed, and to
destroy all implements and devices used in gaming.
- 29th. To restrain and punish vagrants, Vagrants.
street beggars, drunken persons, prostitutes, keepers of
houses of ill fame persons giving away any strong, spir-
ituous liquor, wine or beer, to any person; to prevent
the selling or giving away of liquors, spirituous or
vinous, any ale or beer, to any person whom the com-
mon council shall designate.
- 30th. To restrain drunkards, immoderate drinking, Drundeness.
or obscenity, in the streets or public places; to pro-
vide for arresting, removing and punishing any person
who may be guilty of the same.
- 31st. To prevent and punish all persons engaged in Disorderly con-
duct.
riotous or disorderly conduct, and to prevent disturb-
ances or disorderly assemblages.
- 32d. To prohibit or regulate swimming or bathing Bathing.
in the waters in and around the city.
- 33d. To purchase grounds for, and lay out and Shado trees.
maintain public parks, encourage and regulate the
planting, removing, trimming and preserving of orna-
mental and shade trees in the streets of the city, and
also upon the parks and public grounds of the city.
- 34th. To erect and establish a watch house for the Watch-house.
confinement of disorderly, drunken or riotous persons
or vagrants and to purchase or lease all necessary
grounds, and pass all such ordinances for the regulation
thereof as may be necessary, and to appoint a keeper
and as many assistants as may be necessary.
- 35th. To make, ordain and pass ordinances, by-laws Ordinances.
for the police, and to enforce such rules for the observ-
ance of laws, ordinances, and regulations of the city
watch-house or county jail of Winnebago county, or
both, in the discretion of the magistrate or court before
whom conviction may be had; *provided*, that such fine
shall not exceed one hundred dollars, and such impris-
onment shall not exceed three months.
- 36th. To establish and regulate boards of health, Board of health.

regulate the burial of the dead, and returns of the bills of mortality, and to exempt burial grounds set apart for public use from taxation; and may also appropriate money annually, not to exceed the sum of five hundred dollars, for the benefit of the poor of the city.

Highways, streets, etc.

37th. To lay out, make, open, keep in repair, alter or discontinue any highways, streets, lanes, alleys, keep them free from incumbrance and protect them from injury, to alter or change the name of any street within the city, to alter or vacate the recorded plat of said city or any part thereof surveyed, platted or recorded in the office of the register of deeds of Winnebago county, upon petition and upon such notice as is required in vacating towns by the circuit court.

Removal of encumbrances.

38th. To require any building, fence or other erection built or placed within the line of any street or highway within the city, to be removed therefrom by the owner or occupant thereof, and in case of his neglect or failure to remove the same, to cause the removal at the expense of the owner or occupant, to require the summary removal or abatement of all nuisances or substances likely to become such from any street, lot or building within the city.

Trees and monuments.

39th. To provide by ordinance for the protection of trees and monuments in said city.

What to be deemed nuisances.

SECTION 5. The powers conferred upon the said common council to provide for the abatement or removal of nuisances shall not bar or hinder suits, proceedings or prosecutions in the courts according to law. Depots, houses or buildings of any kind wherein more than ten pounds of gunpowder are deposited, stored or kept at any one time, gambling houses, houses of ill fame, disorderly taverns, and houses or places where spirituous, vinous or fermented liquors are sold, without the license required therefor, within the limits of said city, are hereby declared and shall be deemed public or common nuisances.

Power of council to establish wharves and docks.

SECTION 6. The common council shall have power by ordinance to establish wharves and dock lines upon the banks of Fox river and Lake Winnebago, within the limits of said city, restrain and prevent encroachments upon said river and lake, and obstructions thereto, and to construct, and alter, maintain or cause to be constructed, altered and maintained at the expense of the city, or any of the wards, wharves along the banks of said river and lake.

Council to

SECTION 7. The common council shall examine

audit and adjust the accounts of the city and ward officers or agents at such times as they shall deem proper, and also at the end of each year and before the time for which the officers are elected or appointed shall have expired, and the common council shall require each and every such officer and agent to exhibit his books, funds and moneys, accounts and vouchers for such examination and settlement, and if any such officer or agent shall refuse to comply with the order of said council, in discharge of said duties in pursuance of said section, or shall neglect or refuse to render his accounts or present his books, funds, moneys and vouchers to the 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 institute proceedings at law against any officer or agent of said city who may be found delinquent or defaulting in his accounts, or in the discharge of his official duties; and the common council shall cause to be made a full record of all such settlements and adjustments.

settle with city officers.

SECTION 8. The common council shall have authority by ordinance to provide that any and all persons who shall be found guilty of the violation of any city ordinance for drunkenness or for being an inmate or frequenter of a house of ill-fame, or for disorderly conduct, and shall neglect or omit to pay any fine or costs imposed therefor, that such person or persons shall work out such fine and costs upon the public streets of said city, or shall do any other work that such city may have or wish to be done, and the compensation therefor, to be fixed by the council, shall be deducted from such fine and costs thereon. And the council may pass the necessary ordinance to carry out the provisions of this section.

Council may provide for labor by prisoners.

SECTION 9. The common council shall have authority to build bridges over the Fox river, in the city, or to make the necessary repairs on any of the bridges in the city over Fox river, and to provide for the payment of the same. The council, instead of collecting the whole amount in the next tax roll thereafter, may, in their discretion, issue the bonds of the city for a part or the whole amount, payable in five, or less, equal annual payments, the same not to draw to exceed ten per cent. interest per annum; *provided*, that not more than ten thousand dollars shall be made payable or collected by tax in any one year. To make any such appropriation shall require the affirmative vote of a majority of all the aldermen elect.

Council may issue bonds to build bridges.

Erection of
water-works.

SECTION 10. The common council may, by ordinance, build, erect, construct, complete and maintain in the city, water works, with or without steam engines to run the same, may set the engines in the Fox river, lake Butte des Morts or lake Winnebago, and run pipes therefrom through the city underground and above ground, or may build waterworks by sinking artesian wells and fountains, and making reservoirs, and may purchase patented rights for patent waterworks, may rent the use of the water to residents and provide for the collection of the rents, impose fines and penalties for the care and protection of the water and waterworks, do all the common council may deem necessary to be done in the premises, to supply the city and residents thereof with water by ordinance; *provided, however,* that no such ordinance to build waterworks shall be valid and binding until the same shall be submitted to the vote of such of the qualified electors of said city as shall be freeholders, which may be done at a regular or special election called for that purpose by a two-thirds vote of the common council. At least two weeks' notice thereof shall be given, and if a majority of the qualified electors voting shall vote in favor of such ordinance to build waterworks, the common council may raise the whole or part of the money required by the ordinance, or to build the waterworks, by special tax, or by inserting the same in the annual tax roll, or may raise the whole or part thereof by issuing the bonds of the city therefor, and selling the same, which bonds shall be made payable in twenty years (or less number of years), equal annual payments, not to draw to exceed eight per cent. interest payable annually.

Regulation of
sales at auction

SECTION 11. The common council of the of the city of Oshkosh are hereby authorized and empowered, by ordinance, to regulate the sale of any goods, wares, merchandise, or any other property, at auction, in said city of Oshkosh, and may prohibit the sale thereof at auction within the limits of said city, by any person without having obtained a license therefor; and may also require any auctioneer so licensed to sell to make reports, verified by him, in manner and form, and at such time or times or upon the demand of any officer or employé of said city, as shall be designated and provided by any ordinance of said city, and may require such auctioneer, so licensed, to pay for such license the fee hereinafter prescribed, and also the percentum upon all gross sales by him made, as hereinafter prescribed; viz: for each license to any inhabitant and resident of

said city, a fee not to exceed one hundred dollars for one year; for a license to any non-resident of said city, a fee not to exceed one hundred and fifty dollars per year, and may exact and require such auctioneer to pay on the gross amount of all sales by him made a sum not exceeding two per centum, except as hereinafter otherwise provided, upon all sales made by a non-resident auctioneer, of the following class or described articles, goods, wares, merchandise and property, viz.: clothing, wearing apparel, hats, caps, mittens, gloves, cloths, groceries, dry goods, books, stationery, pictures, picture frames, furniture and jewelry; millinery goods, boots shoes, drugs, medicines, paints, oils, iron, tin, steel, sheet iron, stoves, hardware of every kind, and including all goods, wares, merchandise and other property usually sold or kept for sale in clothing stores, hat and cap and fur stores, drug stores, paint and oil stores, grocery stores, dry goods stores, millinery stores or shops, boot and shoe stores, iron, tin, or hardware stores or shops, may exact and charge upon gross sales, a sum not to exceed ten per cent. on a dollar, upon the gross sales, and upon the same articles, goods, wares and merchandise sold by a licensed resident auctioneer, and which is not the *bona fide* property of such licensed resident auctioneer, or of a *bona fide* inhabitant and resident of said city, may be exacted and charged a sum not exceeding ten per centum upon the gross amount of sales; and that any property belonging to a non-resident which may be sold or transferred to any resident auctioneer, or an inhabitant and resident of said city, for the purpose of, in any wise, avoiding or evading the provisions of any such ordinance, or in which any such non-resident shall retain any interest, shall be liable to pay such ten per centum on a dollar on all gross sales, and may require such licensed auctioneer to give a bond to said city in such penal sum, with a surety or sureties, prescribing the qualifications thereof, and requiring the same to qualify, and conditioned for the faithful compliance with the provisions of such ordinance, with such other conditions as may be deemed necessary for the faithful enforcement of such ordinance. No license shall be issued for a longer time than for one year, and may provide that no license shall be issued for less than one year. When the term resident, or the terra inhabitant resident is used herein, it shall be and mean and include any person who is and has been for three months immediately preceding, an actual *bona fide* inhabitant and resident of said city;

Licensed auctioneer to give bonds.

the term nonresident shall mean and include any person who has not been an actual *bona fide* inhabitant or resident of said city for three months immediately preceding the issuing of any such license or the sale of any goods, wares or merchandise or property at auction. The term licensed resident auctioneer, or resident auctioneer, shall mean and include any person licensed, who has been an actual *bona fide* inhabitant and resident of said city for three months immediately preceding the granting of his license. The term nonresident auctioneer shall mean and include any person to whom a license is granted, who has not been an actual *bona fide* inhabitant and resident of said city for three months immediately preceding the issuing or granting to him of a license, and may provide that in any license issued, that it may be designated whether the person is a resident or nonresident auctioneer, and that the person accepting the same shall be bound and estopped by such license, and shall have only the rights and privileges of the class of auctioneers herein named or designated; *provided, however*, that nothing in this act shall prohibit or affect in any manner sales at auction, in the cases specified by section one of chapter fifty-four (54) of the revised statutes, entitled "Of auctions and auctioneers," all license fees, per centum on sales, to be paid to city treasurer for the benefit of the city.

CHAPTER VII.

FINANCES.

Custody of moneys.

SECTION 1. All moneys, credits and demands belonging to the city and wards of Oshkosh, shall be deposited with and kept by the city treasurer, and shall, except the school fund, be under the control of the common council, and shall be drawn out only upon the order of the mayor and city clerk, duly authorized by a vote of the common council: *provided*, that the school fund shall be drawn out as provided by the provisions of this act. All orders drawn upon the treasury may be payable generally out of any funds in the treasury belonging to the city, except the school fund; and all orders drawn upon the treasury of the city shall be made payable to the person in whose favor they may be drawn, or bearer. All such orders shall be received in payment of any city taxes levied and assessed, except for school purposes.

Limit of taxes to be levied.

SECTION 2. The common council of said city may levy annually upon the taxable property of said city,

to defray the current expenses of said city as follows : For ward purposes a tax not exceeding seven mills on each dollar of taxable property of the respective wards, as shown by the assessment roll of the year; and for all other city purposes, except for schools, a tax not exceeding eight mills on each dollar of taxable property of said city, as shown by the assessment roll of the year.

SECTION 3. The common council shall cause to be levied annually upon the taxable property of said city, such sum or sums of money as the board of education shall determine and certify as necessary to be raised for defraying the current expenses of the public schools of said city; *provided*, that the sum or sums so levied in any one year shall not exceed the sum of two thousand dollars over and above the amount levied in said city for the current expenses of the previous year. School taxes.

SECTION 4. The common council shall cause to be levied annually upon the taxable property of said city, such sum or sums of money as the board of education shall determine, and certify to be necessary for the purchase of school houses, sites or for the building or repairing of school houses, and that the amount so levied in any one year shall not exceed the sum of five thousand dollars. Tax for purchase and repair of school buildings.

SECTION 5. All moneys levied and raised for the purpose of defraying the current expenses of the public schools, or for the purchase of sites for school houses, for the building of the same, shall, after they are so collected, constitute one fund, subject to the control of the board of education, for school purposes in said city. All moneys raised by this act for school purposes shall be paid to the city treasurer, who shall be accountable therefor in the same manner as for other moneys of said city. School fund.

SECTION 6. All moneys coming into the hands of the city treasurer by any provisions of law, by gift or otherwise, for the use and benefit of the public schools of said city, shall be placed by him to the credit of the board of education of said city; and such moneys shall not be paid out by him except upon an order drawn upon him by the president of said board and countersigned by the clerk thereof; and no such order shall be drawn except by resolution of said board, which order shall be made payable to the person or persons entitled to receive the same. School fund to be placed to credit of board of education.

SECTION 7. No debt shall be contracted against the city, or certificate of indebtedness be drawn upon the Majority of council to appropriate money.

city treasury, unless the same shall be authorized by a majority of all the members elect of the common council, and a vote authorizing the same shall be entered by ayes and nays upon the journal of the common council, and no money shall be appropriated or debt contracted for any purpose whatever, except such as [is] expressly authorized by this act.

Treasurer to make report.

SECTION 8. Correct accounts of all moneys, credits and demands received into the treasury, all moneys paid upon orders for expenditures, or for the payment of any debt, and of the transactions in the office pertaining to the city finances, debts and credits shall be kept in books by the city treasurer, and at the termination of his office, and at such other times as the common council shall require, the treasurer shall make a correct report in detail of all receipts and expenditures, with proper vouchers, and the same may be published in the official paper and recorded with the city clerk.

Forfeitures, etc., to be paid into city treasury.

SECTION 9. All forfeitures and expenditures accruing to the city for any violation of this act, or of any of the ordinances, by-laws, rules and regulations 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.

Accounts to be verified.

SECTION 10. Any account or demand against the city, before acted upon or paid, the council may require the same to be verified by affidavit, except salaries and amounts previously fixed or determined by law, and any person who shall falsely swear to any such account or demand shall be deemed guilty of perjury, and shall be punished according to law.

Insurance companies to pay per centage.

SECTION 11. All corporations, companies and associations not incorporated under the laws of this state, engaged in this city in effecting fire insurance, shall pay to the city treasury at the rate of two per cent. upon the amount of all premiums which shall have been received or shall have been agreed to be paid for any insurance effected or agreed to be effected on any property within the city limits by or with such corporations, companies or associations respectively. Such amount shall be paid for every six months preceding the first days of January and July of each year.

Agents of insurance companies to make statement.

SECTION 12. Every person who shall act as agent or otherwise for or on behalf of any such corporation, company or association, on or before the first day of January in each year, shall render to the clerk of said city a full, true and just account, verified by his oath,

of the premiums which, during the half year (ending on the first day of January and July preceding such report) shall have been received by him, or any other person for him, or shall have been agreed to be paid for or in behalf of any such corporation, company or association.

SECTION 13. Upon the report of any such agent or person mentioned in the preceding section, the city clerk shall immediately assess and adjust the whole amount of the per centage chargeable against such corporation, company or association; and within five days thereafter such agent or person shall pay into the treasury of said city the amount so assessed and adjusted.

City clerk to assess per centage.

SECTION 14. If any agent representing any such corporation, company or association, against which insurance rates are chargeable by virtue of this act, shall refuse to make report or pay the rates prescribed by this chapter, at the time or times herein mentioned, such corporation, company or association so in default, and the agent thereof, shall be deprived from doing or transacting any business of insurance in said city until the said requisition shall have been complied with. Any person or agent violating any of the provisions of this chapter shall be liable to a penalty of not less than ten and not more than one hundred dollars in the discretion of the court before which conviction is had; said percentage may also be recovered of said corporation company or association, or its agent, by action in the name and for the use of said city, as for money had and received.

Penalty for violation.

SECTION 15. The insurance percentage so received, as provided by this chapter, shall be appropriated for the benefit of the fire department of said city.

Insurance per centage to go to fire department.

SECTION 16. The aldermen of any ward shall certify to the common council any debt contracted by such ward for the current year, and thereupon the said council shall (if such debt be a proper claim against such ward) allow such debt, and direct the mayor and clerk to issue to the proper person, orders of the city to the amount of the debt allowed; *provided*, that said council shall in no case allow any such debt if such allowance will cause the whole amount of orders so issued to meet the indebtedness of such ward to exceed the amount of tax which may be levied and collected under the provisions of this chapter to meet the expenses of the current year, assuming as a basis the tax list of such year then made out, and if not, then the tax list of the preceding year.

Aldermen to certify to ward indebtedness.

Limit of ward indebtedness.

SECTION 17. No alderman of any ward shall contract debts against such ward in any one year to an amount greater than the amount of tax which, under the provisions of this chapter, may be levied in such ward to meet the current expenses of the year, and if any alderman shall so contract debts to a greater amount than such tax, neither such ward nor the city shall be liable for the same, but the alderman so contracting shall be liable therefor, as if the debt had been originally contracted by such alderman personally; *provided*, that no alderman shall be held liable as aforesaid, without proof of his assent as alderman to the contracting of the debt or liability of the ward.

No debts not authorized by council to be contracted.

SECTION 18. No officer of the city, or member of the board of education, or any other person shall have power, and each and every person is hereby prohibited from making any purchase or contracting any debt on the part of the city, unless specially authorized by the common council or board of education so to do; and no account, claim or demand against the city shall be audited, allowed or paid by the common council or board of education, unless the same is duly authorized by a vote thereof.

Aldermen personally liable for debts contracted.

SECTION 19. In case any alderman shall purposely vote for any appropriation, or for the payment or expenditure of any money not authorized by this act, or in case the common council shall authorize any expenditure for any purpose not authorized in this act, or exceeding the amount they are authorized to raise for any purpose in such year, the alderman voting for any such appropriation or expenditure, or for the contracting of any such debt or debts, shall be personally liable to the city of Oshkosh, in an action in a court of competent jurisdiction, for any damage the city may sustain in consequence of such illegal payment, expenditure or appropriation.

Amounts to be specified in appropriations.

SECTION 20. All resolutions adopted by the common council or the board of education, authorizing the expenditure of money, shall appropriately specify the amount to be expended, the purpose for which the same is to be expended, and no extra or additional compensation shall [be] allowed or paid on any contract or to any officer, person or persons, for any services or work done or materials furnished to or for the city.

Council may borrow money.

SECTION 21. The common council, for city or ward purposes, to pay current expenses, or to pay any debt past due, may borrow from time to time such sum or sums of money as they may deem advisable; *provided*,

that they shall not pay to exceed ten per cent. per annum interest, and that the same shall not be payable at a later date than the first day of February next after the date when such loan or loans are made; proper evidence thereof, by way of note or otherwise, may be given, which shall be signed by the mayor or the acting mayor and city clerk, under the seal of the city. The amount so borrowed shall be inserted in the tax roll next after the same is borrowed, with other taxes.

CHAPTER VIII.

ASSESSMENT AND COLLECTION OF TAXES.

SECTION 1. The assessors shall assess all taxable property in said city, and shall make out the annual assessment roll for said city, in accordance with the general laws of the state relating to the assessment of property and the duties of assessors. Immediately after such assessment roll is equalized, the same shall be verified by the oath of each of said assessors as required by law, and the said assessment roll, or a copy thereof, shall be deposited with the city clerk. All taxes shall be collected in the manner prescribed by the laws of this state.

Duty of assessors.

SECTION 2. If the board of assessors, when making this assessment, shall discover any tract, piece or parcel of land in said city, was omitted in the assessment roll of the preceding year, and was then liable to taxation, they shall, in addition to the assessment of such tract, piece or parcel of land, for that year assess the same separately, for such preceding year that it shall have been so omitted, at the fair and just value thereof, when the same should have been so assessed in such preceding year, noting distinctly the year when such omission occurred, and that the same was omitted, and the reason, if any, why the same was omitted, and such assessment shall have the same force and effect as it would have had if made in the year the same was omitted, and taxes to the amount that should have been levied and paid in the year such omission occurred, shall be levied and collected thereon in like manner, and together with the taxes of the year in which such assessment is made, and such lands shall be subject to taxes so omitted to be assessed in whosoever hands they may come. And if the board of assessors when making any assessment shall discover that, through the fraud, accident, mistake or negligence of any person or persons, officer or officers, in making

Assessment of property for taxation.

Board to deduct
value of prop-
erty.

out, copying or transcribing any tax, tax roll or assessment roll for the preceding year that any tract, piece or parcel of land has been inserted in such tax or assessment roll for the preceding year at a less valuation than fixed upon by the board of assessors, or board of review, for such preceding year, or that the amount or value of the aggregate valuation of personal property liable to taxation, of any person or persons, corporation or corporations as fixed by the board of assessors or board of review for the next preceding year, has been altered or changed to a less amount or value than the amount or value as fixed by the board of assessors or board of review for such preceding year, by or on account of the fraud, accident, mistake, or negligence of any person or persons, officer or officers, in making out, copying or transcribing any tax, tax roll or assessment roll of such preceding year. That the board of assessors shall deduct the value of such piece, tract or or parcel of land, or the amount or value of such personal property as it appears from the assessment roll or tax roll of such preceding year, from the true amount or value as fixed by the board of assessors or board of review for such preceding year, and shall in addition to the assessment of such tract, piece or parcel of land for that year, or in addition to the assessment to or of such person or persons, corporation or corporations, assess the said piece, parcel or tract of land, or such person or corporation the amount and value of the difference as so fixed the preceding year by the board of assessors or board of review, and the amount or value as it appeared on such assessment roll or the roll for such preceding year, noting distinctly in the assessment roll the year when such alteration was made, and the amount or difference caused or made by such alteration; and taxes to the amount that should have been levied and paid on the same, shall be levied and collected thereon in like manner and together with the taxes of the year in which such corrected assessment is made, and shall have the same force and effect. And all such lands, or pieces or parcels of land shall be subject to such taxes in whosever hands they may come, and all persons and corporations shall be liable to pay such taxes so assessed on such personal property, and such taxes shall be collected in the same manner as other taxes. As soon as said tax shall be levied, the common council shall cause the same to be copied in a book provided for that purpose, setting opposite to each tract of land and each person named,

Taxes to be
relieved.

such sum or sums as may be levied upon such lot or against such person; the said copy shall be designated as the tax roll, and to it 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 in said roll specified. Such tax roll before being delivered to the treasurer, shall be compared by the clerk with the assessment roll, and to it he shall append his certificate that the same has been so compared by him, and that the said assessment roll and the whole thereof has been copied with such tax roll, and when so certified shall be *prima facie* evidence that the lands and persons therein named were subject to taxation, and that the assessment was just and equal.

SECTION 3. Upon the receipt of the tax list by the treasurer, he shall proceed to collect the taxes and assessments of said city at the same time as is required by law of town treasurers to collect taxes.

When treasurer to collect taxes.

SECTION 4. The city treasurer shall, upon the receipt of the tax list, publish a notice in the official paper of the city, specifying that all taxes and assessments, whether upon real or personal property in said tax list, shall be paid on or before the last day of December of said year, and that all taxes and assessments not paid by that day will be collected by the seizure and sale of the goods and chattels of the person, company or corporation charged with such taxes and assessments, and the publication of such notices shall be deemed and taken to be a demand, and failure to pay the taxes and assessments within the time limited in such notice shall be deemed a refusal to pay the same. The city treasurer shall charge no fees for collection of taxes and assessments paid to and collected by him prior to the first day of January of each year, and shall charge and collect five per cent. upon all taxes and assessments paid to and collected by him after that date; *provided*, that the common council shall have power to extend the time for collecting such taxes, not exceeding thirty days from the expiration of original warrant.

Treasurer to publish notice.

SECTION 5. In case no goods or chattels shall be found, out of which to collect the taxes, on any lot or lots or other pieces of land or property, it shall be his duty to make out a list of all of the property and taxes remaining unpaid at the time required by law; and the list so made with his affidavit thereto attached, stating that the taxes therein contained had not been collected

Delinquent tax list.

and that he had not been able to find goods and chattels out of which to collect the taxes, shall be called the "delinquent list," and it shall be his duty to deliver such delinquent list to the treasurer of the county of Winnebago, at such time as is required by law; and he shall at the same time pay over to the county treasurer of Winnebago county, all moneys collected by him belonging to said county, and all taxes belonging to the state of Wisconsin in the same manner as required by law of town treasurers.

County treasurer to return money and certificates to city treasurer.

SECTION 6. It shall be the duty of the county treasurer of Winnebago county, and he is hereby required, when lots, tracts, pieces or parcels of land have been returned by said city treasurer for any general tax of the state, or for any tax or assessment authorized under the provisions of this act, immediately after the sale of the said delinquent lots, tracts, pieces or parcels of land by him, to pay to said city treasurer the amount which may have been returned delinquent belonging to said city either in cash or in certificates of sale of said tracts, pieces or parcels of land so returned as delinquent.

Informality not to affect validity of tax.

SECTION 7. All directions hereby given for the assessment of lands, and levying and collection of taxes and assessments, shall be deemed only directory, and no error or informality in any of the proceedings of any of the officers entrusted with the same, not affecting the substantial justice of the tax itself, shall vitiate or affect the validity of the tax so assessed.

How assessments to be carried out.

SECTION 8. In all cases by the provisions of this act, any charge or assessment shall be carried out on the tax roll in a separate column or columns, opposite to the lot or tract upon which the same may be a lien. The treasurer shall collect or do all other acts in regard thereto in the same manner as in the collection of other taxes.

Duty of city treasurer.

SECTION 9. The said city treasurer shall keep in a book, to be provided for that purpose, a true account and statement of all fees by him received as city treasurer, from any source whatsoever; and the same shall be paid by him into the general fund of said city for the benefit of the city, and such books shall at all times be open to inspection by the mayor or common council, or to any committee appointed by the common council; and the said city treasurer, when required by the common council, shall make a report, under oath, of all fees by him received as such city treasurer.

CHAPTER IX.

IMPROVEMENT OF STREETS, ALLEYS, ETC.

SECTION 1. The aldermen shall have the power in their respective wards to establish, alter and change the grade of any street, sidewalk, alley or lane in their respective wards; *provided*, the same is approved by ordinance or resolution of the common council.

Grade of streets

SECTION 2. The aldermen of the several wards shall have the power in their respective wards, to order the construction or repair of sidewalks on or in any public street or along the side thereof, and cause them to be lowered or raised, and prescribe the kind and manner of construction, the grade thereof, and the foundation upon which the same shall rest, at the expense of the lot fronting or abutting on such sidewalk, or through or on which the same may in whole or in part run or be situated.

Construction and repair of sidewalks.

SECTION 3. The aldermen shall also in their respective wards, have power and authority to grade, gravel, plank, or pave with any kind of pavement, or construct or fix with any kind of material, any street or alley in their respective wards, and construct and dig all necessary ditches or gutters, and charge the cost and expense thereof to the center of the street or alley, to any lot or lots fronting or abutting on such street or alley, when such improvement is ordered by the common council, after the following requirements, viz.: when the proposition for such improvement shall be approved or recommended by a majority of the aldermen of the ward or wards in which it is proposed to be made, and presented at a regular meeting of the common council, and the same shall be approved or ordered at some subsequent regular meeting thereof, at least thirteen days intervening, by the common council, which proposition may be in general terms, and the council may change, alter, modify or fix the same or the terms thereof, or when the same is ordered by the common council, which it shall have power to do upon the petition of the owners of a majority of the frontage of the land fronting or abutting upon such part or parts of any such street or alley which it is proposed so to improve at the expense of such lots; *provided*, that the aldermen of any ward shall grade, dig all necessary gutters or ditches on any street in their respective ward at the expense of such ward, for the purpose of graveling, planking or paving such street, at the ex-

Construction and repair of streets.

pense of the lot or lots fronting or abutting such improvement.

Proceedings
when expense
of improvement
is chargeable to
adjoining lots.

SECTION 4. When any such improvement shall be made at the expense of the lots, as provided by sections 2 and 3 of this chapter, the following shall be substantially the mode of proceedings: First. The aldermen of the ward or wards in which the improvement is proposed to be made, shall file in the city clerk's office, or cause to be entered in a record book in said office, a plan or specification of the work to be done, which shall not be required to be more specific than is necessary to inform parties interested of the work to be done; and such plan and specification may refer to any mark, stakes, stones or other monuments, and which may be made a part thereof. Second. By personally serving upon the owner or owners of such lots, or in lieu thereof, publishing in the official paper of said city (if any there be, if not, then in some newspaper published in said city), at least ten days before such work is required to be done or improvement made, a notice signed by the clerk, officially, requiring the owner or owners of such lots to do such work or make such improvement as per such plans and specifications, by a day certain, therein to be named, and may also insert in the same notice that on a day therein to be named, to be not less than six days from the last date, that the aldermen of said ward will let the contract to do all such work or make such improvements as shall not have been done or made, as so required or ordered, and that sealed proposals will be received accordingly. Such notice served or published, need not specify the lots or blocks or land by numbers, figures, letters, or by metes and bounds, but may specify that all the lots or parts of lots, parcels or strips of land fronting or abutting on such street or alley, upon a particular side thereof, between certain points. The aldermen may reject any bid if they think it is not for the interest of the ward and parties interested.

How work to be
let.

SECTION 5. If no satisfactory bid or bids are received to do such work or make such improvements, then the aldermen may contract with some person to do the whole or any part thereof, or such aldermen for their ward may do such work in whole or in part, all the cost or expense thereof chargeable to such lots and lands as aforesaid, and as herein provided. The aldermen may require any bidder *instantly* to give a satisfactory bond with satisfactory surety, for the faithful performance of the contract on his part. In letting

any such work or improvements, different kinds of work may be let to different persons, or the material required may be let separately from the work.

SECTION 6. Sewers, drains, gutters or ditches may be ordered, dug, made or repaired, by the aldermen in their respective wards, at the cost, charge and expense of the lots which they may deem benefited thereby, and they shall apportion such cost, charges and expenses among and on such lots, in such proportion or amount as they respectively shall deem the same benefited thereby; *provided*, that no portion thereof shall be assessed upon any land outside of the ward of the aldermen ordering the same. Such work or improvement may be done by the ward or let out by contract to some third party.

Construction and repair of sewers, drains, etc.

SECTION 7. Whenever a sewer or drain is to be so built or repaired, which runs in more than one ward, or one which it is proposed to charge the cost of construction upon lots situate in more than one ward, or when it is proposed to so improve a street or establish the grade of a street which is located in different wards, then the same shall be done in the same manner under the order and directions of the aldermen of the wards in which any lots are situated, that are so assessed or charged therefor, or in which grade of street is established, but is hereby understood that the above refers to the aldermen of the wards only in which such lots to be so charged, the part or parts of the street to be so graded or so improved are situate; *provided*, however, in such case it shall require a majority of the aldermen of each of such wards to act, and in such cases all orders, entries and proceedings may be made or kept in the ward book of either of such wards, or in any separate book that the clerk may provide.

Building and repair of drains.

SECTION 8. When a sewer or drain is needed, running in or through different wards, and the aldermen of the wards cannot agree to order its construction, the same may be ordered by the council; and when, in the construction of any sewer or drain, the cost of which is assessable or chargeable upon property in different wards, and the aldermen cannot agree upon such assessment, then such assessment may be made by the council.

When council may order construction of sewer or drain.

SECTION 9. A sidewalk across an alley and passage-way into the street shall be built at the expense of the lots abutting such alley, to be apportioned thereon, or such portion thereof, and in such proportions, by the aldermen, as they shall deem the same respectively benefited.

Sidewalks chargeable to adjacent lots.

Lots liable for improvement of streets.

SECTION 10. Lots shall be liable, as in this chapter provided, for the improvement of the streets to the center of street on which they abut or join, and corner lots for all sidewalks up to the crossings or crosswalks.

Crosswalks, drains and sewers to be constructed and kept in repair by wards.

SECTION 11. The ward shall construct and keep in repair all cross walks, drains or sewers across the street from sidewalk to sidewalk, or on that portion used for a public street, exclusive of what is used or may be wanted for sidewalks, and also that portion of the street lying between the crossing where streets intersect.

How charges against lots to be collected.

SECTION 12. When work is done or improvement made, which under this chapter are chargeable to lots as aforesaid, the aldermen of the proper ward shall give to the contractor or person doing or performing the same, or his assigns, a certificate countersigned by the clerk for the amount due him, and containing a description of the land to which the same is chargeable, which certificate shall be transferable by endorsement, and shall draw interest at the rate of fifteen per cent. per annum from date of issue, (provided the same is not paid within twenty days from date), until the same is inserted in the tax roll, as hereinafter provided; and if the amount thereof and interest shall not be paid before the clerk makes out the annual tax roll, next after the date of its issue, the clerk shall insert and assess the amount thereof with interest, as aforesaid, to the time of its being so inserted in the tax roll, upon and against the lot or parcel of land described therein, in such tax roll, and as a part of the tax against such lot, and the same shall be collected as other taxes and assessments for the benefit of the holders of such certificates respectively, and when any such work is done or improvement made by the ward or wards, the same shall be inserted in the tax roll, and collected in like manner; *provided, however,* that in no case shall the city be liable for the amount of such certificate or any part thereof, unless the same has been actually paid into the city treasury; and the sale of such land therefor shall not be regarded payment, and the same shall not be regarded as paid until the parties interested shall have actually redeemed such lots from such sale.

When grading of streets to be charged to lots.

SECTION 13. When in grading any street, the cost of cutting or filling in front of any lot shall be, in the opinion of the aldermen of the ward in which the same is done, greater than such lot is benefited, the aldermen may apportion a portion of such cost among

and on such lots, and in such proportion or amount as they may deem to be benefited thereby, as is herein provided for the building of sewers, and upon property in different wards in like cases, as is provided in the construction of sewers.

SECTION 14. When in the construction of any street, drain or sewer, if from deep cutting, digging or filling, or any cause or reason the aldermen are of the opinion that the same in whole or part should be paid out of the ward or wards' fund, then the same may so in whole or in part be paid; *provided, however*, that no portion thereof shall be paid out of the fund of any ward without the consent of the aldermen of such ward.

When expense payable out of ward fund.

SECTION 15. All sidewalks shall be kept in repair, and clear and free from all obstructions at the expense of the lot adjoining or abutting thereon, and of the owner or owners thereof, and in case the owner or occupant shall fail to keep such sidewalk in repair, and clear and free as aforesaid, the aldermen of the ward may cause the same to be done and charge the expense thereof to such lots respectively; *provided, however*, that no sidewalk shall be so repaired at the expense of the lot, when the cost of such repair shall exceed one-half of the cost of a new sidewalk of the kind in front of such lot, except in the same manner as required for the building of a new sidewalk; *provided, however*, that if a sidewalk on or in front of any lot shall become injured or destroyed by the burning of any building or property, and the same shall not within a reasonable time be repaired or rebuilt by the owner of such lot, the aldermen may repair or rebuild such sidewalk at the expense of the lot without notice or letting to the lowest bidder.

Sidewalks to be kept in repair at expense of lots.

SECTION 16. When the aldermen of any ward shall deem any lot injurious to public health, by reason of stagnant water, or from other causes, they may order that such nuisance be abated, by draining or filling such lot, or in any other manner, by the owner or occupant, and upon their failure to do so, such aldermen may abate or cause to be abated, at the expense of such lot, by taking the same proceedings as are required for the building of a sidewalk.

Abatement of nuisances.

SECTION 17. When a ward or wards shall do any work or make any such improvement or make any repairs, or do any other work or labor as provided in this chapter, which shall be a lien or charge upon any lot, a like certificate as is provided to be issued to contractors or other persons, may be issued to such ward

When work done by wards.

or wards, and be collectable in the same manner; or the aldermen of the ward or wards which are entitled to the same, may make a statement or statements and file the same with the city clerk, of the amount or amounts due to such ward or wards for doing any such work or labor, or making any each improvement, and the amount chargeable to each lot, which amount the clerk shall insert and add to the tax chargeable to such lot in the annual tax roll, issued next after the filing of such statement, and the same shall be a lien thereon and collectable as other taxes.

Assessments may be made at any time.

SECTION 18. If for any cause any tax or assessment chargeable to any lot under the provisions of this chapter, shall not be entered or assessed against such lot at the time therein provided, then the city clerk may enter or assess the same against such lot in any subsequent tax roll.

When there is patent right upon improvement ordered.

SECTION 19. When any improvement is ordered to be made, and there shall be a patent right upon the same, or any portion thereof, the city before giving the notice required to make such improvement, shall purchase the right to use the same in making such improvement, and the letting shall be upon such basis. The cost thereof shall be divided *pro rata* upon the lots chargeable with the improvement, according to the frontage improved. The contractor shall pay the city such portion thereof as shall be due upon the work by him to be done, and the amount by him paid shall be added to the other charges, and inserted in the certificate. If the owner of the lot shall do the work, he shall pay the city his *pro rata* share thereof as aforesaid. If any ward or wards do any portion of the work, then such ward or wards shall pay the city their share thereof on such work, and the ward or wards shall collect the same out of the lot or lots chargeable therewith, the same as other charges for work. If the owner of any lot does the work or makes the improvement, and shall fail to pay the city the proportion of the purchase money chargeable to such lot for the use of such patent right, then the city may charge the amount against said lot.

Order of aldermen may be changed by council.

SECTION 20. An order made by the aldermen of any ward or wards fixing or changing the grade of any street, may be revoked, altered, changed or modified by the council. Any order made by the aldermen of any ward or wards, changing or fixing the grade of any sidewalk, or directing the building of any new sidewalk, may be revoked, altered, changed or modified by

the common council at any time within ten days after the same is made.

SECTION 21. There may be kept in the city clerk's office a book or books for each ward wherein may be entered by the clerk or aldermen of the respective wards all orders, entries or proceedings required to be done or had under any of the provisions of this act, or any other matter appertaining thereto, or to ward matters, and a like book may be kept for the entry of all proceedings and orders when anything is done by different wards together as herein provided, in doing any work or making any improvements of any kind. And there may be entered in such book or books any fact or item appertaining to such proceedings, and as to the service or publication of any notice required by law to be served, given or published, and that any act was done by the aldermen or clerk in making any improvement, and that a notice was served, given or published as required by law in certain proceedings, or to carry out any order or requirement on the part of the aldermen without stating the contents of such notice, and in addition thereto may be entered that due proof of the service or publication of any notice has been made and filed in his office, or there may be pasted in or attached to such book a written or printed or partly written and partly printed copy of any notice or proceeding, which shall be admitted in evidence in all courts the same as the original would be entitled to be, and there may also be entered in such book such other matter as may properly appertain to any ward matters. It shall not be necessary for the aldermen to sign any order, memorandum or other entry in any such book, or in lieu thereof, any such orders or proceedings may be signed by the aldermen of the respective wards and filed in the city clerk's office. And such book or books or any of them, shall be received and admitted in evidence in all courts, in any proceedings whatever, and shall be *prima facie* evidence and proof of all entries, memorandum, facts, items and matters and things therein contained. And the said orders and proceedings shall be received in evidence in like manner and with like effect.

Record of proceedings to be kept.

SECTION 22. Any and all certificates made by the aldermen of any ward or wards of any act done or notice given, served or published under the provisions of this chapter, shall be received and admitted in evidence in all courts of this state, and shall be *prima facie* evidence of all the facts therein contained, and that such

Certificates of aldermen to be admitted as evidence.

acts were done and proceedings had, and such notice served or published as therein certified to. And all proceedings had under the provisions of this chapter or attempted to be had under the same, shall in all courts be deemed presumed and taken to have been regular, and it shall be taken and presumed that all the provisions of this chapter were complied with until the contrary is shown.

When assessments adjudged void.

SECTION 23. If any taxes or assessments chargeable to any lot under any of the provisions of this chapter in any suit shall be adjudged void, in whole or in part for any irregularity in the proceeding or non-compliance with any of the provisions thereof, the court in which said case was tried shall, any time within one year after such judgment, upon the application of the owner of such tax and assessment and a defendant in such suit, cause an issue to be made up between such owner and defendant and the plaintiff, wherein such plaintiff shall be defendant and such owner and defendant plaintiff, as to the value of such improvements and whether the same were made in good faith, and if the jury find that such improvements were made in good faith, the court shall judge the value thereof as found by the jury, to be a lien upon such lot, with costs of suit on such issue, and execution may issue on such judgment, directing the sale of such lot, to pay the same and costs of sale, and the same shall be sold as other real estate is sold on execution. At any time within eight months after such sale, a redemption can be made therefrom, as on the sale of real estate upon other execution, by the payment of the amount for which it was sold together with ten per cent. interest thereon from the time of sale.

Taxes declared void may be reassessed.

SECTION 24. When any taxes or assessments chargeable to any lot, under any of the provisions of this chapter, shall be set aside or declared void, in whole or in part, by any court, by reason of any irregularity in any of the proceedings, or the non-compliance with any of the provisions of this act or of the charter of said city, or in ordering or letting the work, or making contracts in relation thereto, the city council, at any time within two years after the same are declared void, at the request of any party interested in said tax or assessment, may order such tax or assessment so declared void, to be recharged or assessed against said lots respectively, and collect the same as any other taxes or assessments; *provided*, however, if the party avails himself of the remedy to finalty provided by section 23 of

this chapter, he shall be deemed to have waived his remedy under this section.

SECTION 25. If the city shall be subjected to any damages hereafter occasioned, in consequence of any sidewalk or street being out of repair or not in safe condition, such ward in which said defective street or sidewalk is situated shall be liable to the city for all damages, costs and expenses which such city shall be subjected to, and such damages, costs and expenses may be assessed by the common council upon the taxable property of the ward in which such defective sidewalk or street is located and collected the same as other city taxes. If any ward shall be subjected to any tax, in consequence of any damages done or permitted by the occupant of any lot to any sidewalk or street on which it abuts or fronts, occasioned by digging in the street, driving over the sidewalk or by permitting snow to accumulate on the walk, such occupant shall be liable to such ward for all damages, costs, expenses and taxes which such ward shall be subjected to, and such damages, costs, expenses and taxes may be recovered by such ward in a court of competent jurisdiction, by a suit in the name of the city of Oshkosh, and against such occupant.

Liability of wards for damages.

SECTION 26. All real estate shall be liable for the taxes and assessments provided for and authorized to be assessed in this chapter, in manner and form aforesaid, including any real estate belonging to any county or the state of Wisconsin.

All real estate liable to assessment.

SECTION 27. All the provisions of this chapter shall be regarded as directory, except the provision of giving notice as aforesaid, and if such notice is given as herein required, no informality or irregularity or error in the proceedings shall vitiate such assessment or taxes.

Informality not to vitiate proceedings.

SECTION 28. The city shall not be liable to or for any damages arising or growing out of any sidewalks, streets, drains, sewers, gutters or ditches or bridge in said city being in a defective or dangerous condition or out of repair unless it be shown that previous to the happening of the same one of the aldermen of the ward in which the same is located had knowledge thereof, and no knowledge of such condition of the same shall be presumed, unless the defect out of which the same occurred existed three weeks before such damages accrued; *provided, however*, that nothing herein contained shall be so construed as to mean that knowledge is to be presumed because such three weeks had elapsed.

When city may be made liable.

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SECTION 29. Wherever the word lot or lots is used, What deemed as lots.

it shall be deemed to include parts of lots, parcels and strips of land, or any other subdivision of land. And where the word alley is used, it shall be deemed to include all lanes; and where the word street is used, it shall be deemed to include highways. And wherever the word "aldermen" is used in connection with any ward matter it shall be understood to mean a majority of the aldermen of the ward. And all the provisions of the Revised Statutes relative, "of the construction of statutes," shall apply to all the provisions of this chapter.

How things to be done by council.

SECTION 30. Anything required to be done under any of the provisions of this chapter by the common council, may be by order, resolution or ordinance.

Streets to be kept in repair by wards.

SECTION 31. All streets heretofore or hereafter, once graveled, paved or planked at the expense of the property fronting, adjoining or abutting thereon, such street, so far as the same has been graveled, paved or planked (except sidewalks), at the expense of the property on the street, to be so maintained and kept in order at the expense of the ward such street or streets are located in. All the taxes therefor, made necessary to be levied and collected the same as ward taxes upon the taxable property of the ward in which such street is located, anything in this chapter or charter to the contrary notwithstanding.

Contracts to be made in name of city.

SECTION 32. All written contracts to be made under this chapter shall be executed in the name of the "city of Oshkosh," and signed by the aldermen or a majority of the aldermen of the ward in which the work or improvement is situated of one part, and signed by the contractor of the other part. All verbal contracts to be executed in like manner in the name of the city; and all bonds which may be required of contractors to secure the performance of such contracts shall be made and executed to the city.

Certificates to apply in payment of taxes.

SECTION 33. The certificates issued under this chapter on the property therein described in such certificate for work or improvements, shall be received by the county treasurer of Winnebago county, on sale of land for unpaid or delinquent taxes for the same year and tax named in the street improvement certificates for the land therein described, and to be held by the county until the land is redeemed; and in case the improvement tax should be set aside, or the tax certificate of sale issued by the county treasurer cancelled by judgment of court or otherwise, then the holder or legal representative of such certificate of sale issued by the

county treasurer shall receive the street improvement certificate (so received by the county treasurer) from the county, for its face, in payment of any claim against the county for the amount of such tax and charges named in the street improvement certificate for which the land was sold.

CHAPTER X.

OPENING AND LAYING OUT STREETS AND ALLEYS.

SECTION 1. The common council shall have power to lay out public squares, grounds, streets and alleys, and to widen or straighten or extend the same as follows: Whenever ten or more freeholders of the city shall petition the council to take certain lands for public use, for any of the purposes aforesaid, and shall specify therein with reasonable certainty, the courses and distances, metes and bounds of the land proposed to be taken, and the names and residences of the owners of such premises, so far as the same can be ascertained, and deposit with the city clerk the fees hereinafter prescribed for the expenses of ascertaining whether it is necessary to appropriate such property for such public purposes, the common council may, if they are of the opinion that the public interest demands that the request of such petition be granted, in whole or part, cause notice of such application to be given by publication of a notice thereof in the official paper of the city; if there be none, then in some paper published in said city, of at least four weeks, at least once in each week; *provided*, however, that if the land required by the petition to be taken shall be so taken, in whole or in part, such money shall be refunded to the petitioners, and such costs shall be assessed with the damages upon the real estate benefited, as hereinafter provided.

Power of council to lay out streets, alleys, etc., and to take property therefor.

SECTION 2. Such notice shall state that upon 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 or a court commissioner for the county of Winnebago, for the appointment of twelve jurors to view said premises and to determine whether it will be necessary to take the same for the purpose specified in said petition.

What notice to contain.

SECTION 3. Upon the presentation of such application, and upon the proof of the publication or service of the notice hereinbefore required, the said judge or

Jury to be selected to view premises to be taken.

court commissioner shall thereupon appoint twelve reputable freeholders, residents of said city but not residents of the ward in which said premises may lie, nor interested in said premises. The said judge or court commissioner shall thereupon issue his precept, directed to said jurors, requiring them within ten days to view the premises, to be specified in said precept, and to make returns under their hands to the common council whether, in their judgment, it is necessary to take said premises for the purposes specified in said application.

Chief of police
to serve pre-
cept.

SECTION 4. The chief of police shall serve this precept immediately on the jurors therein named by reading the same to every one of them that can be found, and immediately after such service he shall return said precept to the judge or court commissioner who issued the same, together with the doings thereon.

Substitution of
jurors.

SECTION 5. If any of the jurors so appointed cannot be found, or shall be disqualified from acting, or shall refuse to act, the judge or court commissioner may appoint others in their places, and a memorandum of such substitution shall be endorsed on the precept.

Judge to ad-
minister oath
to jurors.

SECTION 6. The said judge or court commissioner shall thereupon administer an oath to said jurors, that they are freeholders of said city and not interested in the premises proposed to be taken, and that they will faithfully and impartially discharge the trusts reposed in them, which said oath shall be filed in the office of the city clerk.

Duty of jurors.

SECTION 7. The said jurors shall, at such time as they may agree upon, 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 oath to the witnesses. After viewing the premises in question, and hearing such testimony as may be offered, the jurors shall make a report of their proceeding, which shall be signed by them respectively, and which shall state whether in their judgment it is necessary to take 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 in said precept, or when ordered by the council. Should the jurors report that it is necessary to take said premises, the common council shall enter an order among their proceedings confirming said report, and directing the same jurors, within twenty days

thereafter, or such further time as shall 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 said property proposed to be taken, and also what lands or premises will be benefited by such taking, and to assess and return within the time limited such damages and benefits to the common council; and after the jurors shall have made their reports as to the taking of any lands or premises under this act, and the same shall have been confirmed, the judge or court commissioner who may have issued the precept, as provided in section 3 of this chapter, shall have power to appoint new jurors in place of any who shall neglect or refuse to serve; and the jurors, before entering upon the discharge of their duties in the premises, shall severally take an oath before some competent officer that they are freeholders of said city and are not interested in the premises to be taken, and that they will faithfully and impartially discharge the trust reposed in them, which oath shall be filed in the office of the city clerk, and the judge or court commissioner, who may have issued the precept as provided in this chapter, shall have power to issue a warrant or attachment against any juryman who shall neglect or refuse to serve, wherein the city of Oshkosh shall be nominal plaintiff, and such juryman or juryman defendants, and compel the attendance of such juryman and punish him for contempt in the same manner as jurymen are punished by law in the courts of record for contempt, and also the said judge or court commissioner shall have power to issue subpoena for witnesses to attend before such jury, and issue attachment and punish for contempt in case of neglect or refusal of witness to appear and testify before the jury, in the same manner as in case of neglect and refusal of jurymen, and all the costs and witness' fees are to be added in with the expenses of the jury.

SECTION 8. The said jurors within the time limited shall view and examine the premises proposed to be taken, and all such other premises as in their judgment will be injured or benefited thereby, and receive and bear such testimony as they may deem necessary in the premises, and thereupon determine and apportion and award to the owner or owners the value of the real estate proposed to be appropriated, and the injury to them respectively as damage after making due allowance, which such owners respectively may derive from such improvement. If there are any buildings in par

Further duties
of jurors.

or whole upon the land proposed to be appropriated, the jury shall assess separately the value thereof, less what its value will be if removed from the land appropriated, and of the removal which the owner will necessarily be obliged to make of the same: and if there is any interest in such property as lessee or otherwise less than an estate in fee simple and not in the nature of a lien by mortgage or judgment, mechanic's lien, or a lien for taxes or assessments, the jurors shall estimate separately the damage which the owner or owners of such interest shall sustain thereby, and in estimating the damage sustained by the owner, the same shall be deducted therefrom. In awarding damages as aforesaid, the jurors shall not be compelled to award the same to any person or company by name, but the same may be awarded to the owner or owners of the property appropriated or injured, or to the party or parties interested therein.

When damages greater than benefit, or vice versa.

SECTION 9. If the damages to any person be greater than the benefit named, or the benefit be greater than the damages, in either case the jurors shall strike the balance, and carry the difference forward to another column, so that the assessment will show what amount is to be received or paid by such owner or owners respectively, and the difference only shall in any case be collectable of them or payable to them.

Jury to assess damages.

SECTION 10. Having ascertained the damages and expense of the said improvement as aforesaid, the jurors shall thereupon apportion and assess the same, together with the costs of the proceedings, upon the real estate by them deemed benefited, in proportion to the benefit resulting thereto from the proposed improvement, as nearly as may be, and shall describe the real estate upon which these assessments may be made. The award of the said jurors shall be signed by them, and returned, together with the testimony taken and the precept to the common council, within the time

Costs and fees.

limited in such precept. The costs of the proceedings shall be estimated as follows: the jurors shall be entitled to one dollar and fifty cents for each day's attendance; the judge or commissioner, in full for his services in any one case, four dollars; the chief of police, for all his services in any one case, four dollars; the city clerk, for the same, three dollars; the clerk of the circuit court, for filing and recording the report, two dollars. The printers' fees for publication of the several notices required by this act, shall be compensated according to the legal rates.

SECTION 11. The city clerk shall, by order of the council, make and deposit with the clerk of the circuit court of Winnebago county, a duly certified copy of said award, and the said clerk of the circuit court shall file and carefully preserve the same in his office, and at the expense of said city shall record the same. The award and the certified copy of the said award so filed shall be *prima facie* evidence of the regularity of all the proceedings, from the presentation of the petition to the filing of said award inclusive. If no appeal is taken from either damages or benefit assessed in said award, the city clerk shall add the benefit so assessed and charged in said award to the lot, lots or parcels of land, to the taxes chargeable to such lot or lots in the annual tax roll issued next after the filing of a copy of such award with the clerk of the circuit court, and the same shall be a lien thereon, and collected as other taxes.

SECTION 12. Any person interested in any property taken, or upon which any benefits are assessed, may appeal to the circuit court of Winnebago county, Wisconsin, from damages awarded. Any person interested in any real estate upon which any such benefits or said damages or costs are assessed may appeal to the same court from such assessment of benefits, and also from such damages awarded; and if he appeals from both he must take it in one appeal; such appeal must be taken within ten days from the date of the filing of a copy of such award of the jurors with the clerk of the circuit court, as heretofore provided, by serving a notice upon the city clerk and filing the same with the clerk of said circuit court, which notice shall state from what such appeal is taken, and shall give and file with the clerk of said court an undertaking, signed by one or more sureties, to be approved by the clerk of said court, in the sum of five hundred dollars, conditioned to pay all costs which shall be awarded against him on such appeal. Such appeal shall be tried as other issues of fact by jury, unless a jury is waived. An appeal from any damages for the appropriation of property or any interest therein, shall take up not only the question as to such damages appealed, but also shall operate as an appeal from all benefits assessed against any property, and shall be tried *de novo*, except as to any damages for any interest in any property which has not been appealed from. An appeal from any benefit assessed against any property shall take up all benefits assessed against any property, and shall be

Duty of city clerk.

Appeal to circuit court.

How appeal to be tried.

When several appeals from benefits, all to be merged in one case.

tried *de novo* as to the question of the benefits. If there is an appeal from the damages and also an appeal from the benefits, by one or more parties, the appeal from damages only shall be tried, and if tried and determined, the appeal from the benefits shall be regarded as merged therein; if there shall be several appeals from benefits, they, by order of circuit court or the judge thereof, at the term or in vacation, without notice, shall be merged in one suit, in which all such appellants shall be plaintiffs; when there are several appeals from damages the same disposition shall be made thereof. If there are any damages awarded that have not been appealed from, then on such new trial the same shall be regarded as adjudicated and assessed *de novo* upon property found to be benefited as other damages found which were appealed from. All parties interested shall be entitled to be heard on any such appeal. If any parties interested claim that other lots or property upon which none of such benefits were assessed, should be assessed with a portion of such benefits, he may, at least ten days before such trial, notify the owner or parties interested therein of such claim, and require him to be present on such trial, and such party so notified shall be bound by the judgments in such case; if on such trial *de novo*, any property is assessed with benefits which was not assessed by the jury, (whose award is appealed from), the owner or party interested, if not so notified, shall be entitled at any time within twenty days after the entry of judgment, to a new trial, which the court in term, or the judge thereof in vacation, may grant upon due notice to all the parties who have appeared in any such suit by attorney, and when a new trial is so granted the same shall stand for trial upon the question of benefits only; the damages shall stand as adjudicated, and the jury on such new trial shall proceed to assess the same with costs, as herein provided, upon the lots and property which they find benefited, and in proportion as they may find the same benefited; *provided*, they shall not assess any such benefits upon any lots and property upon which no benefits were assessed upon the last trial thereof. Upon an appeal from damages, costs shall be awarded as follows: If the appellant's damages are increased ten per cent. he shall recover costs; if not, then defendant shall. The following is the amount of the costs and disbursements in full, which the party entitled to recover costs shall recover: If the damages found are

Rate of costs.

five hundred dollars or less, thirty dollars; upwards of five hundred dollars, fifty dollars; and if there are different appeals from damages, costs shall be awarded as above to or against the respective appellants, as they may be entitled to or liable for, and in the entry of judgment for costs, the same shall be entered for or against the appellant as of separate appeals, but the same shall be in one judgment. In an appeal from benefits in any case in which there is also an appeal from damages which shall be tried and judgment entered, each party shall pay their own costs, but in all appeals for benefits in which the question of benefits only is tried, if any appellant shall diminish the benefits for which his interest in any property is assessed, he shall be entitled to costs, if not he shall be liable for costs; a party entitled to recover costs in such cases, shall recover fifteen dollars and no more, to be entered in the judgment for and against the parties respectively as aforesaid, as in case of judgment for damages, but only one bill of costs in any one case tried shall be recovered against the defendant or by the defendant against appellant or any one of them; if appellant is entitled to recover costs, the amount thereof shall be assessed by the jury on the lots and property found to be benefited, the same as damages; and if an appeal is taken from any judgment or order to the supreme court, and a judgment for costs is rendered against the defendant, the same shall be assessed in like manner as other costs on the property benefited. In no case shall the city of Oshkosh be liable for costs. In all such suits, the city of Oshkosh nominally shall be defendant. Either party to an appeal case under this chapter, may appeal from the award and judgment therein in the circuit court to the supreme court, within twenty days from the date of the award or judgment on appeal therein, in the same manner as appeals are taken from the circuit court to the supreme court. If no appeal is taken within twenty days, the award found and made therein of damages, or of the assessment of benefits, or both, shall be final. From any final award in such cases, the clerk of the circuit court shall make a certified copy of such final award at the expense of the city, on demand of the city clerk, and the fees of the clerk of the circuit court for such copy shall be ten cents per folio, and upon and from such copy of the final award, the city clerk shall enter in the city tax roll of the city, and against property assessed for benefits, the amounts so charged and assessed upon the lots and

By whom payment for costs to be made.

When an appeal is taken within twenty days.

lands described in the award, in the same manner as in case of no appeal from the award.

When land required to be considered appropriated.

SECTION 13. The land required to be taken shall be considered appropriated for such purposes, whenever the time to appeal from such assessment of benefits or award of damages shall have expired, or the appeal or appeals taken therefrom, as heretofore provided, shall have been determined, and such damages shall have been paid, the same shall be considered as paid when each and all the person or persons entitled to receive such damages shall receive the same or any part thereof which he or they are entitled to receive, or when the same shall have been paid to the clerk of the circuit court of Winnebago county, Wisconsin; *provided*, that no portion of any damage for any building shall be paid until such building shall be removed from the land appropriated or proposed to be appropriated, and in case the owner or owners, or parties interested in any such building shall fail to remove such building when the city is entitled to have the same removed, after ten days' notice to remove the same is served personally on such owner or parties interested therein, or shall have been posted upon such building ten days before the same is required to be removed, the city may remove the same, and all the costs and expenses which the city shall be subjected to in removing such building shall be deducted from and paid out of such damage, awarded on and for such building or buildings; if there are any liens upon such property appropriated, or any part thereof, by way of mortgages, judgment, mechanic's lien or taxes, the city shall pay the damages awarded for the appropriation of the property upon which there are such liens, to the clerk of such court; when such damages shall be paid to the clerk of the circuit court, he shall give his official receipt therefor, and the said money shall be paid to such person or persons whom the said court adjudicate or determine is entitled to the same. Any person or persons may pay all such damages and costs awarded, and shall thereby become the assignee of all benefits assessed to pay such costs or benefits. Before any of such damages are paid, the common council may order all such proceedings to be abandoned and stopped.

When land taken, contracts, &c., to cease.

SECTION 14. When the whole of any lot, tract of land or other premises under lease or other contract, shall be taken by virtue of this act, all the covenants, contracts or engagements between landlord and tenant, or any other contracting parties, touching the same or any part

thereof, shall, upon the filing in the office of the clerk of the circuit court of the copy of said award, respectively cease and be absolutely discharged.

SECTION 15. When only a part of a lot or tract of land, or other premises so under lease or other contract shall be taken for any of the purposes aforesaid, all the covenants, contracts or agreements respecting the same, upon the filing in the office of the clerk of the circuit court of the copy of said award, shall be absolutely discharged as to the part thereof taken, but shall remain valid as to the residue thereof, and the rents, considerations and payment reserved, payable and to be paid for or in respect to the same, shall be so proportioned so that the part thereof justly and equitably payable for such residue thereof, and no more, shall be paid or recoverable for or in respect to the same.

When but part of land is taken.

SECTION 16. When any known owner of lands or tenements affected by any proceedings under this act, shall be an infant, or labor under legal disability, the judge of the circuit court or judge of the county court of Winnebago county, or in their absence, any court commissioner of the circuit court may, upon application of the common council, or such party, or his next friend, appoint a guardian for such party, and all notices required by this act shall be served upon such guardian.

When owner is an infant or under legal disability.

SECTION 17. The common council of the city of Oshkosh may, by a vote of two-thirds of all the aldermen elect, pay out of the general fund of the city, all damages or compensation that have accrued, or been awarded or allowed, and unpaid, and that may hereafter accrue, be awarded or allowed to any person, company or corporation, for the extension, opening or laying out of any street in said city, by the reason of the appropriation or taking of any land, buildings or property, or otherwise, together with all cost and expense accruing upon the extension, opening or laying out of any street. In case of the payment of damages or compensation, as provided in this section, the property assessed for benefits to pay such damages and compensation, shall be released and relieved from such assessment and tax for benefits, by the council, but in lieu thereof shall be assessed for their proportion of such damages so paid, in common with the other taxable property of said city.

Council may pay amount of damages from city fund.

SECTION 18. The common council shall have power by ordinance to lay out public squares, grounds, streets and alleys, and to extend, open, widen and straighten

Power of council to lay out streets, etc.

the same, in all cases where it is not necessary to take lands against the will of the owner or owners of the same. In case of lands taken under this section for the purpose above named, the council, by a two-third vote of the aldermen elect, with the consent of the owner or owners, or their legal representative, of the land, may pay (out of the general fund of the city,) to such owner or representative, all damages and compensation for such land taken for such purpose as per amicable agreement with the owner or legal representative, upon the execution and delivery to the city of a good and sufficient deed and conveyance in law for such land.

CHAPTER XI.

FIRE DEPARTMENT.

Power of council to provide against fire.

SECTION 1. The common council shall procure fire engines and other apparatus used for the extinguishment of fires, and have charge and control of the same, and shall provide, fit and secure houses and other places for keeping the same, and shall have power to appoint a chief engineer, define his duties, fix his salary and remove him at pleasure; to organize fire, hook, ladder and hose companies, and disband the same; to purchase horses and necessary apparatus and fuel for steam engines, and to provide for the appointment of a necessary number of competent persons to take the care and management of the steamers, engines, horses and other fire apparatus, to prescribe their duties and to summarily remove such persons at the pleasure of the common council; to prescribe the duties of firemen and their compensation, and to make rules and regulations for their government, and to impose reasonable fines and forfeitures upon them for a violation of the same. Every fire company organized by the common council shall not exceed, for hand engines, sixty able bodied men, and for steam engines, thirty able bodied men, between the ages of eighteen and fifty years, and they may elect their own officers, and shall be formed only by voluntary enlistment. Every member of each company hereby authorized to be formed shall be exempt from service on juries and from military duty, during the continuance of such membership, except in case of insurrection or invasion.

Membership of fire companies.

When summary arrests may be made.

SECTION 2. Whenever any person shall refuse to obey any lawful order of the chief engineer, the mayor, any alderman, fire warden, chief of police, or any policeman, at any fire, it shall be lawful for the officer giv-

ing any such order to arrest or direct orally any policeman, constable or any citizen to arrest any such person and to confine him temporarily in the watch house or any safe place until such fire shall be extinguished, and in the same manner such officer or any of them may arrest or direct the arrest and confinement of any person at such fire who may be intoxicated or disorderly, and if any person shall refuse to arrest or aid in arresting any person who shall be intoxicated or disorderly, shall be liable to such penalty as the common council shall prescribe, not exceeding twenty dollars.

SECTION 3. All the expense of the fire department shall be hereafter a city charge, and the taxes therefor to be assessed and collected as other city taxes.

Expense of fire department to be a city charge

SECTION 4. The aldermen of such wards of the city of Oshkosh, out of its ward funds, may by contract or otherwise, construct and maintain in said wards, reservoirs to supply with water the city fire department and for ward purposes, by sinking artesian wells or fountains, or may construct reservoirs to be filled in any other manner, and may purchase lands upon which to build such fountains, wells and reservoirs, deeds to be given to the city of Oshkosh in trust for such wards and the same shall be the property of such wards. When a majority of the aldermen of such wards shall certify that it is advisable to sell any such property and the common council shall so determine, it shall dispose of the same by deed or deeds, and no sale shall be made except upon notice for three weeks, published in the official city paper, and at public auction with the right to reject any and all bids; deeds to be executed the same as now provided by the city charter for executing deed.

Reservoirs to be erected from city funds.

SECTION 5. A majority of the aldermen of such ward may construct jets and fire hydrants, and also hydrants for public and private use, and fountains in such places in such wards as a majority thereof may determine, and may lay water pipes in and through all the alleys, streets and public grounds in the said wards, and generally do all such things and work as may be found necessary or convenient from time to time for the purposes of this act, and for that purpose may enter any lands or water in the city for the purpose of making examination or survey.

Aldermen may make provisions against fire.

SECTION 6. The common council of the city, upon the recommendation of the the majority of the aldermen of such wards, shall have power from time to time, upon the recommendation of a majority of the

Power of council to make regulations relating to water-works.

aldermen of such wards, to make by-laws, rules and regulations by ordinances, in relation to such water works for the preservation and protection thereof, fixing uniform water rates to be paid for the use of water furnished by the wards, the same to be enforced and collected in the name of the city of Oshkosh, of parties using said water, and fixing the manner of distributing and supplying water for use and consumption, and for withholding or shutting off the same for cause and impose proper fines and penalties for violation of such ordinance. All penalties and fines shall be collected in the same manner as penalties for the violation of the city ordinances, and shall be paid to the treasurer of the city, and credited to the ward's fund of such wards for the benefit of said wards. All expenses incurred in and about such ward's water works, wells and reservoirs, shall be paid for out of the ward's fund and all income therefrom shall be paid into the fund of such wards.

When improvements exceed ten thousand dollars.

SECTION 7. Whenever any of the improvements herein authorized, the cost of which shall exceed two thousand dollars in any one year, the aldermen of such ward are required to have their action approved by the common council before the wards can be made liable to payment therefor, and under no circumstances shall the city be liable for any of the costs of expenses thereof, but all costs, charges and expenses, accruing or arising in any suits or litigation arising or growing out of the same or otherwise, the same shall be chargeable and paid out of the fund of such ward.

CHAPTER XII.

BOARD OF EDUCATION.

School district limits.

SECTION 1. All territory within the present corporate limits of the city of Oshkosh, and all territory which may hereafter be attached to and incorporated in the limits of said city, shall constitute one school district. The commissioner of common schools herein named, and the superintendent thereof, shall be styled the "Board of Education of the city of Oshkosh," a majority of whom shall constitute a quorum. The superintendent of schools in said city shall be *ex officio* president of the board of education, and in case of a tie shall be entitled to a casting vote. The term of his office shall be one year, and his compensation shall be one hundred dollars per annum, which salary shall be paid out of the school fund.

Board of education.

SECTION 2. The city clerk shall be the clerk of the board of education, whose duties shall be to keep a record of the proceedings thereof, and perform such other duties as the board may prescribe, which record or transcript thereof, certified by the clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth. The compensation of the said clerk for such services shall be one hundred dollars per annum, to be paid from the school fund. It shall be the duty of the city clerk, within ten days, immediately after the election of any person as a commissioner of common schools, or as superintendent of the same, either personally or by writing, to notify him of his election; and if any such person shall not within ten days after receiving such notice, take and subscribe the constitutional oath and file the same with the clerk of said city, the common council may consider it a refusal to serve, and may proceed to fill such vacancy in the manner hereinbefore provided.

Duties of city clerk.

SECTION 3. It shall be the duty of the common council of said city to pass such ordinances and regulations as the board of education may report to them as necessary and proper for the preservation and protection of the schoolhouses, sites, and all other property belonging to and connected with the public schools of said city, and impose proper penalties for the violation thereof; and all such penalties shall be collected in the same manner as penalties for the violation of the city ordinances, and shall be paid to the treasurer, and be subject to the order of the board of education, and shall be expended by said board for the use of the said schools in said city.

Duty of common council.

SECTION 4. The title of all the school houses, sites, furniture, books and apparatus shall become and be vested in the city of Oshkosh, and the same, while used for school purposes, shall not be levied upon or sold by virtue of any warrant or execution, nor be subject to taxation for any purpose whatever.

Title of school property vested in city.

SECTION 5. Whenever said board of education shall report to the common council that it is advisable to sell any of the school houses or sites, now or hereafter belonging to said city, the common council may dispose of the same, but no such conveyance of real estate shall be made except upon the recommendation of the board of education, nor shall any school house or site, belonging to said city for school purposes, be used for any other purpose, without the unanimous consent of said board.

Selling of school property

Removal from
office.

SECTION 6. Any commissioner of common schools in said city may be removed from office for official misconduct, by the common council, by a vote of two-thirds of the aldermen present, but in all cases shall be granted a full and fair hearing before such removal.

Powers and
duties of board
of education.

SECTION 7. The board of education shall have power and it shall be their duty :

1st. To establish and organize such schools in said city, as they may deem expedient and necessary, and in their discretion to discontinue the same.

2d. To purchase or lease school houses or lots, or sites for school houses, and to fence or otherwise improve the same, as they may deem proper, upon such lots and upon any sites now owned by said city ; to build, enlarge, improve and repair school houses outhouses, and their appurtenances as they may deem proper, provided no purchase of school house sites or real estate shall be made without the approval of the common council.

3d. To purchase, exchange, repair or improve school apparatus, furniture, books for indigent pupils, and to provide fuel for the schools, and to defray their contingent expenses.

4th. To have the custody and safe keeping of the school houses, outhouses, books and furniture belonging to the schools in said city, and see that the ordinances of the common council relating thereto are strictly observed.

5th. To employ and contract with all teachers in the common schools, to whom the necessary certificates may have been given by the superintendent, and at their pleasure to remove them ; *provided*, that no contract for the employment of teachers shall extend beyond the first day of July next succeeding the date of such contract ; to have in all respects the supervision and management of the common schools in said city, and from time to time make, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils from other districts and the transfer of pupils from one department to another, and generally for their good order and utility.

6th. To make such orders and regulations in regard to the examination of teachers, as they may deem proper ; *provided*, that such examination shall be conducted by the superintendent, or in his presence, and none but the superintendent shall be authorized to issue and give certificates of qualification.

SECTION 8. The said board shall have power to allow children of parents not residents of the city, to attend any of the schools of said city, and to fix the amount of tuition to be paid by them, and the terms upon which they may attend such schools.

Attendance of non-resident children.

SECTION 9. The said board shall be trustees of the school district library in said city, and shall expend all moneys appropriated by law or gift, for enlarging or establishing the same.

Trustees of school district library.

SECTION 10. The said board shall each year prepare a correct statement of all receipts and disbursements of school moneys during the preceding year, specifying from what source received and for what purpose expended, which statement shall be published at least ten days before the annual charter election, in the official newspaper of said city.

Board to publish statement of receipts and disbursements.

SECTION 11. The said board of education shall determine and certify to the common council of said city, such sums of money as they may deem necessary for defraying the current expenses of the public schools, but such sum so certified in any one year, shall not exceed the sum of two thousand dollars over and above the current expenses levied to said city for the previous year.

Board to certify to council sum necessary for expenses.

SECTION 12. It shall be the duty of the board of education to certify to the common council of said city, such sums of money as they may deem necessary for the purchase of school houses, sites, or for the building of school-houses; *provided*, that the amount so certified shall not exceed in any one year the sum of five thousand dollars: It shall be the duty of the board of education to file with the city clerk of said city, on or before the the first day of November of each year, a certificate or certificates in writing, stating the amount of money to be raised, as determined by them either for building or general fund purposes, which certificate or certificates shall be signed by the president of said board, and it shall be the duty of the clerk to place the same on the tax roll for that year, and the common council shall cause the sum herein provided for, to be levied and collected annually in the same manner as other taxes are levied and collected in said city.

Board to certify sum necessary for purchase of sites.

SECTION 13. All moneys raised by this act for school purposes shall be paid to the city treasurer, who shall be accountable therefor in the same manner as for other moneys of said city.

Money to be paid to city treasurer.

SECTION 14. The said board of education may

Board may

prosecute bond
of city treasurer.

cause a suit or suits to be commenced and prosecuted in the name of the city of Oshkosh upon the official bond of the treasurer of said city, for any default, delinquency, or official misconduct in relation to the collection, safe keeping, and disbursement of any school moneys that may come into his hands.

City exempt
from act cre-
ating office of
county superin-
tendent.

SECTION 15. The city of Oshkosh is hereby exempt from the provisions of an act entitled "An act to create the office of county superintendent of schools," approved April 6, 1861, except in the matter of making reports to the state superintendent.

Parties liable
for unauthor-
ized expendi-
tures.

SECTION 16. In case any school commissioner, or the superintendent of schools, shall purposely vote for any appropriation, or for the payment or expenditure of any moneys not authorized by law, or in case the board of education shall authorize any expenditure for any purpose not authorized in this act, or exceeding the amount the board of education are authorized to certify to the common council to raise for any purpose in any one year, the school commissioner, or any of them, or the superintendent of schools voting for any such appropriation or expenditure, or for the contracting of any such debt or debts, shall be personally liable to the city of Oshkosh, or to any person or persons who may sue for the same, in an action in a court of competent jurisdiction, for any damage the city may sustain in consequence of such illegal payment, expenditure or appropriation.

CHAPTER XIII.

MISCELLANEOUS PROVISIONS.

All work to be
let to lowest
bidder.

SECTION 1. All work for the city, including all printing and publishing, shall be let by contract to the lowest bidder, and due notice shall be given of the time and place of letting such contract, and the council shall have the right to reject any bid, when it is deemed for the interest of the city to do so.

Appropriation
of moneys.

SECTION 2. No moneys shall be appropriated for any purpose whatever, except such as are expressly authorized by this act.

How judgments
discharged.

SECTION 3. No penalty or judgment recovered in favor of the city shall be remitted or discharged, except by a majority of the aldermen elect.

Actions to be
brought in
name of city.

SECTION 4. All actions brought to recover any penalty or forfeiture under this act, or the ordinances, by-laws, 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 clause of this act or by-law or ordinance under which the penalty or forfeiture is claimed, and to give special matter in evidence under it.

SECTION 5. In all the prosecutions for any violation of any of the provisions of this act, or any by-law or ordinance, the first process shall be a summons, unless oath be made for a warrant as in other cases. Process in prosecutions.

SECTION 6. When the action is commenced by summons, the complaint may be substantially in the following form: Form of complaint by summons.

CITY OF OSHKOSH *against* — ——. In Justice Court.

The plaintiff complains against the defendant in an action of debt for that the defendant did, on the — day of —, 18—, violate section — of an ordinance, (or by-law, describing it by its title), which said action hath accrued to the city of Oshkosh 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 7. In all cases where the oath is made for a warrant, the complaint shall be made on the oath of the complainant, and no other affidavit shall be necessary, which complaint last above named may be substantially in the following form: Form of complaint by warrant.

THE CITY OF OSHKOSH *against* — ——. In Justice Court.

STATE OF WISCONSIN — *County of Winnebago* — ss.

— —, being duly sworn, complains on oath to — —, justice of the peace of the city of Oshkosh, that — — did, on the — day of —, 18—, violate section —, of an ordinance (or by-law, describing its title), which said — is now in force and effect, as this complainant verily believes; and prays that said — — may be arrested and held to answer to said city of Oshkosh therefor.

Subscribed and sworn to before me this — day of —, 18—.

It shall be sufficient to give the number of the section or sections, and the title of the ordinance or by-laws or the law violated in the foregoing forms of the complaints, and the 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 thereon, which may be substantially as follows:

Form of warrant.

STATE OF WISCONSIN — *County of Winnebago* — City of Oshkosh — ss.

The State of Wisconsin to the sheriff or any constable of said county, or to the chief of police or any policeman of the city of Oshkosh, greeting:

Whereas, — — —, has this day complained to me in writing, on oath, that — — — did, on the — day of —, 18—, violate — section or sections, of ordinance, by-law, regulation or law (as the case may be, describing it by its title), which said — — — is now in full force and effect, as complainant verily believes. Therefore, in the name of the state of Wisconsin, you are hereby commanded to arrest the body of said — — —, and bring him before me forthwith, to answer to the said city of Oshkosh, on his complaint aforesaid.

Given under my hand this — day of —, 18—, — — —. Justice of the Peace.

How case to be proceeded with.

Upon the return of the warrant, the justice may proceed summarily with the case, unless it be continued by consent, or for cause. If the cause be adjourned, the defendant, if required by the court to do so, shall recognize with security to be approved by the court, for his or her 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 watch house of said city, or the common jail of Winnebago county. The complaint made as aforesaid shall be the only complaint required, and a plea of "not guilty" shall put in issue all subject matter embraced in the action.

Printed copy of ordinance to be evidence.

SECTION 8. A printed copy of an ordinance, by-law or resolution passed by the common council, and published in a newspaper or in a pamphlet or book form shall be *prima facie* evidence of its due passage and publication, and shall be received [in evidence] on the trial of all cases cognizable before any court in this state.

Witnesses and jurors to attend without prepayment of fees.

SECTION 9. Witnesses and jurors shall attend before a justice of the peace in all city suits without the payment of fees in advance, or a tender thereof, upon process of the court duly served, and in default thereof, their attendance may be compelled by attachment.

Process in city prosecutions.

SECTION 10. In city prosecutions the finding of the court or jury shall be either "guilty" or "not guilty." If guilty, the court shall render judgment thereon against the defendant for the fine, penalty, or forfeiture contained in the ordinance, by-law or resolution for the violation of which the person or persons shall have been

adjudged guilty, and the costs of suit; but if not guilty, the costs shall be taxed against the city. Upon conviction and the non-payment of such judgment, the court may forthwith issue an execution as in case of tort, and shall determine and enter upon the 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 commitment or execution. Such execution may be in the following form:

STATE OF WISCONSIN — *Winnebago County — City of Oshkosh* — ss.

The state of Wisconsin to the sheriff or any constable of the county of Winnebago, or the chief of police or any policeman of said city, and to the keeper of the watch house of said city, or of the common jail in said county, greeting:

Form of execution.

Whereas the city of Oshkosh, on the — day of —, 18—, recovered a judgment before —, the justice of the peace of said city against —, for the sum of — dollars, together with — dollars, costs of suit, for the violation of an ordinance, by-law, resolution or law (as the case may be), these are therefore, in the name of the State of Wisconsin, to command you to [levy] distress on the goods and chattels of said —, excepting such as the law exempts, and make sale thereof according to law, in such cases made and provided, to the amount of said sum, together with your fees and twenty-five cents for this writ, and the same return to me in thirty days; and for want of such goods and chattels whereon to levy, take the body of the said —, and him convey and deliver to the keeper of the common jail in Winnebago county, or the keeper of the watch house in said city, and the said keeper is hereby commanded to receive and keep in custody in said jail, or watch house, the said —, if in the city of —, unless said judgment, together with all costs and fees, are sooner paid, or he be discharged by due course of law.

Given under my hand this — day of —, 18—. —, Justice of the Peace.

SECTION 11. No person shall be an incompetent judge, justice or juror, by reason of his being an inhabitant of and tax payer in the city, in any proceeding or action in which the city shall be a party.

Residence not to disqualify as judge or juror.

SECTION 12 All ordinances, regulations or resolutions now in force in the city of Oshkosh, and not in-

Ordinances to remain in force.

consistent with this act, shall remain in force under this act until altered, modified or repealed by the common council, after this act shall take effect.

Actions vested in corporation.

SECTION 13. All actions, rights, fines, penalties and forfeitures, in suit or otherwise, which have accumulated under the several acts consolidated herein, shall be vested in and prosecuted by the corporation hereby created.

When election not held at prescribed time.

SECTION 14. If any election by the people or common council shall, for any cause, not be held at the time or in the manner herein prescribed, or if the council shall fail to organize as herein provided, it shall not be considered reason for arresting, suspending or absolving said corporation; but such election or organization may be had at any subsequent day, by order of the common council, and if any of the duties enjoined by this act, or the ordinances or by-laws of the city, to be done by any officer at any specified time, and the same are not then done or performed, the common council may appoint another time at which the said acts may be done and performed.

River to be under jurisdiction of city.

SECTION 15. All that part of the Fox river within the limits of said city, shall be kept under the exclusive jurisdiction of the said city and the common council, and all bridges over the said river within the limits aforesaid, shall be under its jurisdiction; and the mayor and common council of said city are hereby fully empowered to build and construct, or cause to be built and constructed, new bridges over said river, at such point or points as they may deem necessary and for the best interests of the city, and to maintain and support all such bridges which the city may own now or may build hereafter, at the expense of said city; *provided*, that all of said bridges shall contain draws sufficient for the passage of vessels.

Penalty for retarding work on streets.

SECTION 16. Every person who shall interfere with, molest or hinder any alderman, street commissioner, contractor or any employe of a contractor or alderman, or retard the work on streets, after the same is ordered let and under contract, on any street, drain, sidewalk or other street improvement, shall be liable to pay a penalty of ten dollars, which shall be sued for and recovered (with costs), (of such person violating this section, in an action wherein the city shall be plaintiff,) in the same manner as for the violation of city ordinances herein provided in this chapter.

General laws for protection of bridges to apply.

SECTION 17. The general laws for the preservation of bridges, and the punishment by such laws provided

for the willful and malicious injuries done thereto, are hereby extended to and shall include all of said bridges, and shall apply to any willful or malicious damage which may be done to either of them by any person or persons whatever; and the common council may, from time to time, make such by-laws or ordinances as they may deem necessary for the preservation of such bridges, and enforce the same by adequate penalties. In case of any damage done to any of said bridges by any vessel or watercraft, or by the master or any person in command thereof, such vessel or water craft may be proceeded against under the law to provide for the collection of demands against boats and vessels.

SECTION 18. When any suit or action shall be commenced against said city, the service thereof may be made by leaving a copy of the process, by the proper officer, with the mayor, and it shall be the duty of the mayor forthwith to inform the common council thereof, or to take such other proceedings as by ordinances or resolutions of said council may be in such case provided.

Service of process.

SECTION 19. No real or personal property of any inhabitant of said city, or of any individual or corporation, shall be levied on and sold by virtue of any execution issued to satisfy or collect any debt, obligation or contract of said city.

Private property exempt from execution against city.

SECTION 20. The common council of said city may at any time appoint six commissioners, one from each ward, who, with the assistance of the city surveyor, or such other assistant surveyors as the council may appoint, shall cause a new and accurate survey to be made of the lines and boundaries of all the streets, alleys, sidewalks, public grounds, wharves and blocks, and shall cause to be established such permanent land marks as they may deem necessary, and to cause an accurate plat or plats thereof to be made and certified to by the said mayor and commissioners, which shall be filed in the office of the city clerk, and a copy thereof shall be recorded in the office of the register of deeds of Winnebago county.

Council may appoint commissioners to make new survey.

SECTION 21. The survey and landmarks so made and established shall be *prima facie* evidence of the lines and boundaries of all streets, alleys, sidewalks, public grounds, wharves and blocks, in all cases in which they shall be drawn into controversy, in all courts of this state.

Survey to be evidence.

SECTION 22. The common council of said city may, at such time as they may deem proper, establish the

Power of council to establish grade of streets, etc.

grade of all streets, alleys and sidewalks, in said city, and shall cause accurate profiles thereof to be made, one of which shall be filed in the office of the register of deeds of Winnebago county; and should the grade so established be at any time hereafter altered, all damages, costs and charges arising thereupon shall be paid by the city to the owner of any lot or parcel of land or tenement which may be affected or injured in consequence of the alteration of such grade; *provided*, that nothing in this section contained shall be so construed so as to prevent the several wards of the said city from ordering or causing to be done the grading of any street within their ward to a temporary grade to be established by the ward aldermen for their ward.

City may hold personal property.

SECTION 23. The said city may lease, purchase and hold real or personal estate sufficient for the convenience of the inhabitants thereof, and may sell and convey the same, and the same shall be free from taxation while owned by said city.

All property subject to special assessments.

SECTION 24. Real estate exempt from taxation by the laws of this state shall be subject to special assessments for improvements made on streets and sidewalks under the provisions of this act, as other real estate.

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Act not to be affected by general laws.

SECTION 25. No general law of this state contravening the provisions of this act, shall be considered as repealing, annulling or modifying the same, unless such purpose be expressly set forth in such law, as an amendment to this charter.

Subdivision and platting of lands.

SECTION 26. Every individual or company of individuals, or body corporate, owning a lot or tract of land within the corporate limits of the city of Oshkosh, who may desire to subdivide or plat such lot or tract of land into city lots, shall, in platting the same, cause the streets and alleys in such plat to correspond in width and general direction with the streets and alleys through the lots and blocks in said city, adjacent to said lot or tract of land so platted; and before recording such plat as required by law, it shall be the duty of such person or persons making such plat, to submit the same to the common council of said city for approval, and if said plat shall be approved by the common council, it shall be lawful for the party or parties making such plat to record the same in the manner prescribed by the Revised Statutes of this state, concerning town plats; but, except such plat shall be approved by resolution adopted by said common council, a copy of which, duly certified to by the city clerk, shall be affixed to said plat, it shall not be lawful for the register

of deeds of Winnebago county to receive such plat for record, and the person or persons neglecting or refusing to comply with the requirements of this act, shall forfeit and pay a sum not less than one hundred dollars and not more than one thousand dollars; and the register of deeds who shall record such plat without such resolution of the common council thereto attached, approving the same, shall forfeit and pay a sum not less than fifty nor more than one hundred dollars.

SECTION 27. All forfeitures and liabilities which may be incurred and arise under and by virtue of this act, shall be prosecuted for and recovered in the name of the city of Oshkosh, and paid into the city treasury for the use and benefit of said city, except as herein otherwise provided.

Forfeitures to be prosecuted by city.

SECTION 28. When the city of Oshkosh deeds or leases any real estate, or any interest therein, owned by said city, the party of the first part shall be the city of Oshkosh, and the person or persons authorized to execute such deed or lease need not be named in the body thereof.

When city deeds or leases real estate.

SECTION 29. The mayor of said city is hereby authorized, when the common council shall by ordinance or resolution, for that purpose, describing the real estate and interest to be conveyed, order and direct him so to do, to execute a deed or lease of such real estate, or interest therein belonging to the said city; the said deed or lease shall be signed by the mayor of said city and countersigned by the city clerk, and sealed with the corporate seal of said city, and duly witnessed and acknowledged, as is provided by law for the execution of deeds and leases.

Mayor to execute deeds.

SECTION 30. When any such deed or lease is so executed, the city clerk shall attach to such deed or lease a true and attested copy of such ordinance or resolution, and the same shall be recorded by the register of deeds with the said deed or lease, and such copy, so attached and recorded, shall be, in all courts of this state, *prima facie* evidence of the authority of such mayor to make and execute such deed or lease.

How deed to be attested and recorded.

SECTION 31. Every person who shall set up or keep a common gaming house, or a gambling house or place, or a house of ill-fame, or a bawdy house or place, and all person or persons inmates thereof or found therein, within the limits of the city of Oshkosh, and on trial and conviction be adjudged guilty, in an action where-in the city shall be plaintiff, in the same manner as for violation of city ordinances hereinbefore provided,

Prosecutions for keeping disreputable houses.

shall be punished by imprisonment in the city prison or county jail of Winnebago county, not to exceed six months, or by fine not to exceed one hundred dollars, or by both such fine and imprisonment, as the justice of the peace of the city or court before whom the trial is had may think proper; and on trial of persons for the violation of this section, proof of the general reputation of the house kept shall be sufficient *prima facie* evidence of the same and kind of place or house kept.

Subsequent costs to be added to judgment.

SECTION 32. When judgment is rendered against any person for the violation of any city ordinance, and such person shall be committed for the non-payment thereof, all subsequent costs and expenses made thereon, including his board, shall be added thereto, which he shall be required to pay, in case of payment of said judgment.

Duty of keeper of jail.

SECTION 33. The keeper of the common jail of the county of Winnebago is hereby required to receive and keep all persons who shall be arrested by the proper officers for the violation of any city ordinance, or committed for the non-payment of any judgment, fine or penalty.

City orders payable to bearer.
Lighting of streets.

SECTION 34. City orders may be made payable to bearer.

SECTION 35. The streets in said city, or any part thereof, may be lighted with gas or with other materials, as follows: The aldermen, or a majority thereof, of each ward, may divide the ward which they respectively represent into one or more gas districts, with power, when they see fit, to change or alter the bounds thereof, or re-district the same. The majority of the aldermen of the ward in which any such gas district or districts are located may, at the expense of all the taxable property in such district, erect gas posts therein, with necessary and suitable burners and equipments, and have the same lighted with gas.

Levy of tax for lighting streets.

SECTION 36. There shall be levied and assessed upon and collected from all the taxable property in such district, a tax or assessment to pay all the costs and expenses of lighting the streets in such districts with gas as aforesaid; the same shall be collected therefrom as other taxes and assessments; *provided*, however, and the following real estate shall be exempt therefrom, viz: all real estate belonging to the city, all real estate upon which buildings are situated used exclusively for religious worship.

Lighting bridge

SECTION 37. The city, out of the general fund, may pay for lighting the bridge across the Fox river, in said city with gas.

SECTION 38. Each ward in said city, out of its ward fund, in the discretion of the aldermen thereof, may light the streets thereof with gas, and erect the necessary gas posts and equipments therefor.

Streets may be lighted from ward fund.

SECTION 39. The common council, by resolution, may forbid any and all persons in said city, who are or may be licensed to sell strong, spirituous, ardent or intoxicating liquors, from selling or giving to any person, naming him, who in the opinion of the council is drinking or using spirituous, ardent or intoxicating liquors to such excess as to make or render such person disorderly or liable to be disorderly; and if any person licensed as aforesaid, shall sell or give to any such person any strong, ardent or spirituous liquors, or allow any other person or persons on his premises to sell or give to such person, or to any other person for him, any spirituous, ardent or intoxicating liquors of any kind whatever, the council may declare the license of such licensed person forfeited, and such person, or any other person who shall give, sell, buy or procure for such person any strong, ardent or spirituous liquors or beer, shall be liable to a penalty of twenty-five dollars, which shall be sued for and recovered, with costs, of such persons violating this section, in an action wherein the city shall be plaintiff, in the same manner as for the violation of city ordinances hereinbefore provided in this chapter.

Regulations for sale of liquors.

REPEALING CLAUSE.

SECTION 40. All acts incorporating the city of Oshkosh and amendatory to the city charter, are hereby repealed, and all acts and parts of acts inconsistent with and conflicting with the provisions of this act are hereby repealed; but the repeal of said acts and parts of acts shall not in any manner affect, injure or invalidate any contracts, acts, suits, claims or demands that may have been entered into, performed, commenced or that may exist under or by virtue or in pursuance of the said acts or any of them, but the same shall exist and be in force and carried out as fully and effectually to all intents and purposes, as if this act had not been passed.

Repealed.

SECTION 41. This act shall take effect and be in force from and after its passage and publication.

Approved March 3, 1877.