

No. 244, S.]

[Published April 7, 1891.]

## CHAPTER 123.

AN ACT to revise, consolidate and amend chapter 127, of the laws of the state of Wisconsin for the year 1874, entitled, "An act to incorporate the city of Menasha, and 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.

SECTION 1. All that section of country situated in the county of Winnebago, state of Wisconsin, and embraced within the following described limits and boundaries, to-wit: Lots three and four, in section thirteen, all of section fourteen, all of section fifteen, all of section sixteen, east of low water mark on the west shore of Lake Butte des Morts, all of the north half of section twenty-one, east of low water mark, on the west shore of Lake Butte des Morts, all of the north half of section twenty-two, all of the north half of section twenty-three, and all of such parts of the south half of sections twenty-two and twenty-three, extending from Lake Winnebago on the east to the center line of Commercial avenue on the west, and north of the center line of the avenue now forming the dividing line between said cities of Menasha and Neenah, same being a strip one hundred feet wide from north to south, and all in township twenty north, of range number seventeen east, shall be a city by the name of Menasha, and all the people inhabiting the said described section of country, and those who shall hereafter inhabit the same, shall be a municipal corporation by the name of the city of Menasha, and shall have generally all the powers belonging to municipal corporations at common law, and shall also have and possess all the rights and powers

City bound-  
aries and cor-  
porate powers.

hereinafter specifically granted, and the authorities thereof shall have perpetual succession, and shall be capable of contracting and being contracted with, suing and being sued, pleading and being impleaded in all the courts of law and equity, and shall have a common seal, and may alter the same at pleasure.

Ward boundaries.

First ward.

SECTION 2. The said city of Menasha shall be divided into four wards as follows: The First ward shall include all that territory in said city north of the Fox river, and included between the following line on the east side of said ward, to-wit: On the section line between sections fourteen and fifteen running north from Fox river to Round's addition, thence fifty feet west to the line between Round's addition and Reed's addition, thence along the line between Round's and Reed's addition north to the north line of the corporation limits, and the following line on the west side of said ward, to-wit: Commencing on the north line of said city at the center of Milwaukee street, thence along the center line of said Milwaukee street to the south line of Darling's addition, thence westerly along the south line of Darling's addition, to the line between lots twelve and thirteen in block thirty-five, thence south on the line between lots twelve and thirteen, and between twenty-one and twenty-two, in blocks thirty-five, thirty-two, and sixteen, on the line between lots seven and eight and lots twenty-nine and thirty, in block eight on the line between the lots thirty-two and thirty-three, and lots thirteen and fourteen, in block seven, thence along the center line of Clay street between blocks two and three to the canal, and on the line between lots twenty and twenty-one, in block one to the Fox river. The Second ward shall comprise all that territory in said city west of the above described west line of the First ward.

Second ward.

Third ward.

The Third ward shall comprise all the territory in said city on Doty's island, and all south of the north branch of the Fox river. The Fourth ward shall comprise all the territory in said city north of the Fox river and east of the above described east line of the First ward.

Fourth ward.

Corporate powers, how vested.

SECTION 3. The corporate authority of said city shall be vested in one principal officer, styled a mayor, in one board of aldermen, consisting of

two members from each ward, who with the mayor, shall be denominated the common council; together with such other officers as are hereinafter mentioned, or may be created under this act.

## CHAPTER II.

### OFFICERS, THEIR ELECTION AND APPOINTMENT.

**SECTION 1.** The elective officers of said city shall be a mayor, a city treasurer, two assessors, two justices of the peace, and two constables, to be elected by the voters of the city at large, and two aldermen and one county supervisor from each ward. Justices of the peace, treasurer, and aldermen shall be elected for two years, and all other officers for one year. The appointive officers of said city shall be a city clerk, city attorney, chief of police, superintendent of the poor, superintendent of the streets, superintendent of schools, and one school commissioner from each ward; chief engineer of fire department, city surveyor, and as many firemen, policemen, and other such officers or agents as may be provided for by this act or as the common council may determine to be necessary. The superintendent of schools and school commissioners shall be appointed and hold their offices for two years, and all other officers shall be appointed, and hold their offices for one year.

Elective and appointive officers; terms of

**SECTION 2.** All appointive officers shall be appointed by the common council, at the annual meeting after each annual municipal election, or at such other time within two weeks thereafter as the council may determine, and at such other times as it may be necessary to fill vacancies.

Appointive officers, when and how chosen.

**SECTION 3.** The annual municipal election in said city shall be held on the first Tuesday of April in each year, and at such place in each ward as the common council shall designate, at which time there shall be elected by the qualified electors of said city, in the manner herein provided, all officers required to be elected at such general municipal election. The polls of such election shall be opened at nine o'clock in the forenoon, and kept open until sundown of the same day without intermission.

Annual municipal election, when and how held.

Old officers to continue until end of term.

**SECTION 4.** All officers now in office shall continue to hold such office during the term for which they have been respectively elected or appointed.

Officers, terms of; when to commence.

**SECTION 5.** The terms of office of all elective officers shall commence on the second Tuesday of April in the year of their election, and continue for one year, except justices of the peace, treasurer and aldermen, who are elected for two years, and until their successors are elected and qualified. All appointive officers, appointed for one year, shall hold their respective offices from the time of their appointment until the second Tuesday of April next succeeding their appointment and until their successors are elected and qualified; and all appointive officers, appointed for two years, shall hold their respective offices for two years from the second Tuesday of April in the year of their appointment, and until their successors are elected and qualified.

First council, how composed; when to organize.

**SECTION 6.** The first common council under this act shall be organized and enter upon its duties on the second Tuesday of April, A. D. 1891, and shall be composed as follows. The mayor and aldermen from each ward as follows: The aldermen from each ward, whose term of office will expire in A. D. 1892, shall be one of the aldermen from such ward under this act, until the end of his said term; and at the annual election in A. D. 1891, the qualified electors of each ward shall elect one alderman for the term of two years, and thereafter one alderman from each ward shall be elected at each annual election, for the term of two years.

Notice of municipal election.

**SECTION 7.** Ten days prior to each annual municipal election, the common council shall cause to be published in the official newspaper printed in said city, if there be one, a notice in which shall be stated, the officers to be elected and the time and places of holding such election. If there be no such newspaper printed in said city, then the city clerk under the direction of the council, shall post up, one copy of said notice in each ward at the place of holding such election, at least ten days prior to said election. Five days' notice shall be given in like manner of all special elections.

Vacancies, what to constitute.

**SECTION 8.** 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, shall be given him by the city clerk of said city, as provided herein, to qualify and enter upon the discharge of the duties of his office, unless prevented by sickness or unavoidable absence, shall be deemed to have vacated his office, and the common council shall proceed to fill such vacancy as herein provided.

SECTION 9. No person shall be eligible to hold any office mentioned in this act, unless he shall be a qualified elector of the state of Wisconsin, and shall have been a resident elector of said city for ten days previous to the election or appointment, nor shall any person be eligible to any ward office unless he shall have been a resident elector of such ward for ten days previous to his election or appointment.

Eligibility to office.

SECTION 10. In case of any vacancy in any of the offices, provided for in this act, the common council may fill the same for the unexpired term of such office, except vacancies in the office of mayor, justice of the peace or aldermen.

Vacancies, how filled.

SECTION 11. The common council shall have power, for gross negligence, malfeasance or misconduct in office, to expel any of its own members, and to remove any elected or appointed officer, excepting justices of the peace, by a two-thirds vote of all the members of the common council, but written charges shall first be filed with the city clerk, and due and reasonable notice, and opportunity, shall then be given for the hearing upon such charges, to the officer proposed to be removed. The mayor or 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 requiring them to attend before said council, wherein the city shall be nominally plaintiff, and the party charged, defendant. In a case of neglect or refusal of any such witness to attend and testify on such hearing, the justice of the peace, who issued the process of subpoena, shall have the same power to issue a warrant of attachment and punish for contempt by law, as in cases in justice court, where the witnesses refuse or neglect to appear or testify.

Removals from office. Proceedings when charges are filed.

Upon such hearing the common council may adjourn from time to time as may be deemed necessary. And if such officer neglects to appear and answer to such charges, or if such charges are sustained by the common council, then the common council may declare such office vacant, by two-thirds vote as aforesaid. Any appointive officer may be suspended until the disposition of the charges against him, by resolution of the common council.

Officers to deliver moneys, books, etc., to successor.

SECTION 12. All city or ward officers, at the expiration of their terms of office, or upon their resignation, removal or vacation from office, shall immediately deliver to their successor in office all property, moneys, books, papers and effects, of every description in their possession belonging to the office they may have held.

Salaries and compensation, council to fix.

SECTION 13. The common council shall, at its annual meeting after the annual municipal election, or as soon as may be thereafter, by resolution, fix the salaries and compensation to be paid to such of the city officers and employes elected or appointed under the provisions of this act as are entitled thereto; provided, that no salary or compensation having been once fixed shall be increased to any officer or employe during his term of office or employment, unless by the unanimous consent of all the members of the common council elect.

Salaries, limitation of.

SECTION 14. The compensation to be paid to the city clerk, shall be not less than five hundred dollars, nor more than six hundred dollars *per annum*. The compensation of the city attorney shall be not less than two hundred dollars, nor more than three hundred dollars *per annum*. The compensation of the superintendent of schools shall be not less than fifty dollars, nor more than one hundred dollars *per annum*. The compensation of the superintendent of the poor, shall be not less than one hundred dollars, nor more than one hundred and fifty dollars *per annum*, which salary shall be paid quarterly or monthly as the common council may determine. All other officers to whom any compensation is by this act provided to be paid, may be established and paid by the day, week, month or year.

The votes to be determined by casting lots.

SECTION 15. When two more candidates for an elective office under this act shall receive an equal

number of votes for the same office, the election shall be determined by casting lots in the presence of the common council, at such time after it shall have met to canvass the votes of such election, and in such manner as the common council shall direct.

## CHAPTER III.

### ELECTIONS.

SECTION 1. All elections by the people shall be by ballot, and a plurality of votes shall constitute an election. All qualified electors of this state, and who shall have been residents of the ward where they offer to vote, for ten days next preceding and the time of holding said elections, shall be entitled to vote for any officer to be elected under this act and qualified to hold any office hereby created.

Elections;  
qualifications  
of electors.

SECTION 2. All elections by the common council shall be by ballot, and a majority of the votes of the aldermen entitled to seats in the council shall be necessary for a choice. But in case of an equal division the mayor may give the deciding vote.

Council to vote  
by ballot,  
when.

SECTION 3. Inspectors and clerks of election for each ward of said city shall be appointed in such manner as now is, or hereafter may be, provided by the general laws of the state of Wisconsin; and such inspectors and clerks of all municipal or other elections in their respective wards. All general laws of the state relative to the filling of vacancies in the office of inspectors and clerks of elections in the cities, shall be applicable to all municipal elections of said city; and when any inspector or clerk of election shall be a candidate for any municipal office, his place shall be filled in the same manner as if a vacancy had otherwise occurred.

Inspectors and  
clerks of elec-  
tions; choice of  
how made.

SECTION 4. All of the general laws of this state relative to elections and the qualifications of electors, the challenging of persons offering to vote by any elector or inspector of elections, as not being qualified to vote at any election, or for any of the causes mentioned in the general laws of the state, the punishment for illegal voting, and

General laws  
to govern elec-  
tions.

the laws of registration of electors, shall be in force and apply to all elections held under this act.

Illegal voting;  
punishment of.

SECTION 5. If any person who is not a qualified voter, shall vote at any election, or if a person qualified 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 deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by such penalties as are provided and imposed by the general laws of the state of Wisconsin.

Inspectors,  
duties of;  
penalty for  
violations or  
frauds.

SECTION 6. It shall be the duty of the inspectors to keep a list of the names of all persons whose vote shall be challenged as aforesaid, and who shall swear to their vote, and if any inspector shall knowingly receive the vote of any person not authorized to vote, or shall make out false returns of any election, or if any clerk shall knowingly fail to write down the name of every voter as he votes, or shall willfully make untrue or incorrect counts and tallies of votes, such inspector or clerk shall be liable to prosecution therefor, and on conviction thereof, shall be punished by a fine not exceeding one hundred dollars for each offense, or imprisonment in the county jail not exceeding six months, or both, in the discretion of the court.

Canvassing the  
votes and de-  
claring the re-  
sult.

SECTION 7. When the election shall be closed the number of votes cast for each person voted for shall be counted, and the inspectors shall then publicly declare the result and make returns thereof, stating therein the number of votes cast for each person for any office, and shall deliver or cause to be delivered such returns to the city clerk within twenty-four hours after the closing of the polls, with the defective ballots cast, if any, at such election, enclosed in a sealed envelope. The second day after any election, at half-past seven o'clock P. M., the common council shall meet at their usual place of meeting and canvass such returns and declare the result as it appears from the same, and the clerk shall forthwith record the same and give notice of his election to each officer elected.

Special elec-  
tions, how held.

SECTION 8. Special elections by the people to fill vacancies, or for any other purpose shall be held and conducted by the inspectors and clerks

of election of the several wards in the same manner and canvassed by the council within the time and in the same manner as prescribed for the annual municipal election.

SECTION 9. Every person elected or appointed to fill a vacancy, shall hold his office and discharge the duties thereof, for the unexpired term, with the same rights and subject to the same liabilities as the person whose office he may be elected or appointed to fill.

Vacancies only to be filled for unexpired term.

SECTION 10. If any person having been an officer of said city, shall not, within twenty-four hours after demand, and presentment by his successor of the city clerk's certificate of his successor's election or appointment and qualification to said office, deliver to his successor in office, all property, money, books, papers and effects of every description belonging to said city, or pertaining to the office he may have held, he shall forfeit and pay to the use of said city a sum not exceeding one hundred dollars as the common council may determine and all damages and costs caused or incurred either by said city or his successor by his neglect or refusal so to deliver, and for such damage he and his bondsmen shall be liable as for a breach of his official bond, and further such successor may recover the possession of such books, papers, and effects in the manner prescribed by the laws of this state.

Penalty for failure to turn over books, papers, etc., to successor.

SECTION 11. Should there be a failure to hold any annual or special election, or by the people to elect any officer required by this act to be elected, on the day designated or fixed, it shall be the duty of the common council, within ten days thereafter to order a new election to be held, and to require notice of the time and places of holding such election, and of the officer or officers to be elected at such meeting as provided herein; in case of annual or special election, the same shall be held and conducted and returns made and canvassed in the same manner as annual elections.

Elections not held at appointed time may be subsequently held.

SECTION 12. The votes for all city and ward officers shall be on one ballot and shall be deposited in the same ballot box.

City and ward officers to be voted for on one ballot.

## CHAPTER IV.

## DUTIES OF OFFICERS.

Mayor; his powers and duties.

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 upon him by this act or by the ordinances 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, as hereinafter provided, except such resolutions as are by this act specially 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; his powers and duties.

SECTION 2. The common council at its first meeting in each year after the annual election or as soon thereafter as practicable shall elect one of its members president, who, in the absence of the mayor, shall preside over the meeting of the common council; 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 and have all the powers of his office, except as hereinafter limited. In case the mayor and president shall both be absent, from any meeting of the council, the council may elect one of its own members, temporary president who shall preside over such meeting,

and while so acting shall have the power and discharge the duties of mayor, and shall be styled "acting mayor," but provided that such temporary president shall not sign any city order, and that neither such president nor temporary president shall sign any bond, certificate of appropriation or resolution appropriating money for any purpose, or any instrument for payment of any money, except such president, while acting as mayor may sign city orders for payment of salaries of officers and accounts allowed by the common council.

SECTION 3. The clerk shall keep the corporate seal and all papers and records of the city, and keep a record of 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 may 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 to the common council 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 treasury by order of the common council, and shall keep a correct record of the same; he shall be clerk of the board of review and shall attend the meetings of such board 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 as filed shall be as valid and legal as if the same had been filed in any town clerk's office in

City clerk; his powers and duties.

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. The city clerk of the city of Menasha shall have power to appoint a deputy clerk and remove him at pleasure. The deputy clerk, in the absence of the clerk shall perform all the duties of the clerk. His salary shall be paid by the clerk, who shall be responsible for the faithful performance of his duties.

Treasurer; his powers and duties.

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 the treasurers of towns; and he shall be subject to the same liabilities; he shall pay all orders drawn on 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, and as often as the common council shall require, 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, 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. He shall receive such compensation only as is hereinafter provided. No person shall be eligible to hold the office of treasurer for two successive terms.

City attorney; his powers and duties.

SECTION 5. The city attorney shall conduct all law business of said city and the departments thereof, unless relieved by the common council, and all other legal business in which the city shall

be interested, and when so ordered by the common council, he shall furnish written opinions on all 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.

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, 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.

City surveyor, qualifications; his powers and duties.

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 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.

Chief engineer of fire department; his powers and duties.

SECTION 8. 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 the public schools, school-houses, books and appa-

Superintendent of schools; his powers and duties.

tus, he shall visit all the schools as often as his duty will require, and pay special attention to the classification 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 changes required in the same.

Chief of police;  
his powers and  
duties.

SECTION 9. 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 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 processes 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 assemblages, 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 service necessary; he shall promptly report to the mayor all complaints against the policemen and cause to be obeyed all rules and regulations prescribed for the police department, and he, or some policeman, shall be keeper of the lock-up and keep the keys thereof.

SECTION 10. 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 powers of constables; they shall faithfully abide by all ordinances prescribing the manner and extent of their duties and the time in which such duties are to be performed; they shall perform all duties for the city required, under such regulations as the common council shall prescribe.

Policemen;  
their powers  
and duties.

SECTION 11. 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 if any person shall refuse to aid in maintaining the peace, when so required, every person shall forfeit and pay a fine of twenty-five dollars. It shall be lawful for the mayor and aldermen, chief of police, every policeman or constable of the city to arrest forthwith any person within the city, 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 of this state 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 or trial cannot be had, to confine such person so arrested in the police station or common jail of Winnebago county until such time as an examination or trial can be had.

Officers of the  
peace; penalty  
for failure to  
obey.

SECTION 12. 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

Fire wardens;  
their powers  
and duties.

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.

Justices of the peace; jurisdiction of; approval of bonds.

SECTION 13. 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 this state and shall qualify in the same manner, except that their official bond shall be approved by a majority of the common council; and in addition thereto they shall have concurrent jurisdiction in all cases arising under this act, the ordinances, resolutions and by-laws passed by said city council unless otherwise provided. Their fees shall be governed by the general laws concerning the fees of justices of the peace; but they shall not be furnished or paid by said city, nor shall they receive any perquisites or compensation from said city, except so far as the city may become liable to them for fees as the party to a suit before them. They shall as often as the common council may require, report to the common council all the proceedings instituted before them in which the city is interested, and shall account for and pay over to the treasurer of said city, all fines and penalties collected by them, and belonging to said city, within ten days after receiving the same and take his receipt for the same.

Superintendent of poor; his powers and duties.

SECTION 14. The superintendent of the poor shall have the same powers and shall perform the same duties in relation to the care and support of the poor, as supervisors of the several towns, under the general laws of the state; provided, however, that he shall keep such accounts as the common council may direct, and at all times be subject to, and obey all orders and resolutions of the common council, concerning his duties and care and support of the poor, and shall report from time to time as the council shall direct.

Members of council not to be interested in city contracts.

SECTION 15. No member of the common council shall be directly or indirectly interested in any contract made with or in behalf of said city, and no officer of said city, shall directly or indirectly purchase or be interested in the purchase of any city or school order or certificate of indebtedness for less than the face thereof. Any person violating the provisions of this section shall be deemed

guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail for not more than six months or both, in the discretion of the court.

SECTION 16. The city treasurer shall receive the compensation provided for in this act and no more. The assessors and members of the board of review and inspectors and clerks of election shall receive such compensation as shall be fixed and allowed by the general laws of this state.

Salary of treasurer; other officials.

SECTION 17. The mayor, clerk and assessors of said city of Menasha and one other person to be appointed by the common council shall constitute the board of review of the city of Menasha. The members of the board of review shall have the same compensation per day as the assessors. The time for which the members of the board of review shall receive compensation shall not exceed fifteen days. The mayor shall be chairman *ex-officio* of said board.

Board of review; how constituted.

SECTION 18. The assessors shall not receive compensation for a longer time than fifty days for making the assessment of real and personal property of said city.

Assessors; compensation of.

## CHAPTER V.

### GENERAL POWERS AND DUTIES OF COMMON COUNCIL.

SECTION 1. The mayor and aldermen shall constitute the common council, and the style of all ordinances shall be: "The mayor and common council of the city of Menasha 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 or any rule adopted shall appoint. The mayor or a majority of the common council, for any good reason may call special meetings, by 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 rules of its own proceedings, and be the judges of the

Common council, how constituted.

Style of ordinances; annual and stated meetings of, etc.

election and qualification of its members, and shall have power to compel the attendance of absent members.

Control and management of finances, except school moneys.

General powers of common council enumerated.

Manage finances.

Levy taxes.

Grant licenses.

**SECTION 2.** The common council shall have the control and management of all the finances, except school moneys, as hereinafter provided, 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 and 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 laws; 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:

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

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

3. To license, prohibit, regulate, tax and suppress the exhibition of common showmen of any kind, or the exhibitions of caravans, circuses, theatrical performances, musical entertainments, billiard tables, bowling saloons, and nine or ten pin alleys; to prescribe the amount to be paid for such license and the time when such license shall expire; and to grant licenses for the selling of spirituous, intoxicating, or fermented liquors, ale or beer, and to revoke the same for a violation thereof, and the amount to be paid for any such license for the selling of spirituous, intoxicating, or fermented liquors, ale or beer, shall be as is, or may be fixed by the general laws of the state of Wisconsin; and to prescribe the time when such licenses shall expire; and may require of all persons applying for licenses for the sale of spirituous, vinous, intoxicating or fermented

liquors, ale or beer, a bond in such penal sums and with such provisions as the common council shall direct; provided, that no person so licensed shall give away or sell spirituous, vinous, intoxicating or fermented liquors, ale or beer on election days or Sundays.

4. To restrain or prohibit all descriptions of gaming and fraudulent devices and practices, and all playing of cards, dice and other games of chance for the purpose of gaming in said city. Restrain gaming.

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

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

7. To direct the location and management of, and regulate breweries, tanneries and packing houses; and to direct the location, management and construction of, and regulate, license, restrain, abate or prohibit within the city, distilleries, slaughtering establishments, establishments for steaming or reducing lard, tallow, offal, and such other substances, as can or may be rendered, and all establishments or places where any nauseous, offensive or unwholesome business may be carried on. Regulate breweries.

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

9. To regulate butchers, and to regulate and restrain the sale of game, poultry, fresh meat, vegetables, fish, butter, fruit, eggs and other provisions in the city; to restrain and punish the forestalling of poultry, fruit and eggs, and to cause the seizure and destruction, or other dispo-

Regulate butchers.

sition of tainted, unwholesome meat, butter, vegetables, fruit or provisions.

Direct storing  
of combusti-  
bles.

10. To direct or prohibit the location and management of houses for the storing of gunpowder or other combustible and dangerous materials, within the city.

Regulate keep-  
ing of combus-  
tibles.

11. To regulate and restrain the keeping and conveying of gunpowder and other combustible and dangerous materials, and the use of candles and lights in barns, stables and out houses.

Restrain shoot-  
ing.

12. To prevent the shooting of fire-arms and crackers, and to prevent the exhibition or use of any fireworks at any time or in any situation which may be considered by the council, dangerous to the city or to any property therein, or annoying to any citizen thereof.

Prevent en-  
cumbering of  
streets.

13. To prevent the encumbering of the streets, sidewalks, lanes, alleys, public grounds, wharves and docks, with carriages, carts, wagons, sleighs, sleds, wheel-barrow, boxes, lumber, firewood, timber, posts, signs, awnings, or any substance or material, or in any manner whatsoever.

Prevent horse  
racing.

14. To prevent horse racing or immoderate riding or driving in the streets, and to authorize any person to stop persons immoderately riding or driving, as aforesaid; to prohibit and punish the abuse of animals, and to compel persons to fasten their horses, oxen or other animals attached to vehicles or otherwise, while standing or remaining in any street, alley or public ground.

Regulate  
swimming.

15. To regulate and determine the times and places of bathing and swimming in canals, rivers, harbors or other waters in and adjoining said city and to prevent any obscene or indecent exhibition, exposure or conduct.

Punish va-  
grants

16. To restrain and punish vagrants, mendicants, street beggars and prostitutes, and to restrain drunkards, immoderate drinking or obscenity in the streets or public places, and to provide for arresting, removing and punishing any person or persons who may be guilty of the same.

Restrain run-  
ning at large of  
cattle.

17. To restrain, regulate or prohibit the running at large of cattle, horses, mules, swine, sheep, goats, poultry and geese, and to authorize the restraining, impounding and sale of the same, for the penalty incurred and the costs of proceedings; and also to impose penalties on the

owners of any such animals for a violation of any ordinances in relation thereto.

18. To prevent the running at large of dogs in the said city, and to authorize the destruction of the same in a summary manner, when at large contrary to such ordinances. Prevent running at large of dogs.

19. To provide for licensing the keeping of dogs in said city, at a sum or rate not less than one dollar, nor more than ten dollars a year for each dog, and to provide for a badge or token to be carried by each licensed dog, and for the killing and destruction in a summary manner of all dogs not licensed wherever the same may be found within the city, and of the licensed dogs at large in the streets, alleys or public grounds in said city, and to punish persons keeping unlicensed dogs. License dogs

20. To license, regulate and suppress hackmen, draymen, cartmen, porters, omnibus drivers, cabmen, carmen and porters, and all others, whether in the permanent employment of any corporation or otherwise, who may pursue like occupation with or without vehicles. Regulate hackmen.

21. To prevent and regulate the rolling of hoops, flying of kites, playing of ball, riding of bicycles and velocipedes, or other amusements or practices having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams and horses. Prevent ball playing.

22. To make regulations to prevent the introduction of contagious or infectious diseases into the city, or their spread therein. Prevent contagion.

23. To abate all nuisances, which are or may be injurious to the public health, in any manner they may deem expedient, and to do all acts and make all regulations which may be necessary or expedient for the preservation of health and the suppression of disease. Abate nuisances.

24. To regulate the burial of the dead and registration of births and deaths; to provide hospital and cemetery grounds; to direct the returning and keeping of bills of mortality, and to impose penalties on physicians, sextons and others for any default in the premises. Regulate burial of dead.

25. To remove and abate all nuisances under the ordinances or at common law, and punish the authors thereof by penalties, fine and imprisonment, and to define and declare what shall be deemed nuisances, and authorize and direct Declare what are nuisances.

the summary abatement thereof; but nothing in this act shall be so construed as to deprive any court of its jurisdiction to abate and remove nuisances in the streets, or in any other parts of said city or within its jurisdiction by indictment or otherwise.

Prevent bringing of putrid carcasses, etc., within city.

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

Establish pest houses.

27. To erect or establish one or more pest houses, hospitals and dispensaries, and control and regulate the same.

Prevent ringing of bells.

28. To prevent the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, performances and devices tending to the collection of persons on the streets and sidewalks, by auctioneers or others, for the purpose of business, amusement or otherwise.

Control steam whistles.

29. To control, regulate or prohibit the use of steam whistles within the limits of the city.

Regulate streets.

30. To control and regulate the streets, alleys and public grounds in said city and to remove and abate any obstructions and encroachments therein.

Compel removal of snow from side-walks.

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

Prevent encumbering of streets.

32. To control, regulate, repair, amend and clean all streets and alleys, bridges, side and cross-walks, and open, widen, straighten and vacate streets and alleys, and establish and alter the grade thereof; and prevent the encumbering of streets and alleys in any manner, and protect the

same from any encroachments or injury, and to regulate the manner of using the streets and pavements in said city and protect the same from injury by vehicles used thereon.

33. To prevent all persons from riding or driving any horse, ox, mule, cattle or other animals on the sidewalks in said city, and protect the same from injury or damage.

Protect sidewalks.

34. To make, establish and regulate public ponds, pumps, wells, cisterns and reservoirs.

Establish pumps.

35. To erect lamps and regulate the lighting thereof; and to provide for lighting the streets, public grounds and public buildings with gas or otherwise.

Provides for street lighting.

36. To regulate the sale of bread within said city, and prescribe the size and weight of bread in the loaf and the quality of the same; and to provide for the seizure and forfeiture of bread baked contrary to such regulations and prescriptions.

Regulate sale of bread.

37. To require every merchant, retailer, trader and dealer, in merchandise or property of any description which is sold by measure or weight, to cause his weights and measures to be sealed by the city sealer and to be subject to his inspection, and to provide for the punishment of persons using false weights and measures. The standard of such weights and measures shall be in conformity to those established by law in this state.

Prevent use of false weights and measures.

38. To regulate the weighing and sale of hay, and the places and manner thereof; to regulate the cutting and sale of ice; and to restrain the sale of such ice as is impure; also to regulate the sale and measuring of wood and the weighing and selling of coal and lime, and the places and manner thereof, and to appoint suitable persons to superintend and conduct the same, and to define their duties.

Regulate weighing of hay, etc.

39. To regulate the times, places and manner of holding public auctions or vendues.

Regulate auctions.

40. To tax, license and regulate auctioneers, distillers, brewers and pawn-brokers, and all keepers or proprietors of junk-shops and places for the sale and purchase of second hand goods, wares and merchandise; and to tax, license, regulate and restrain hawkers and peddlers, and runners or solicitors for steamboats, vessels, cars, railroads,

License auctioneers.

stages, public houses and other establishments; and other runners, including runners or solicitors for mercantile houses from other cities and towns for the sale of goods, wares and merchandise by sample, order or otherwise, and keepers or proprietors of gift book stores, gift concerts and other gift enterprises, and to fix and regulate the amount for licenses under this subdivision, and to prescribe the time for which such licenses shall be granted, and to provide and enforce penalties for carrying on either of said trades, kinds of business or employments without license and to regulate the manner in which they shall be carried on.

- Regulate sale of fish.** 41. To regulate the places and manner of selling pickled and other fish.
- Inspect liquors.** 42. To regulate the inspection of whiskey and other liquors, to be sold in barrels, hogsheads and other vessels.
- Establish public grounds.** 43. To establish and regulate public grounds, parks and boulevards, and to purchase grounds for the same.
- Appoint policemen.** 44. To appoint watchmen and policemen, and regulate the police and prescribe their duties.
- Compel numbering of houses.** 45. To compel the owners and occupants of all houses, stores or other buildings within the city of Menasha to number the same in such manner as the common council may from time to time prescribe.
- Destruction of noxious weeds.** 46. To declare the weed commonly called the Canada thistle and other noxious weeds and plants on lots, parts of lots and lands in said city, a public nuisance, and to proceed to abate the same as the said city is authorized by law to abate other nuisances.
- Provide penalties.** 47. To impose fines for all violations within the limits of said city, of the general laws of the state, when in their judgment, it is necessary, for the peace and good order, or for the health of the city.
- Direct planting of trees.** 48. To direct the planting and preserving of ornamental trees in the streets and public grounds.
- Preserve public waters from pollution, etc., and provide penalties therefor.** 49. To preserve Lake Winnebago, the Fox river within the limits of the city of Menasha, and prevent any use of the same or any act in relation thereto inconsistent with or detrimental to the public health, or calculated to render the waters of the same, or any part thereof, impure

or offensive or tending in any degree to fill up or obstruct the same; to prevent and punish the casting or depositing therein of any earth, dead animals, ashes or other substance or filth, or floating matter; to prevent and remove all obstructions therein and punish the authors thereof; to prescribe, regulate and control the time or times, manner and speed of all boats, crafts and vessels, passing the bridges over the Fox river in said city, or the canals of said city, and of coming to and departing from the wharves of said city, and to regulate and prescribe by ordinances, such location of the steamboats, crafts or vessels afloat within the Fox river and the harbor of said city, and such changes of station therein as may be necessary to promote order in said river and harbor, and the safety and convenience of the different water crafts and vessels therein, as near as may be, and to enforce such ordinances by penalties not exceeding fifty dollars for any offense against such ordinance.

50. To authorize the arrest, fine and imprisonment, as vagrants, of all persons who, not having visible means to maintain themselves, are without employment, idly loitering or rambling about or staying in groceries, drinking saloons, houses of ill-fame or houses of bad repute, gambling houses, railroad depots or fire-engine houses; or who shall be found trespassing in the night time upon the private premises of others, or begging, or placing themselves, in the streets, or other thoroughfares, or public places, to beg or receive alms; also keepers, exhibitors or visitors at any gambling table, gambling house, house of fortune telling, place for cock-fighting, or other places of device; and all persons who go about for the purpose of gambling or watch stuffing, or who shall have in their possession any article or anything used for obtaining money under false pretenses, or who shall disturb any place where public or private schools are held, either on week day or Sabbath, or places where religious worship is held.

Imprison vagrants, trespassers, etc.

51. To regulate or prohibit the carrying or wearing by any person under his clothes, or concealed about his person, of any pistol, revolver or slung shot, or cross-knuckles or knuckles of lead, brass or other metal, or bowie-knife, dirk-knife or dirk or dagger, or any other dangerous or deadly

Regulate carrying of weapons.

weapon; and to provide for the confiscation or sale of such weapons.

Provide for safety against fire.

52. To control and regulate the construction of buildings, chimneys and stacks; and to prevent and prohibit the erection or maintenance of any insecure or unsafe building, stack, wall or chimney in said city, and to declare them to be a nuisance and to provide for their summary abatement.

Provide for speedy egress from public buildings.

53. To declare that it shall be unlawful for any hall, theater, opera house, church, school-house or building of any kind whatsoever to be used for the assemblage of people unless the same is provided with ample means for the safe and speedy egress of the persons therein assembled in case of alarm.

Detail men from police force.

54. To require the mayor and chief of police to detail a sufficient number of men from the police force of the city to take charge of the public grounds of said city, and to properly enforce the pound ordinances thereof, and to provide for the election of one or more pound keepers, and for the payment of such pound keepers, either by salary or fees, or partly by both; and to make all necessary rules and regulations for the enforcement of any pound ordinance of said city.

Establish fire department and provide regulations for construction of chimneys, etc.

55. To establish a fire department within the city, and prescribe the duties of officers and members thereof, and 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, and also 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.

Grant right of way to street railways.

56. To grant by ordinance the right of way through any street or over any bridge of the city, to any person, persons or corporation proposing

to build thereon street railroads, the cars thereon to be propelled by horse or other power; and to grant them rights and privileges under such limitations and conditions as they may direct.

57. 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.

Regulate erection of walls.

58. To direct the digging down and filling up of lots, whenever the same may be deemed necessary to prevent injury to the streets, side or crosswalks, or to 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 grounds in said city.

Direct grading of lots.

59. To erect and establish a city jail for the confinement of disorderly, drunken or riotous persons, vagrants and all persons charged or found guilty of any offense under the laws of the state of Wisconsin, or any ordinance of said city; and to purchase or lease all the necessary grounds, and pass all such ordinances for the regulation thereof, as may be necessary; and to appoint a keeper.

Erect a city jail.

60. To regulate the use of locomotive engines within the city, to direct and control the location of railroad tracks; maintain and control, at their own expense such bridges, viaducts, tunnels, gates, barriers, as the common council may deem necessary, and to enforce such ordinances by penalties, to be collected from the railroad companies, or by arresting the engineers, firemen or conductors, operating the trains in violation thereof, or by imposing such other penalties, not contrary to the statutes and constitutions of this state or the United States.

Regulate use of locomotives, and location of tracks.

61. To regulate, control and prohibit the location, laying, use and management of telegraph,

Regulate location of telegraph poles, wires, etc.

telephone and electric light power, wires and poles.

Ordain police regulations.

62. To make, ordain and pass ordinances and by-laws for the police, and to enforce such rules for the observance of laws, ordinances and regulations of the city police station.

Boards of health.

63. To establish and regulate boards of health.

Water works, council not to establish or contract for until authorized by vote of electors.

SECTION 3. The common council shall have power to provide for the erection of water works for the supply of water to the inhabitants, and to the said city for fire protection, and other purposes; to secure the erection of water works, said city may by contract or ordinance, grant to any person, company, or corporation, full right and privilege, and empower, and authorize such company, persons or corporation, to build for themselves and own such water works, and to maintain, operate and regulate the same, and in so doing, to use the streets and alleys of said city, in laying and maintaining the necessary pipe lines, and hydrants, on such terms and conditions, as may be prescribed by such ordinance or contract, providing for the supplying from said water works, the said city with water for fire protection, and other purposes, and also the inhabitants thereof with water, for such term of years, and for such price, and in such manner, and subject to such limitations as may be fixed by said contract; provided, however, that no ordinance or contract to purchase waterworks for, or in behalf of said city, or to erect such waterworks by the city, shall be valid or binding until the same shall be submitted to a vote of the qualified electors of said city, which may be done at a regular or special election called for that purpose, by a majority vote of the common council, of which at least two weeks notice thereof shall be given, and if a majority of the qualified electors shall vote in favor of such ordinance for the purchase of water works, the common council may raise the whole, or part of the money required by ordinance, to purchase the water works, by special tax upon all the taxable property, or may raise the whole or part thereof by issuing the bonds of the city of Menasha therefor, and selling the same; which bonds may be payable in twenty years, or less number of years; and shall not draw to exceed five *per cent.* interest, payable

annually, and which shall be paid by, from, and out of the taxable property of the city of Menasha.

SECTION 4. Sewers, drains, or ditches may be made, or dug or repaired by the common council, at the cost, charge or expense, in whole or in part, as the council may determine, of the lots which may be deemed benefited thereby, and the common council shall apportion such costs, charges and expense among and on such lots, in such proportion or amount as said common council shall deem benefited thereby, and such amounts shall be levied and assessed upon said lots as a special tax; and be inserted in the tax roll first made out thereafter, and collected as other special taxes are; said work may be done by the common council, or by men in its employ, or let out by contract to some third party, or by the lot owner himself if he sees fit, under the direction and to the satisfaction of the superintendent of said works, or superintendent of streets of said city.

Expense for sewers, drains, etc., to be apportioned upon lots benefited.

SECTION 5. The common council of the city of Menasha is hereby authorized and empowered by ordinance, to regulate the sale of goods, wares and merchandise, or any other property, at auction, in said city of Menasha, and may prohibit the sale thereof at auction within the limits of the said city of Menasha, by any person without having obtained license therefor; and may require such person or auctioneer so licensed, to pay for such license a fee of not less than two dollars per day, nor more than twenty five dollars per day, for each and every day for holding said auction or vendue; provided, however, that nothing in this act shall prohibit or effect in any manner, sales at auction, exempted from payments of license as specified in section 1585, revised statutes, as re-enacted and amended by section 2, of chapter 384, of the laws of Wisconsin for the year 1887.

Regulation and license of auctions.

SECTION 6. 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 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 re-

Passage of ordinances over mayor's veto.

turn 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 resolution 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. Before any such ordinances or resolutions shall be in force, they shall be published in the official paper of said city, and together with the affidavit of publication, shall be recorded by the city clerk in the books provided for that purpose. The time and manner of publication proven by the original affidavit of publication or by the recorded copy thereof, or in case of the loss or destruction of either of the original affidavit, or ordinance, or resolution, or the book or books containing a record of the same, the contents of the affidavit, ordinance or resolution as well as the fact of recording the same, or any of them, or any matter or thing therein contained, may be proven by parole testimony.

Publication of ordinances required.

Council's power to abate nuisances not a bar to proceedings in court.

SECTION 7. The power 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 and 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.

Council to examine and adjust the accounts of city and ward officers.

SECTION 8. The common council shall examine, audit and adjust the accounts of 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 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 office duties; and the common council shall cause to be made a full record of all such settlements and adjustments.

SECTION 9. 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, 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 said 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 by ordinance require convicted persons to work out fines.

SECTION 10. The common council shall have authority to build bridges over the Fox river and canal in the city, or to make the necessary repairs on any of the bridges in the city over Fox river and canal, and to provide for the payment of the same.

Building and repair of bridges.

## CHAPTER VI.

### FINANCE AND TAXATION.

SECTION 1. All the funds in the city treasury, except school, state and county funds, shall be drawn out upon the certificate of the mayor, countersigned by the clerk, duly authorized by a vote of the common council, and in no other manner; and all certificates drawn upon the treasurer shall specify the purpose for which they were

Mayor and clerk to draw orders against all funds, except school, state and county.

drawn, and shall be payable generally out of any funds in the treasury belonging to the city.

Certificates of indebtedness, how authorized.

SECTION 2. No debt shall be contracted against the city, or certificates of indebtedness drawn upon the city treasury unless the same shall be authorized by a majority of all the members of the common council, and the vote authorizing the same shall be entered by ayes and noes upon the journal of the council, and no money shall be appropriated for any purpose whatever, except such as is expressly authorized by this act.

Forfeitures and penalties to be a part of general fund.

SECTION 3. All forfeitures and penalties accruing to the city for a 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 part of the general fund, except as otherwise provided by this act.

Fiscal year.

SECTION 4. The fiscal year of the city of Menasha shall commence on the second Tuesday of April in each year.

Annual tax levy, when made; limitation for current expenses.

SECTION 5. The common council shall within ninety days after the first Monday of September in each year, by resolution determine what amount of money including the estimated resources of the city not derived from direct taxation, for the year then next ensuing, will be required for general city purposes during that year; and the council shall thereupon be empowered to levy, and shall by resolution, levy upon the taxable property of the city to defray the current expenses of said city, a tax not exceeding one *per cent.* of the assessed value of the real and personal property of said city for that year, and for all other purposes, except for schools, bridges, highways and the payment of the principal and interest of any outstanding bonds, debts or obligations of said city, a tax not exceeding one-half of one *per cent.* upon all the taxable property of said city for that year; the common council shall have power at the same time, in addition to taxes now required by law to be levied by them, to levy a tax for the purpose of paying the interest or principal of any outstanding bonds or obligations of indebtedness of said city or of such part of principal and interest of any bonded indebtedness of the town of Menasha, and which said city may be liable or bound to pay by the

provisions of this act, or which may hereafter be issued by said city, by authority of law, which may be now due or may be due at the time of levying such tax, or may become due before the time for collecting such tax; and they shall also levy the amount required to be raised for the support of the schools of said city for the erection of school houses, when required by a vote of the city or any department of the city authorized to order the same; and to levy a special tax to build or repair bridges, when the same may be necessary, not exceeding five thousand dollars, in any one year, which shall be collected at the same time as other city taxes are collected. No city order of any kind shall be received in payment of school or school-house tax, but the same shall be paid in money, and all such moneys shall be used for school purposes only. All resolutions for the purpose of levying a tax shall require for their passage a majority of all the members of the common council.

Special tax levy, maximum amount of.

SECTION 6. No error or informality in the proceedings of any of the officers in assessing property, levying or collecting taxes, or making return of unpaid taxes, not affecting the substantial justice or the tax itself, shall invalidate or vitiate or in any wise affect the validity of the assessment of tax; provided, that this section shall not be so construed as to dispense with the requisite majority vote of all the members of the common council in the levying of a tax.

Error or informality not to invalidate tax.

SECTION 7. The city treasurer shall not receive from the treasurer of Winnebago county tax certificates in payment of any indebtedness which may become due from said county to said city; the city shall contract no debt and the common council shall make no appropriation during any fiscal year for city purposes, greater than the amount determined upon as provided in the foregoing section 5 of this chapter for such purposes, together with the amount of money which may be at any time in the city treasury derived from other sources than taxation.

Treasurer can not accept tax certificates in payment of county indebtedness.

SECTION 8. All scrip, certificates, treasury orders or other evidence of debt which shall hereafter be issued or authorized by the common council of the city of Menasha, and whenever the common council shall lawfully appropriate money

Orders on treasury to be issued in the order in which appropriations are made.

to any party, to be paid out of the city treasury, the mayor and city clerk shall issue an order, in the order in which such appropriations are made, specifying in said order the purpose for which such appropriation was made, and said treasurer shall pay the amount so appropriated and certified in the order in which they are so certified, out of the proper funds in his hands, belonging to the city, taking up such orders, and filing them in his office, and the city funds shall be paid out of the treasury in no other manner whatever.

Council may levy tax to pay judgments.

SECTION 9. The common council shall have power to levy a tax or taxes to pay any or all judgments against the city.

Treasurer may be removed for neglect of duty.

SECTION 10. In case the city treasurer shall at any time refuse or neglect to perform his duties in enforcing the payment of taxes as provided by this act, and so authorized and required by the laws of this state, the common council shall forthwith remove such treasurer from office and appoint a suitable person to fill the vacancy.

Accounts to be verified before allowance.

SECTION 11. All accounts or demands against the city, before the same shall be allowed, shall 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 shall be deemed guilty of perjury.

Appropriations, for what purposes may be made. No allowance for interest.

SECTION 12. No money shall be appropriated or drawn out of the city treasury except in payment of accounts or demands allowed by the common council; and no interest shall be allowed or paid on any city order or certificate whatever, except as otherwise provided in this act.

Claim must be presented to council before action can be brought.

SECTION 13. No action shall be maintained by any person against the city of Menasha, upon any claim or demand, until such person shall have first presented his claim or demand to the common council for allowance.

Disallowed claim, reconsidered how.

SECTION 14. In case any person shall present his claim or demand to the common council, and the said council shall disallow such claim in whole or in part, it shall not thereafter entertain such claim, unless by consent of a majority of all the aldermen entitled to seats in the council. The determination of the common council disallowing in whole or in part any claim of any person shall

be final and conclusive, and a perpetual bar to any action in any court founded on any such claim or demand, except that such persons may appeal to the circuit court of said county as provided in the next section.

SECTION 15. When any claim of any person against the city shall be disallowed in whole or in part, by the common council, such person may appeal from the decision of the council disallowing such claim, to the circuit court of the county of Winnebago, by causing a written notice of such appeal to be served on the clerk of said city, within thirty days after written notice of the making of such decision, and executing a bond to the said city, with sufficient surety, to be approved by the said clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant by the court. The clerk, in case such appeal is taken, shall make a brief statement of the proceedings had in the case before the council, with its decision thereon, and shall transmit the same together with the bond and all papers in the case, to the clerk of the circuit court of Winnebago county, and thereupon such appeal shall be entered, tried and determined in the same manner as cases originally commenced in the circuit court. Such court may, in its discretion, order former pleadings to be filed, and issue formed as in other actions, and costs shall be awarded as on appeals from justices' courts. The clerk, upon such appeal being taken, shall forthwith, give notice thereof to the mayor, and shall also report the same to the council at its first meeting thereafter.

Appeal on disallowance of claim, how.

Clerk to notify mayor.

SECTION 16. No action for injury to the person shall lie or be maintained against the city of Menasha, unless the person claiming injury shall permit the mayor or common council, by a physician of his or its appointment, to make personal examination of the alleged injury as often as requested, after the time of its infliction, until the amount of damages is adjusted.

Injury to person, no action to lie, when.

SECTION 17. The mayor and clerk shall on or before the twenty-fifth day of March in each year examine, audit and adjust the accounts of the treasurer and other officers of said city, and report the result of such examination to the common council for final adjustment; and no financial

Examination and adjustment of treasurer's accounts. Other officers.

business shall be transacted after the said twenty-five day of March in each year by the common council.

Annual report  
of city clerk.

SECTION 18. The city clerk shall in the month of March in each year make out a detailed statement of the receipts and expenditures of the city, and of the financial condition of the city, and have the same published in the official newspaper of the said city.

Bonded in-  
debtedness,  
not to be  
incurred, when.

SECTION 19. While the bonded indebtedness of said city exceeds five *per cent.* of the assessed valuation of all the taxable property of said city, no further bonded indebtedness shall be incurred (while the bonded or interest bearing indebtedness of said city exceeds five *per cent.* of the assessed valuation of all the taxable property of said city). No further bonded or interest bearing indebtedness shall be incurred, except as herein otherwise provided.

## CHAPTER VII.

### ASSESSMENT AND COLLECTION OF TAXES.

Assessor, his  
powers and  
duties.

SECTION 1. The assessor 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 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.

Lands omitted  
in assessment  
through  
mistake or  
fraud may be  
assessed for  
tax of previous  
years.

SECTION 2. If the assessors, when making their assessment, shall discover any tract, piece or parcel of land in said city, was omitted in the assessment roll of either or both of the two preceding years, 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 or years, 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

or years, 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 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 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 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 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 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 roll or assessment roll of such preceding year, then the assessors shall deduct the value of such piece, tract or parcel of land, or the amount or value of such personal property as it appears from the assessment roll of such preceding year, from the true amount or value as fixed by the 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 as-

sessors or board of review, and the amount or value as it appeared on such assessment roll, or the roll of 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 whosoever 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 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.

Treasurer to collect taxes upon receipt of tax roll.

SECTION 3. Upon receipt of the tax roll 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.

Collection of taxes; notice of, how given.

SECTION 4. The city treasurer shall, upon receipt of the tax roll, 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 roll, shall be paid on or before the fifteenth day of January next thereafter

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 notice 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 as a refusal to pay the same. The city treasurer shall charge one *per cent.* fees for collection of taxes and assessments paid to the fifteenth day of January in each year, and shall charge and collect three *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 forty-five days from the expiration of the original warrant.

Council may extend time of,

SECTION 5. In case no goods and chattels shall be found out of which to collect taxes, or any lot or lots, or any piece of land or property, the treasurer shall make out a list of all 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, and that he had not been able to find goods and chattels out of which to collect the taxes, shall be called "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 taxes belonging to the state of Wisconsin, in the same manner as required by law of town treasurers.

Delinquent list, what to comprise. To be delivered to county treasurer in settlement.

SECTION 6. If the city clerk in making out the annual tax roll of said city shall in any way discover or learn that the city treasurer in any one or more of the three preceding years has failed to collect any tax upon any real estate or personal property or both, duly assessed, levied and charged in the tax rolls of said city for any one or more of the said three preceding years to and against any person, company or corporation and has also failed to return the same as delinquent tax to the county treasurer of Winnebago

Uncollected taxes not returned delinquent may be inserted in tax list, how.

county, as provided by law, then upon the filing in his office of the affidavit of the city treasurer, so failing to collect or return said tax, and the affidavit of the said county treasurer, or other proof showing the assessment and levying of said tax, and the failure to collect or return the same, the said clerk shall insert the amount of said tax with the interest thereon from the first day of January in the year when the same should have been paid, in the tax roll of said city, next after the filing of said affidavits or other proofs as aforesaid, in a separate column in said roll, and against the same person, company or corporation, and the same property as the original taxes were assessed, levied and charged to be collected as other taxes; and the said treasurer shall have the same authority to collect said taxes as other taxes in said roll. In inserting the aforesaid tax, the said clerk shall give the year when the same was assessed, levied and charged, originally.

Interest on,  
how figured.

County treasurer to make return to city upon sale of delinquent lands.

SECTION 7. 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 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 in cash.

Informality not to vitiate tax.

SECTION 8. 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.

Special charge or assessment, treasurer to collect, how.

SECTION 9. In all cases specified in the provisions of this act, any charge or assessment shall be carried out in 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.

SECTION 10. Upon receiving the annual state-  
 ment of state and county taxes, the city clerk shall  
 make out a tax roll of all the real and personal  
 property in said city, as required by the general  
 laws of the state, and shall, upon a uniform per-  
 centage, calculate and carry out in one item, op-  
 posite to each valuation in said tax roll, the  
 amount required to be raised upon such valuation,  
 to realize in the said city the whole amount of  
 state, county, school and other taxes so certified,  
 together with all the city taxes, except taxes to  
 pay judgments and special assessments; and all  
 other taxes including taxes to pay judgments and  
 special assessments in separate columns, opposite  
 the valuation of the property to be charged. The  
 city clerk shall make a duplicate of said tax roll,  
 and upon receiving the county treasurer's receipt  
 prescribed in section 1080 of the revised statutes,  
 said clerk shall attach to said duplicate tax roll, a  
 warrant substantially in the following form:

Tax roll, how  
 made. Dupli-  
 cate of, with  
 warrant to be  
 delivered to  
 treasurer.

The state of Wisconsin, to . . . . ., treas-  
 urer of the city of Menasha, in the county of  
 Winnebago:

Form of war-  
 rant.

You are hereby commanded to collect from  
 each of the persons and corporations named in  
 the annexed tax roll, and from the owners or oc-  
 cupants named of the real estate described  
 therein, the taxes set down in such roll opposite  
 to their respective names, and to the several par-  
 cels of land therein described; and in case any  
 person or corporation upon whom any such sum  
 or tax is imposed, shall refuse or neglect to pay  
 the same, you are to levy and collect the same by  
 distress and sale of the goods and chattels of the  
 person or corporation so taxed; and out of the  
 moneys so to be collected after deducting your  
 fees, you are first to pay to the treasurer of said  
 county, on or before the last Monday of January  
 next, the sum of . . . . . dollars for  
 state taxes; you are to retain and pay out as city  
 treasurer, according to law, the sum of . . . . .  
 . . . . . dollars; and the balance of said moneys  
 you are required to pay to said county treasurer  
 for county purposes, on or before the day above  
 specified, by which day you are further required  
 to make return to said county treasurer of this  
 warrant with said roll annexed, together with  
 your doings thereon, as required by law.

Given under our hands and the corporate seal of said city of Menasha, this .... day of .... A. D. 18..

....., Mayor.  
....., Clerk.

Said warrant shall be signed by the mayor and clerk, and sealed with the corporate seal of said city. The said clerk shall deliver such tax roll and warrant to the city treasurer, on or before the second Monday in December, or as soon thereafter as practicable.

Treasurer to collect upon receipt of tax roll. Fees for collecting.

SECTION 11. The city treasurer upon receipt of such tax roll shall proceed to collect the taxes therein named in like manner as town treasurers are, or may be required to do by law, and have the same powers as town treasurers, except as otherwise provided in this act. The city treasurer shall receive one *per centum* fees upon all taxes paid to him on or before the fifteenth day of January, and three *per centum* fees upon all taxes collected after that time to be added to the amount of taxes and collected with the same. He shall also receive one *per centum* for receiving and disbursing all other money paid into the treasury and disbursed by him, except school money and city orders. The compensation herein provided for, shall be in full for all services performed by said treasurer under this act or the ordinances of the city.

Taxes, a lien until paid.

SECTION 12. All taxes and assessments, general or special, levied in the city of Menasha under and by virtue of any law of this state, shall be and remain a lien upon the lands and tenements upon which they may be assessed, and on all personal property upon which such taxes may be assessed from the time of the receipt of the tax roll by said city treasurer, and no sale or transfer of such real or personal property, and no levy or sale thereof under and by virtue of any judgment, execution or attachment, or other legal process, shall affect such lien upon such real or personal estate.

No exemption from special taxes.

SECTION 13. All property in said city, real and personal and mixed, shall be subject to taxation for all purposes authorized by law excepting only such property as is or shall be exempt from taxation throughout the state by general laws exempting from taxation, but no real estate shall be ex-

empt from special taxes for local improvements provided for in this act.

SECTION 14. The assessors shall assess all the taxable property in said city and shall make out the annual assessment roll for the said city in accordance with the general laws of the state relating to the assessment of property and the duties of assessors and said assessment roll shall be equalized and notice thereof given at the time and manner required by law, and all other general laws of the state applicable to boards of review for the equalization of taxes in towns and cities shall be in force and apply to said city. Immediately after such assessment roll is equalized the same shall be verified by both of such said assessors as required by law and the assessment roll deposited in the office of the city clerk.

Assessors, their powers and duties.

SECTION 15. The assessors shall on or before the third Monday in July annually deliver the assessment roll so completed as provided by the preceding section. And all the sworn statements and valuations of personal property, to the clerk of said city, and the same shall be preserved in his office. All the general laws of the state relative to the duties and powers of assessors and city clerks in all matters relating to the assessment of taxes, shall apply to and be in force in said city, except as otherwise provided in this act.

Assessment roll to be completed and delivered to clerk, when

## CHAPTER VIII.

### IMPROVEMENT OF STREETS.

SECTION 1. The common council of the city of Menasha, shall have power to establish the grade of streets, alleys, gutters, sidewalks, etc., of said city, and to change and to re-establish such grade as it shall deem expedient; provided, that whenever it shall change or alter the grade of any street the city shall be liable to any person who shall have sustained damages by such change or alteration of grade for the damages so sustained.

Council may establish and change street grades.

Liability of city for change.

SECTION 2. The common council shall have power to cause sidewalks, curb-stones and gutters to be built, re-built or repaired, of such material and in such manner as it may direct, and to assess the cost thereof against the particu-

Sidewalks, curb stones and gutters, council may order construction and repair of, how.

Notice, how given.

lar lot or lots in front of which such work shall have been done. Such work may be done or required to be done without any petition therefor, upon the filing with the city clerk of a plan and specifications of the work to be so done, and the passage of an order or resolution by the common council, describing the location of the lots or lands in front of which such work shall be done, and naming the owners thereof, if known, and containing a description of the work, and naming the time in which the same shall be done, which shall not be less than one week from the time notice of such order or resolution shall be given, either by service of copies thereof upon the owners of such lands personally, or by leaving a copy with the occupants of the building on such lot or lots, if they shall be occupied, or by the publication of such order or resolution in the official paper of the city, if there be one, if not, then in some other newspaper published in said city, or posting up in five of the most public places in said city at least one week before such work is required to be done, or improvement made. The affidavit of the officer serving such order describing the manner of such service, or the affidavit of the printer, of the publication of such order, shall be *prima facie* evidence of such service. If after the time mentioned for the performance of such work in such order, such work or any part thereof shall not have been done, the common council may cause such work to be done by contract or by men in its employ, and shall charge the particular cost of such work done in front of or contiguous to any lot or parcel of land as a special assessment against the respective lot or lots, in front of or contiguous to which such work shall have been done, and such assessment shall be collected as other taxes are collected.

Repair of sidewalks and removal of obstructions: how done upon failure of owner.

SECTION 3. All sidewalks shall be kept in repair and free and clear 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 free and clear as aforesaid, and the same shall be so out of repair for the space of twenty-four hours, the superintendent of streets shall cause the same to be done, and charge the expense thereof to such lot or 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 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. The superintendent of the streets, after he shall have repaired any such sidewalk, shall make out an itemized statement of the costs of such repairs, specifying the lot or lots, parcel or parcels of land adjacent to which such repairs were done, verified by his oath, and shall deliver the same to the city clerk. Said clerk shall present all such statements to the council at its first meeting in November of each year, and the council shall levy and assess the amount of such cost of such material and work upon the lot or parcel of land adjacent to which work was done or material furnished, or both, as the case may be, and said amount shall be a special tax against and lien on said property; and the same shall be inserted in the tax roll and collected as other taxes.

**SECTION 4.** It is hereby made the duty of every owner of any lot or lots or tracts of land within the said city, and they are hereby required to keep and maintain the sidewalks in front of and adjacent to their respective lots, in good repair and free and clear of all obstructions including ice and snow, and the existence of defects in such sidewalks for the space of twenty-four hours, shall be notice to the owners of adjacent lots of their need of repair, and no other or further notice need be given.

Owner to keep sidewalks in repair and from ice and snow.

**SECTION 5.** The common council shall 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 the city of Menasha, and construct and dig all the 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 in the same manner as is provided in section 2 of this chapter.

Improvement of streets and alleys.

**SECTION 6.** Whenever the general interests of the city require deep cutting or extraordinary filling in grading any street, and the owners of

Extraordinary grading, city to do, and apportion expense.

the lots or lands fronting on such deep cutting or filling shall deem themselves aggrieved thereby, and shall represent to the common council in writing that the expense of such excavation or filling will exceed the proportion that should be charged upon the adjacent property, the council may, in its discretion, order such cutting or filling to be done under the direction of the superintendent of streets, and shall in such order fix the amount justly chargeable to such lots or lands, and such sums shall be assessed thereon and collected as other special assessments; provided, that such representation shall be made before the time fixed for the performance of such work.

What street improvements chargeable to city.

SECTION 7. The expense of all improvements in construction or repair of streets at their intersection with streets or alleys and across public grounds and to the middle of streets and alleys adjacent to public grounds, and the building and repairing of crosswalks, and the laying and repairing of drains to carry the surface water at the intersection of streets, the construction and repair of sidewalks, curb-stones and gutters, adjoining any public ground or square, and the construction and repair of sewers across streets and alleys, and adjacent to public grounds, and the construction and repair of bridges shall be paid by the city at large.

Street improvements, proceedings upon petition for.

SECTION 8. The council may cause any streets or parts of streets to be paved or macadamized at the expense in whole or in part of the adjacent lots, upon a petition in writing therefor, signed by at least a majority of all the owners of real estate bounding both sides, and of the owners of at least half the frontage of such street, or part of street to be so improved. If the council shall determine that such improvement be made it shall cause to be made by some competent person, a plan and specification of the work to be so done, and an estimate of the average cost per foot of frontage on each lot, for the construction of the same to the center of the street. Such estimate shall include the cost of any cutting or filling necessary, and it shall be filed in the office of the city clerk for the inspection of all parties interested.

SECTION 9. Before proceeding to execute such proposed improvement, the council shall consider

and determine what proportion of the costs of such improvement should be paid by the lot owners, owning the respective lots fronting or bounding such streets, which shall be of uniform proportion and shall assess the amount so determined upon each such lot or tract of land as a special tax, specifying the amount, and shall thereupon cause notice to be published in the official paper, if there be one, if not, in some newspaper published in said city, that such assessment has been made, and that a time and place to be named in such notice, not less than one week from the publication thereof, the council will meet to review such assessment, that all persons interested will then be heard in objection to the proposed assessment, and any tax payer of said city shall be deemed interested. It shall be sufficient to state briefly in such notice the nature of the proposed improvement, and the locality; and no further or other assessment shall be necessary. At the meeting mentioned in such notice the council shall hear such objections as may be offered, and may review and modify such assessment, preserving uniformity throughout in such a manner as it may deem just; and for the purpose of such review may adjourn from time to time, as may be necessary; provided, no such assessment shall be increased without notice to the lot owners, if residents of said city.

Apportionment of cost for street improvements, how made; notice of to be given.

SECTION 10. Such assessments as finally adjusted shall thereupon be levied and assessed upon the respective tracts of land as a special tax, and inserted in the first annual tax roll made out thereafter and collected as other special taxes.

Assessment to be levied as special tax.

SECTION 11. In all cases mentioned in this chapter wherein the common council is authorized to cause improvement or repair to be made of any kind, the council may, in its discretion, cause the same to be done by men in its employ, and may procure the necessary material therefor, or may let the same by contract. If let by contract it shall be to the lowest possible bidder, and notice of the time within which bids will be received shall be given by publication in the official paper if there be one, if not, in some newspaper published in the city, at least one week prior to the expiration of such time, and in all cases the council may require bonds from contractors in

Improvements and repairs, council to let contract or do otherwise.

such amount and penalty as it may direct for the faithful performance of contracts awarded to them.

Dangerous sidewalks, city to repair, when.

SECTION 12. Whenever any sidewalk or part of any sidewalk shall in the judgment of the common council, declared by a resolution to that effect, be in a dangerous condition to persons passing over it, for want of being repaired or re-made, it shall have power to order the same to be forthwith repaired or re made; and thereupon forthwith to employ fit persons to repair or re-make the same for a fair price, and charge the expense thereof to the lots, parts of lots or parcels of land abutting thereon by a special assessment, and such assessment shall be a valid charge and lien upon such lots, parts of lots or parcels of land, without any estimate, notice, letting or proceeding preliminary to the doing of such work, except the resolution of said council so declaring such walk to be dangerous.

Snow and ice; street superintendent to remove upon owner's neglect; cost to be inserted in next tax levy.

SECTION 13. Whenever the superintendent of streets shall deem it necessary to remove the snow or ice in front of any lot or piece of land in said city, and the owners or occupants thereof shall neglect to remove the same for the space of twenty-four hours, the said superintendent shall remove or cause such snow or ice or both to be removed, and charge the same to the lot or lots, without any notice to any owner or occupant of said lot or lots, and it shall be the duty of the said superintendent after he shall have removed said snow and ice from in front of any lot or piece of land, when the same is completed to make out an itemized statement, duly verified, of the costs of such removal of ice or snow, or both, as the case may be, specifying the lot or lots, parcel or parcels of land adjacent to which such snow or ice, or both were so removed, and shall deliver the same to its city clerk. Said clerk shall present all such statements to the city council, on or before its first meeting in November of each year, and the council shall levy and assess the amount of such cost of such work upon the lot or tract of land adjacent to which such removal of such ice and snow, or either had been done, and said amount shall be a special tax, and the same shall be inserted in the next tax roll and collected as other taxes.

**SECTION 14.** The common council may, whenever it deems it advisable by ordinance, provide for a uniform system of sewerage, and by such ordinance or any ordinance amending or extending such sewerage, provide for connecting the different sewers in the city, built and hereafter to be built and apportion the cost of the same.

Council to provide for a system of sewerage.

**SECTION 15.** If a sidewalk on or in front of any lot shall become injured or destroyed by the burning of any building or property, or in consequence thereof, and the same shall not within a reasonable time be repaired or re-built by the owner of such lot, the common council may rebuild or repair such sidewalk at the expense of the lot without notice or letting to the lowest bidder.

Cost of work to be charged against lots

**SECTION 16.** When the common council shall deem any lot injurious to public health by reason of stagnant waters, or from other causes it 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 so to do, the council may abate or cause to be abated, at the expense of such lot, by taking the same proceedings as are herein required for the building of the sidewalk.

Stagnant water, council to provide for abatement of.

**SECTION 17.** Sewers, drains, gutters or ditches may be ordered dug, made or repaired by the common council at the cost, charge and expense of the lots which it may deem benefited thereby, and it shall apportion such cost, charges and expenses among and on such lots, in such proportion or amount as it shall deem the same benefited thereby. Such work may be done by the city or let by contract to some other party.

Sewers, drains, etc., cost of to be apportioned.

**SECTION 18.** Lots shall be liable as in this chapter provided, for the improvement of the streets to the center of the street on which they abut or join, and corner lots for all sidewalks up to the crossings, or cross walk.

Lots to be liable for improvements to center of street.

**SECTION 19.** 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 the state of Wisconsin.

All real estate liable for taxes.

**SECTION 20.** The city shall not be liable for any damages arising or growing out of any sidewalks, streets, drains, sewers, gutters or ditches,

Damages from defective sidewalks, gutters, etc., liability of city for, when.

or bridges 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 city of Menasha, had knowledge thereof, and no knowledge of such condition of the same shall be presumed, unless the defect 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.

Powers of council, how effected.

SECTION 21. Anything required to be done under any of the provisions of this chapter by the common council, may be done by order, resolution or ordinance.

Street work, street superintendent to have supervision of. Cost in first instance may be paid out of general fund.

SECTION 22. All work provided for in this chapter shall be done under the supervision of the superintendent of streets, unless otherwise provided, and to the acceptance of the common council, and in all cases wherein the council is authorized to do any work, or cause the same to be done and to assess the whole or any part of the cost thereof upon the adjacent lots, the expense of such work and material used may in the first instance be paid out of the general fund. The superintendent of streets, or person doing any such work, shall keep an accurate account of the cost of all labor and materials expended upon improvements or repairs, the whole or any part of which is chargeable to the adjacent lands, and before the first day of November in each year, shall report fully the same with itemized statements of accounts to the council, and if found correct, the council shall levy and assess the amounts so chargeable upon the respective tracts and lands assessable therefor, as a special tax, and the same shall be inserted in the tax roll for such year and collected as other city taxes.

Informality not to affect validity of proceedings.

SECTION 23. All the directions given in this chapter shall be deemed directory only, and no error, irregularity or informality in any of the proceedings under the provisions of this chapter shall in any way affect the validity of the proceedings had thereunder.

Proceedings to be presumed regular.

SECTION 24. 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 said chapters were complied with, until the contrary is shown.

SECTION 25. The common council shall have power to vacate any plat, or part of plat, upon petition of all the property holders interested therein; provided, that notice of application for vacating said plat, shall have been published for three successive weeks prior thereto, in a newspaper published in said city, or posting up notices in three public places in said city.

Vacation of  
plat upon  
petition.

## CHAPTER IX.

### OPENING STREETS, ALLEYS, ETC.

SECTION 1. The common council shall have power to lay out and open public squares, streets and alleys, and to change and widen and extend the same; to construct and open, alter, enlarge or extend drains, canals or sewers, or alter, widen or straighten water courses. For such purposes it may take private property in the following manner: Whenever twenty or more freeholders residing in any ward shall by petition represent to the common council that it is necessary to take certain lands within the wards where such petitioners reside, for the public use for any of the purposes herein mentioned, specifying in such petition the purpose for which said lands were required, and the courses and distances, metes and bounds of the lands proposed to be taken, together with the names and residences of the owners of such premises, if the name shall be known to the petitioners. If the common council shall determine that the prayer of such petition should be granted, it shall cause an accurate survey and plat of such land to be made and filed with the city clerk, and it may purchase or take by donation from such owners, such ground as may be needed, by agreement with the owners, and to take from them conveyances thereof to the city for such use or in fee; but otherwise it shall by resolution declare their purposes to take the same and therein by metes and bounds or other appropriate description, describe the lands proposed to be taken, defining

Right of  
eminent  
domain, coun-  
cil may  
exercise for  
street improve-  
ments, when.

Proceedings  
thereunder.

separately each tract owned by a distant owner, mentioning the names of each owner so far as known, and therein fix a day, hour and place, when and where it will apply to the county judge, or one of the justices of the peace of said city, for the appointment of a jury to appraise and condemn the same. The provisions herein contained authorizing the city to take such property by purchase or donation from the owner, shall not be construed as requiring an effort on the part of the council to so obtain the lands, but the council may proceed in the first instance to condemn the same.

Owners to be notified that city has made application to condemn lands for public use.

Notice, how served.

SECTION 2. It shall thereupon cause to be made by the clerk a notice of the adoption of such resolution, embracing a copy thereof and notifying all parties interested, that the council will, at the time and place named, apply to the judge or justice named for appointment of a jury, to determine the necessity of taking such lands, and the compensation to be paid therefor. A copy of such notice shall be served on the owner of each such parcel of land to be taken, residing within the state, and upon each person having an interest therein, by lien or otherwise, in the manner that a summons in an action in the circuit court is required to be served, and proof of such service shall be made in the same manner as of the service of a summons in the circuit court, and shall be *prima facie* evidence of the facts therein stated. If the notice cannot be so given as to all the parcels, then the same shall be also published once in the official paper, and the affidavit of the printer or foreman of such newspaper shall be *prima facie* evidence of such publication. Such notice shall be so served or published, at least five days prior to the time for such application. If any such owner be a minor or of unsound mind, the judge or justice before proceeding, shall, on the day fixed for hearing such application, appoint for him a guardian for the purpose of such proceeding, who shall give security to such person to the satisfaction of the magistrate, and act for such person.

Selection of jury to view lands and appraise damages, when and how made.

SECTION 3. At the time and place fixed for such hearing, the application, accompanied by a copy of such resolution and such survey, and by proof of the service of such notice, as provided in the last section, shall be filed with the judge or

justice, who shall thereupon make a list of twenty-four disinterested freeholders of said city. He shall hear and decide any challenge for cause or favor made to anyone, and if sustained shall replace his name with an unobjectionable juror until the list shall be perfected. Thereupon, under direction of such magistrate, each party, the common council, by its representatives on the one side, and the owners of land or their agents present, or if none be present, or they disagree, a disinterested person appointed by the judge or justice, on the other, shall challenge six names, one at a time, alternately, the council beginning. To the twelve jurors remaining, such judge or justice shall issue a precept requiring them all at any hour on a day named, not more than ten nor less than three days thereafter, to appear before him to be sworn and serve as a jury to view lands and appraise damages, and at the same time shall publicly adjourn the proceedings to the time and place so named; such precept shall be served by the chief of police of said city, or sheriff of the county, at least one day before such appointed time, by reading the same to each juror, or by leaving a copy thereof at his usual place of abode, in the presence of a member of his family.

SECTION 4. The jurors summoned shall appear at the time and place named; and if any be excused by the judge or justice, or fail to attend, he shall appoint other jurors having the requisite qualifications, in their place, and such appointment shall be endorsed upon or annexed to the precept, and such person shall be forthwith summoned, and like proceedings shall be had until a jury is obtained. It shall be the duty of every person appointed as such juror to act, unless excused for reasonable cause by the judge or justice appointing him, and every person summoned to serve on such jury who shall, without being so excused, neglect to serve, shall forfeit and pay the sum of fifty dollars; no person shall be compelled to serve upon such jury more than once during the same calendar year.

SECTION 5. Each of said jurors shall then, and before entering upon the discharge of their duties, severally take and subscribe an oath to be endorsed upon, or annexed to, such precept, to be

Vacancies in jury to be filled by appointment and endorsed on precept.

Jurors to take oath. Form of.

administered by said judge or justice: "That he is a resident and freeholder within said city, and is not interested in the premises proposed to be taken; that he will well and truly inquire into and determine the necessity for taking the lands mentioned in the resolution, and if found necessary, the damages occasioned thereby, and faithfully and impartially discharge his duties as a juror according to law."

Proceedings to continue without adjournment.

SECTION 6. From the time fixed in the precept for the meeting of the jury, the proceedings shall be continued before such judge or justice without adjournment, except from day to day, as necessity shall require until a jury is appointed and qualified and a verdict rendered.

Jury to separately appraise damages and deduct benefits if deciding upon the necessity to take lands. Right to appeal.

SECTION 7. Under the direction of such magistrate, the jury shall view the lands to be taken, and shall then sit before him to hear such competent evidence as shall be provided by any party, and for such purpose, such magistrate shall possess the same powers as a court in session with a jury, and if there be a necessity, may adjourn the sitting from day to day. Such magistrate shall decide all questions upon the admissibility of evidence. The jury shall render a separate unanimous verdict in writing, signed by them, in which they shall find whether it be necessary to take such lands, or any part thereof, for such purpose, describing such as they find necessary to be taken. If any be found necessary to be taken, then they shall render a verdict or appraisement of damages, specifying therein the damages of each owner, stating separately the value of the land taken from each, and the damages otherwise sustained by each by reason of the taking thereof, and from such last named sum they shall deduct any special benefit, if any, to be enjoyed by each from such improvement; and a majority of such jury may render such verdict or appraisal of damages, and shall sign the same. If the land be subject to lease, contract, mortgage or judgment, or there be any estate therein less than an estate in fee, or the buildings thereon belong to some person other than the owner of the land, the person claiming such interest may file with the magistrate a notice in writing specifying the interest claimed, and the jury in such verdict may award to such

person the damages which his interest in such lands sustains by the taking thereof, and deduct the same from their award to the owner; and any person filing such notice shall have the same right of appeal as is given to the owner, and in case of failure to appeal shall likewise be concluded by the verdict. Any technical error in such verdict may be immediately corrected with the assent of the jury. The verdict shall be filed by the magistrate. In case the jury shall fail to find a verdict, the council may upon the same petition, proceed to obtain the appointment of another jury in like manner. The testimony need not be reduced to writing, but the magistrate shall indorse upon the verdict the time of filing the same

SECTION 3. After the filing of such verdict, if it shall appear therefrom that any damages have been awarded, such jury shall again view the said premises, under the direction of the magistrate, and shall then sit before him to hear such competent evidence relative to any special benefits that may accrue from such improvements to any other tract of land in the same manner as provided in the next preceding section. The city on the one hand, and any tax payer or property owner on the other, shall have a right to be heard thereon. The jury shall thereupon consider and determine what proportion of the whole award of damages, as found by their verdict provided for in the preceding section, should be assessed upon the property, if any, specially benefited by such improvements, and shall then apportion and assess the same upon the lands and premises by them deemed specially benefited in proportion to the benefits received, and shall make a verdict specifying the proportion of damages to be so assessed, and the particular lot or tract of land determined to be benefited, and the amounts of such benefits accruing to each shall be set opposite thereto; and a majority of such jury may render such verdict determining the proportion of damages to be specially assessed as benefits, and upon what parcels of land, and the amount of each, and shall sign the same. Any technical error in such verdict may be immediately corrected, with the assent of the jury, and their verdict shall be filed by the magistrate, and

Jury to determine what proportion of damages awarded to be assessed as benefits.

he shall endorse thereon the time of filing the same. The jury shall then be discharged. Any lot owner against whom any such assessment is made may appeal from the verdict, as hereinafter provided.

Buildings on land to be valued by jury. Sale of building, when.

SECTION 9. If there should be any building standing, in whole or in part, upon the lands to be taken, the jury shall also, in making their verdict of damages, find and determine, first, the whole value of such building to the owner, aside from the value of the land, and secondly, the value of such building to remove, and shall state such determination in their verdict, and in such cases the award of damages shall be the value of the land taken and the damage to the owner by the taking, over and above such value less any special benefits, as provided in the second preceding section, together with the value of such building to the owner, less its value to remove. The owner of such building may, within ten days after the filing of such verdict, file with such magistrate a notice in writing, that he elects to take such building at the value thereof to remove, as fixed by the jury, and he shall have such reasonable time to remove it as the council shall allow. But if such owner shall neglect to file such notice within the time aforesaid, and to remove such building within the time allowed by the council, the council shall order such building to be sold at public or private sale, in their discretion, and shall direct by whom the sale shall be made. In case of public sale they shall prescribe the time and manner of giving notice, and the proceeds shall be paid to the owner or deposited with the city treasurer, and he subject to his order.

Appeals from award may be taken by city or owner within ten days. Notice of appeal.

SECTION 10. Within ten days after such verdict any land owner whose land has been found necessary to be taken or against whose land any assessment has been made, may appeal from the award of damages to him, or assessment of benefits, in such verdict, to the circuit court of said county, and the council may likewise appeal from the award of damages to any owner. The party appealing shall file with such magistrate a notice of appeal, specifying whether the appeal is from the whole award to him or assessment against him, or any part, and if a part, what part, and therewith an undertaking with two suffi-

cient sureties, to be approved by the magistrate, to pay all costs that may be awarded against such appellant on the appeal; and, at the time of filing such notice of appeal and undertaking shall pay the magistrate for his return to such appeal. Any person not so appealing shall be forever concluded by such verdict, appraisement of damages or assessment of benefits. The appeal herein provided for shall be the only remedy for damages sustained by the acts or proceedings of the said city, or its officers, in the matters which such verdict should cover and no action at law or in equity shall be had or maintained for or on account of such acts or proceedings. Upon an appeal being taken, the magistrate shall transmit to the clerk of the circuit court, within ten days, the notice of appeal and undertaking and thereto annex a copy of all the papers in the proceedings, with his certificate thereof, and he shall, after the time for appealing expires, file with the city clerk annexed together, all the original papers, including the verdict, with a certificate that no appeal has been taken, except as the fact is, which he shall briefly specify, and the clerk shall record all such papers.

SECTION 11. Upon filing such transcript in the circuit court, the appeal shall be considered an action pending in such court, and be so entered, the land owner as plaintiff and the city as defendant, and be subject to a change of place of trial and appeal to the supreme court as other actions. The appeal shall be tried by a jury, unless waived, and costs shall be awarded against the appellant, if a more favorable verdict be not obtained; otherwise, against the respondent. Upon entry of judgment, the clerk of the circuit court shall transmit a certified copy thereof to the city clerk.

SECTION 12. If the verdict of the jury find it necessary to take such lands, or any part thereof, the council may upon return thereof to the clerk, enact an ordinance according thereto, for laying out, changing, widening, or extending and opening such street, lane, alley, public grounds, square, or other public place; or constructing, opening, altering, enlarging or straightening any such drain, canal, sewer or water course; but shall not appropriate the land until the damages awarded the owner or other party interested, be paid or

Trial upon appeal.

Lands not to be taken until damages awarded owner are paid or tendered.

tendered him, or the amount thereof be set apart for him in the hands of the treasurer, and an order therefor lawfully executed to him to be deposited with the city clerk to permanently remain subject to his order at any time, before causing any such land to be actually taken for such purpose and before the rendition of any judgment in the circuit court for damages, the council may discontinue all proceedings therefor taken, and the city shall in that event be liable for the costs only. All the costs of every such proceeding shall be paid by the city, except when they recover costs in the circuit or supreme court.

Levy of assessment for benefits awarded, when.

SECTION 13. Upon the filing with the city clerk of the verdict and other proceedings mentioned in these sections, the council shall proceed to levy and assess upon each tract of land mentioned in the verdict of the jury against which any assessment of benefits has been made, the amount assessed thereon by the jury as a special tax and the same shall be inserted in the tax roll next made out thereafter and collected as other taxes.

Judgment upon appeal.

SECTION 14. If, on the appeal by any person against whom such assessment is made, judgment is rendered in favor of the appellant, such judgment shall be for the difference between the assessment and the amount determined to be justly chargeable against the property affected by such appeal on the trial in the circuit court.

Compensation of jurors.

SECTION 15. The said jurors shall each receive as compensation for his services on such jury, two dollars for each day's service on such jury.

Council may declare necessity to take lands for public purposes, how. Proceedings thereunder.

SECTION 16. Whenever the said common council, with the concurrence of three-fourths of the aldermen elected thereto, shall declare by their resolution, that it is necessary for the public interest to open a public street, or alley, or take land for any public purpose authorized by this act, the said common council shall have power to open such public street or alley, or take land for such public purpose, as the case may be, without any petition therefor and to proceed thereafter in that behalf, as in case of petition therefor, duly made; provided, that in case of streets and alleys, such resolution shall also be approved by the aldermen of the ward in which the land proposed to be taken may be situated. The resolution provided for in this section shall declare why it is necessary

for the public interest so to proceed; and no such resolution shall be passed by the common council at the same meeting in which it is first considered, but the same shall lie over to a future meeting, and the yeas and nays on the passage of such resolution shall be taken and duly entered in the journal of proceedings of the council.

SECTION 17. Upon the petition, in writing, of all the owners of lots or lands or any street or alley, and not otherwise, the council may vacate any street or alley, or any part thereof. At least ten days before acting on such petitions, the council shall cause the same to be published in the official paper of said city, with the notice of the time the same will be acted upon; and the votes of all the aldermen entitled to seats in the council shall be necessary to pass any ordinance or resolution vacating a street, lane or alley, or any part thereof.

Vacation of street or alley, how.

SECTION 18. Whenever the owner or owners of any land in said city shall desire the continuation of a street or alley, or highway or a new street or alley through or over the same, and shall have filed his or their written consent thereto, and shall waive all damages therefor, specifying the width, course and termination of such street, with the clerk of said city, the common council may by resolution, lay out, establish and name, and open said street or alley in accordance with said consent, and said street or alley shall thereafter be subjected to all laws and ordinances of said city applicable to streets and alleys.

Continuation or opening of street through private lands on owner's consent.

SECTION 19. Whenever complaint shall be made to the common council that any highway, street, or alley in said city has been or shall be encroached upon by any fence, building, or any other fixture, the said council may, by resolution, require and direct the removal of said encroachment and thereupon the mayor of said city shall make an order under his hand requiring the occupant of the land through or by which such highway, street or alley runs, and to which such fence, building or other fixture shall be appurtenant, to remove the same beyond the limits of such highway, street or alley, within twenty days thereafter and he shall cause a copy of such order to be served upon such occupant, and every such order shall specify the width of such highway, street or alley, the extent of the encroachment, and

Removal of encroachment upon street upon complaint.

place or places in which the same may be with reasonable certainty.

Penalty for failure to remove encroachment after notice.

SECTION 20. If the fence, building or other fixtures causing such encroachment shall not be removed within said twenty days after the service of such order, and such occupant shall not have denied such encroachment as provided in the next succeeding section herein, such occupant shall forfeit the sum of one dollar for every day after the expiration of said time during which such encroachment shall continue; and in such case if such encroachment shall not be removed within thirty days after the service of such copy, in addition to the collection of such penalty or forfeiture, the common council may, by resolution, authorize and direct the superintendent of streets of said city to forthwith remove such encroachment or encroachments; and it shall thereupon be lawful for and the duty of said superintendent of streets, without delay, to remove or cause to be removed such fence, building or other fixture, beyond the limits of such highway, street or alley as specified in the order mentioned in the next preceding section.

Proceedings when occupant serves notice denying encroachment.

SECTION 21. If the occupant upon whom a copy of such order shall be served shall, within ten days after the service thereof in writing, deny such encroachment, and file the same or a copy thereof with the city clerk, the said clerk shall thereupon make out and serve upon such occupant a notice at a time and place therein named, to be not less than twenty-four hours after said service, application will be made to a justice of the peace of said city, to be named therein for the selection of six disinterested freeholders of said city, to inquire into the premises at the time and place therein designated; the said justice shall make out a list of eighteen disinterested freeholders of said city, from which six shall be selected and struck in the same manner that juries are selected and struck in justices' courts; the said justice shall thereupon issue his precept directed to the chief of police, deputy sheriff, or any constable of the county, commanding him to summon the six freeholders thus selected to meet at a certain day and place not less than two days after the issuing thereof, to enquire into said alleged encroachment, and should

either party not be present at the selection of said jury, said constable shall give such absent party at least one day's notice of the time and place at which such freeholders are to meet.

SECTION 22. On the day specified in the precept the jury so summoned shall be sworn by such justice well and truly to inquire, whether any encroachment has been made, as described in the order of said mayor, and by whom; and the witnesses produced by either party shall be sworn by the justice and the jury shall hear the proofs and allegations which may be produced and submitted to them, and in case any person so summoned as juror shall not appear, or shall be incompetent; his place may be supplied by a talesman as in other cases.

Jury to determine whether any encroachment has been made.

SECTION 23. If the jury find that any such encroachment has been made, they shall make and subscribe a certificate in writing of the particulars and extent of such encroachment and by whom made, and shall file the same in the office of the city clerk; and the occupant of the land, whether such encroachment shall have been made by him or by any other person, shall remove the fence, building or other fixtures causing such encroachment within twenty days after the filing of such certificate, and in default of such removal shall forfeit and pay a penalty of one dollar for each day after the expiration of said time, in addition to the recovery of said penalty; the common council may proceed to cause such encroachment to be removed, as provided in section 20 of this chapter. Any person who shall replace any encroachment, after the same shall have been removed by the officers of the city, as provided in this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding three months, or both, in the discretion of the court.

Encroachment, upon finding of jury to be removed when.

SECTION 24. If the jury find that any encroachment has been made as aforesaid, the occupant shall pay the cost of such inquiry, and if the same shall not be paid in ten days the justice shall issue an execution for the collection thereof, directed to the chief of police of the city, sheriff or deputy sheriff, or any constable of the county,

Justice may issue execution for costs, when.

commanding him to levy such costs and his fees thereon, of the goods and chattels of such delinquent, and make return thereof to such justice within thirty days from its date, and the justice, constables, jurors and witnesses shall be entitled to the same compensation as other similar services in trials before justices of the peace.

City liable for costs, when.

SECTION 25. If the jury find that no encroachment has been made they shall so certify, in which case, the city shall be liable to pay the costs of the proceedings including the fees of witnesses of said occupant, who shall have been sworn in said matter, and the common council shall allow the same as other accounts against said city.

How allowed.

Lands subdivided or donated to city to be platted to conform to adjacent property.

SECTION 26. In all cases where lands in the city shall be subdivided in lots and blocks, or where streets, alleys, or public grounds shall be donated or granted to the public, the owner or owners thereof 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 the lot or tract so platted, and shall submit such maps or plats thereof to the common council of said city for their approval; and if such plat or map shall be approved by the common council it shall be lawful for the party or parties making such plat to record the same and evidence of such approval in the manner prescribed in the revised statutes of this state concerning town plats; but except such plats shall be approved by resolution adopted by said common council, a copy of which, duly certified 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 or map for record, or to record the same, and the same shall have no validity, and the person or persons neglecting or refusing to comply with the requirements of this section shall forfeit and pay a sum not exceeding one hundred dollars.

Public streets and alleys, what to constitute.

SECTION 27. All streets and alleys which have been heretofore laid out, or which may be hereafter laid out by the common council or otherwise, and which shall have been opened and used or worked and improved for four years successively, shall be held to be public streets and alleys, and

no defect or irregularity in the proceeding of opening the same or in the direction thereof, shall affect the same.

## CHAPTER X.

### FIRE DEPARTMENT.

**SECTION 1.** The common council, for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings or buildings of other material that shall not be considered fire proof, shall not be erected, placed, raised, enlarged or repaired and to direct that all and any building within the limits prescribed shall be made and constructed of fire-proof materials, and to prohibit the repairing or re-building of wooden buildings within the fire limits whenever the same shall have been damaged to the extent of fifty *per cent.* of the value thereof; and to prescribe the manner of ascertaining such damages and to prevent and prohibit the moving of any wooden building into or within such limits; and to prescribe the penalties for the violation of any resolution or ordinance passed under this section.

**SECTION 2.** 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 for 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, and 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 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 com-

*Fire limits.*

*Fire-engines, etc., council to procure and have control of. Fire companies, organization and regulation of.*

pany organized by the common council shall not exceed for hand engines, forty able bodied men, and for steam engines twenty able bodied men, and for hook and ladder companies twenty-five able bodied men, between the ages of eighteen and fifty years, and they may elect their own officers not otherwise herein provided for 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 and invasion.

Penalty for failure to obey lawful order of officers at fires.

SECTION 3. Whenever any person shall refuse to obey any lawful order of the chief engineer, the mayor and aldermen, fire warden, chief of police, or any policeman at any fire, it shall be lawful for the officer giving 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 police station 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, he shall be liable to such penalty as the common council shall prescribe, not exceeding twenty dollars.

Members of fire companies, who may be.

SECTION 4. Only actual residents and persons approved by the common council of the city of Menasha shall hereafter be admitted as a member of any company organized under this act. And upon removal from the city, of any member of any such company, and in case of his absence from the city for a space and term of two months at any one time, he shall immediately cease to be a member of his said company and of the fire department of the city of Menasha.

Expenses of fire department to be a city charge.

SECTION 5. 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.

Reservoirs for water supply, city may construct by contract or otherwise.

SECTION 6. The common council may by contract or otherwise construct and maintain in said city, reservoirs to supply with water the city fire department by sinking artesian wells or foun-

tains, or may construct reservoirs to be filled in any other manner and may purchase lands upon which to sink wells and reservoirs, deeds to be given to the city of Menasha, and may sell and deed such property when a majority of said council may see fit. And the common council may pass all the necessary ordinances for the protection of same and prescribe penalties for the injury or destruction to any of said property.

SECTION 7. The common council shall appoint one fire warden for each ward who shall perform such duties as the common council may prescribe, and they may, at any time enter into any building, house, store, barn or enclosure for the purpose of inspecting the same.

Fire wardens.

SECTION 8. The treasurer of the fire department shall receive and pay out all moneys belonging to said department and shall secure the faithful performance of his duty by his bond to said city in such penal sum as shall be required with sureties to be approved by the common council. Such moneys only to be paid out on order signed by the chief engineer and countersigned by the clerk of said department.

Treasurer of fire department.

SECTION 9. There shall be elected by the members of each company aforesaid, annually at their annual meeting a clerk or secretary who shall, on or before the first Monday in May in each year return to the city clerk a list containing the name of each member of their respective companies, and when any member of either of said companies shall cease to be a member thereof by resignation, expulsion or otherwise, notice thereof shall be given to the city clerk.

Officers of fire company, elected when.

SECTION 10. The city clerk is hereby required to keep a record of the members of the several companies organized under this chapter, and such record shall consist of the returns made by the several clerks or secretaries, as above provided; and no person shall be exempt from jury duty unless the name is entered on such list. In case any person shall, from any cause cease to be a member of either of said companies, the clerk shall note that fact on the list thereof, and shall return to the county clerk of the county of Winnebago a list of all persons who are members of either or all of said companies exempt from jury duty, on or before the day now appointed, or

City clerk to keep a record of members of fire companies.

which may hereafter be appointed for the annual meeting of the said board, and said board shall not place the names of such persons on the jury list for the ensuing year.

Percentage of fire insurance premiums to be paid city treasurer annually, when.

SECTION 11. There shall be paid to the treasurer of the city of Menasha for the benefit of the fire department of the city on or about the first day of February of each year, by every person who shall act in said city as agent for, or in behalf of any individual or association or associations of individuals, whether incorporated by the laws of this state, or by the laws of any other state, territory or country, to effect insurance against loss or injury by fire, the sum of two dollars upon each one hundred dollars, and at that rate upon the amount of all premiums which during the year or part of the year ending on the next preceding first day of January, shall have been received by such agent or person or company or by any other person or persons for him or it, which shall have been agreed to be paid for any insurance effected or agreed to be effected or promised by him, or such agent, or otherwise, or by such company against loss or injury by fire. No person shall, in said city of Menasha, as the agent or otherwise, for any individual or individuals, association or corporation, agree to effect or effect any insurance upon which the duty mentioned in the next preceding article, is required to be paid, or as agent or otherwise procure such insurance to be effected, unless he shall have first executed to said city of Menasha, and deposited with the clerk a bond, to be approved by the mayor of said city of Menasha, and deposited with the clerk of said city, the penal sum of three hundred dollars, with sureties thus approved by said mayor, conditioned that he will render to said clerk of the city, on or before the first day of February next, a just and true account, verified by oath, that the same is true and just of all premiums, which during the year ending on the first day of January, next preceding such report, shall have been received by him or by any other insurance against loss or injury by fire in said city, which shall have been effected or promised by him or agreed or promised by him to be effected for any individual or individuals, association or corporation, and that he will on such first day of

Bonds, agents of insurance companies to give.

February pay to the treasurer of said city of Menasha, for the use and benefit of the fire department two dollars upon every hundred dollars on premiums collected and at that rate upon the amount of such premiums; each and every such agent shall annually file such bond with said city clerk on the first secular day of January in each year; provided, that in lieu of an annual bond, any such agent may file a bond, with like conditions in the penal sum of one thousand dollars which shall be a continuing bond while such agent shall engage in the insurance business in said city, and any person who shall in said city effect, agree to effect, promise or procure any insurance specified in the preceding section, without having given such bond shall forfeit and pay for each offense and for each insurance so effected the sum of one hundred dollars, and such sum shall be recovered as other penalties or forfeitures accruing under this act; and said city may maintain an action on said bond, or against such agent, to recover all moneys required by the previous section of this act to be paid into the city treasury.

SECTION 12. Any person who shall pay any premium or agree to pay any premium for insurance on property within said city to any person, association or corporation, who shall not have filed the bond hereinbefore provided for, shall forfeit and pay three times the amount of the percentage upon such premium which should be paid into the treasury as aforesaid, to be recovered as other forfeitures under this act.

Penalty for paying insurance premium, when.

SECTION 13. It shall be competent for the common council to provide by ordinance for the organization and management of volunteer fire companies, and to appropriate from the general fund such sums as shall be deemed requisite for the aid of such companies for procuring apparatus and outfit, and maintaining and housing the same, and to provide suitable penalties for the violation of any of the provisions of the ordinances passed under this section, and shall be competent for the said common council to provide for the establishment or continuance of a paid fire department to be entirely under the control of the city government, and maintained at the sole expense of the city; and to provide for the appointment and com-

Volunteer and paid fire department, council may provide for.

pensation of as many firemen as shall from time to time be necessary.

## CHAPTER XI.

### BOARD OF EDUCATION.

City to constitute a single school district.

SECTION 1. All territory within the present corporate limits of the city of Menasha, and all territory which may hereafter be attached to, and incorporated in the limits of said city shall constitute one school district for the better regulation and management of the public schools of said city.

Board of education, how constituted.

SECTION 2. The commissioners of common schools herein named, and the superintendent thereof, shall be styled the "Board of Education of the City of Menasha," a majority of whom shall constitute a quorum, and shall be a corporate body in relation to all powers and duties conferred on them by virtue of this act. 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. Said board of education shall appoint one of their number clerk, and fix his compensation, which shall not exceed fifty dollars per year, and who shall hold his office during the pleasure of said board. The said commissioners shall receive no compensation for their services.

Oath of office.

SECTION 3. The said superintendent of schools and the said commissioners of the common schools so elected as aforesaid, shall, within ten days after election, take the oath of office prescribed by the constitution of the state, and file the same with the city clerk.

Clerk's duties defined.

SECTION 4. The clerk of said board shall 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 superintendent and clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth, and such records and all the books and accounts of said board shall at all times be subject to inspection of the city council, and of any committee thereof.

**SECTION 5.** The city council of said city shall have power, and it shall be their duty to raise from time to time, by tax upon real and personal estate in said city, which shall be liable to taxation, in addition to the amount of school moneys now or hereafter appropriated or provided by law for the common schools in said city, such sums as may be determined and certified by said board of education to be necessary or proper for any or all the following purposes:

1. To purchase, lease or improve sites for school houses. Sites.

2. To build, purchase, lease, enlarge, alter, improve and repair school houses and their out houses and appurtenances. Buildings.

3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages; but the power herein granted shall be denied to the furnishing of class or text-books for any scholar whose parents or guardian shall be able to furnish the same. Apparatus.

4. To procure fuel and defray the contingent expenses of the district library of said city. Fuel and library.

5. To pay the wages of teachers due after the application of public moneys, which may by law be appropriated and provided for that purpose; provided, nevertheless, that no tax shall be levied for such purposes oftener than once in each year; and provided also, that the amount to be raised for teachers' wages, and for contingent expenses in any one year, shall in no case exceed four dollars for each person that draws public money, nor less than three dollars; that the amount to be raised in any one year for the repairing of school houses and the appurtenances shall not exceed one thousand dollars, and for buying sites and erecting new school houses, shall not exceed five thousand dollars, and all sums certified to the common council by the board of education, for repairs to school houses above one hundred dollars for any one school house, and all sums certified for the building of new school houses, and all sums certified for purchasing, changing, improving and repairing school apparatus and furniture and appendages exceeding one hundred dollars, shall be approved by a vote of a majority of the whole number of aldermen before any tax shall be levied for said repairs or

School purposes, council may levy taxes for enumerated sites.

Sites.

Buildings.

Apparatus.

Fuel and library.

Teachers' wages; limitations on tax for various purposes.

for building said new school house or purchasing said apparatus or furniture.

School taxes, how levied and collected.

SECTION 6. The city council shall cause the tax or taxes herein provided for to be levied and collected annually on all such real and personal property or capital of any kind within said city as is subject to taxation by the laws for levying taxes for the state for the time being, said taxes to be levied and collected in the same manner as annual taxes are levied and collected in said city.

All moneys to be paid to treasurer.

SECTION 7. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to, or provided for said city, shall be paid to the treasurer of said city, who, together with the sureties of his official bond, shall be accountable therefor in the same manner as for other moneys of said city. The said treasurer shall also be liable to the same penalties as for any official misconduct in relation to the other moneys of said city.

Treasurer to pay out school moneys.

SECTION 8. The treasurer of said city shall not pay out any moneys in his hands, received by said city either as school moneys, or collected or received by him in any manner as school moneys, by virtue of any of the provisions of this act, except upon an order drawn upon him and signed by the superintendent and clerk of said board of education, and no such order shall be drawn except by virtue of a resolution or majority vote of the said board.

Board may bring suit upon treasurer's bond, when.

SECTION 9. The said board may cause a suit or suits to be prosecuted in the name of the city of Menasha, upon the official bond of the treasurer or of any collector of said city, for any default, delinquency or official misconduct in relation to the collection, safe keeping or payment of any moneys in this section mentioned.

Board of education; general powers enumerated.

SECTION 10. The said board shall have power, and it shall be their duty:

Organize schools.

1. To establish or organize such and so many schools in the several wards of the city, including the common schools now existing therein, as they shall deem requisite and expedient, and to alter and discontinue the same.

Purchase school houses.

2. To purchase or hire school houses and rooms, and lots and sites for school houses, and to fence and improve them, as they may deem proper; pro-

vided the amount necessary has been appropriated by the common council of the city.

3. Upon such lots and upon any site now owned by said city, to build, enlarge, alter, improve, and repair school houses as they may deem advisable. Build school houses.

4. To purchase, exchange, improve and repair school apparatus, furniture and appendages, and to provide fuel for the schools, and to pay their contingent expenses and the expenses of the district library. Purchase furniture.

5. To have the custody and safe keeping of the school houses, out houses, books, furniture and appendages, and to see that the ordinances of the city council in relation thereto are observed. Custody of school houses.

6. To contract with and employ all teachers in the common schools, and the high schools, who shall have been licensed by the superintendent, and at their pleasure to remove them. Employ teachers.

7. To pay the wages of such teachers out of the school moneys, which shall be appropriated and provided in said city so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised for that purpose by section five of this chapter, by tax upon the city. Pay teachers.

8. To defray the necessary contingent expenses of the board, including the salary of the clerk; provided, that the account of such expenses shall be first audited and allowed by the city council. Defray expenses.

9. To have in all respects the superintendence, supervision and management of the common schools in said city, and from time to time, adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils, and their transfer from one school to another, and generally for their good order, propriety and public utility. Supervision of schools.

10. Whenever in the opinion of the board, it may be deemed advisable to sell any of the school houses, lots, or sites, or any of the school property now or hereafter belonging to the city to report and recommend the same to the city council. Sell school property.

Report ordin-  
ances.

11. To prepare and report to the city council such ordinances and regulations as may be necessary or proper for the protection, safe keeping, care and preservation of school houses, lots and sites and appurtenances and all other property belonging to the city, connected with, or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations; and annually to determine and to certify to said city council the sums in their opinion necessary or proper to be raised under section 5 of this chapter, specifying the sums required for each of the purposes therein mentioned, and the reason therefor.

Adopt rules.

12. The said board shall adopt, and at their discretion modify or repeal by-laws, rules and regulations for their government, and for the organization, discipline and management of the public schools of said city, and generally adopt all such measures as shall promote the good order and public utility of said schools; provided, that such by-laws, rules and regulations shall not conflict with the constitution and laws of this state.

Expenditures  
not to exceed  
appropriations.

SECTION 11. It shall be the duty of said board in all expenditures and contracts, to have reference to the amount of money that shall be subject to their order during the then current year, for the particular expenditure in question and not to exceed such amount.

Library  
trustees.

SECTION 12. The said board of education shall be the trustees of the district library in said city, and all the provisions of law which now are or may hereafter be passed relating to the district school libraries, shall apply to said board in the same manner as if they were trustees of any ordinary school district; they shall also be vested with the discretion as to the disposition of moneys appropriated by any law of the state, for the purchase of libraries, which is therein conferred upon the inhabitants of school districts. It shall be their duty to provide library room and the necessary furniture therefor, and to appoint a librarian; to make all purchases of books for said library, and from time to time to exchange or cause to be repaired the damaged books belonging thereto.

Report receipts  
and disburse-  
ments, how.

SECTION 13. It shall be the duty of the said board at least fifteen days before the annual election for city officers in each year, to prepare and

report to the city council true and correct statements of the receipts and disbursements of moneys under and in pursuance of this act, during the preceding year, in which account shall be stated under appropriate heads:

1. The money received from the city council under the fifth section of this chapter.

2. The school moneys received by the treasurer of the city from the county treasurer.

3. Moneys received by direct tax.

4. All other moneys received by the treasurer subject to the order of the board, specifying the sources.

5. The manner in which sums of money shall have been expended, specifying the amount paid under each head of expenditures; and the city council shall ten days before such election, cause the same to be published in at least one of the newspapers published in said city, if there be one.

SECTION 14. The said board shall be subject from time to time, to the rules and regulations made by the state superintendent of the common schools, so far as the same may be applicable to them, and not inconsistent with the provisions of this act.

Board subject to state superintendent.

SECTION 15. The superintendent shall be the executive officer of the board of education, shall examine all teachers making application for schools (examination to be public and in presence of the board), shall grant certificates to such persons so examined, as shall be deemed by him and the majority of the board suitably qualified, and shall carry into effect the ordinances of the city council, and the rules and regulations of the board, in reference to the common schools; he shall also be especially charged with the care and custody of the several school houses of the city, and, under the direction of the board, shall superintend the building, enlarging, improving, furnishing and repairing of all of the school houses ordered to be erected by them, and the making of all repairs and improvements on and around the same. In addition to the foregoing duties, he shall visit the common schools of the city at least twice during each term and report their condition to the board, with such suggestions for their improvement as he may deem proper; he shall also perform such other duties with respect to such

Superintendent; his powers and duties.

schools as the board may assign him. The amount of his compensation shall be determined by the city council and the manner of its payment.

Annual report to state superintendent; what to contain; when made.

SECTION 16. It shall be the duty of the superintendent, between the first and fifteenth days of October in each year, to make and transmit to the state superintendent of public instruction, a report in writing, bearing date on the first day of October in the year of the transmission, stating:

Number of schools.

1. The number of schools taught within the city, and the length of time they have been taught by qualified teachers.

Total amount of money.

2. The total amount of public money received for the use and benefit of such schools.

Number of children.

3. The number of children taught in the common schools of the city, and the number of children residing in the city over the age of four and under the age of twenty years.

Manner of expenditures.

4. The manner in which the public moneys have been expended, and whether any and what part remains unexpended, and for what cause.

Amount of money raised for various purposes.

5. The amount of money raised in the city and paid for teachers' wages in addition to the public money raised therefor, the amount of taxes raised for the purchasing, repairing and insuring of school houses, for the purchase of school house sites, for building, hiring, for fuel, for district libraries, or for any purpose allowed by law, in said city since the date of the last preceding reports, with such other information as the state superintendent may from time to time require.

Board to fix tuition for non-resident children.

SECTION 17. The board may allow the children of all non-residents to attend any of the schools of said city upon such terms as said board by resolution shall prescribe, fixing the tuition therefor.

School of mixed grades.

SECTION 18. The board of education of said city shall establish and maintain a school of mixed grades. Said school shall be open to all persons of the school age residing in said city. The course of study for said school shall be such as shall be prescribed by the board of education of said city.

Title of school property vested in city.

SECTION 19. The title of all school houses, sites, and all school property shall be vested in the city of Menasha, and the same, while used for school purposes, shall not be subject to taxation for any purpose whatever, and shall be exempt from levy and sale on any warrant or execution. Whenever the board of education shall report to the

common council recommending the sale of any school houses, sites or property, the common council may dispose of the same, and direct the proper officers to execute a conveyance thereof; but no such sale or conveyance shall be made, except the board of education shall first report to such council, recommending such sale; and all the proceeds of any such sale shall be paid and kept by the city treasurer, and appropriated to the purchase of other school houses, sites, or for other school purposes, as the board of education shall direct.

SECTION 20. The common council shall have power to borrow from time to time such sum or sums of money, not exceeding fifteen thousand dollars in any one year, as the board of education shall recommend, and said common council shall deem necessary to be used by the board of education, under the direction of said council, in the purchase of lands for school house sites, and in the erection and construction or enlargement of school houses and buildings, and furnishing the same; and to issue bonds of the city or certificates of appropriation or indebtedness therefor, payable at such time or times as the common council may direct, not more than twenty years after date, and bearing interest at a rate not greater than five *per cent. per annum*, such bonds or certificates of appropriation or indebtedness to be signed by the mayor and countersigned by the city clerk, with the seal of the city attached; provided, however, the power herein given shall be exercised, subject to the limitation of municipal indebtedness prescribed by the constitution.

Council may borrow money for school purposes.

## CHAPTER XII

### OF PROSECUTIONS AND FINES.

SECTION 1. Justices of the peace elected under this act, in addition to the powers, duties and jurisdiction vested in, and required of them by the statutes and laws of the state of Wisconsin, shall have power to hear and determine all charges for offenses against any provision of this act, or any act amendatory thereof, and all charges for the violation of any ordinance, by-law, police or health

Justices of the peace, their powers and duties.

regulations made in pursuance of and by authority herein conferred.

Action to be commenced upon complaint.

SECTION 2. The city of Menasha in its corporate name may sue for and recover any and all fines, penalties and forfeitures under said city charter, and the acts amendatory thereof, or under the ordinances, by-laws, or police, or health regulations made in pursuance thereof, any general law of the state to the contrary notwithstanding, and such action shall be commenced by complaint substantially in the following form:

Form of complaint.

State of Wisconsin, }  
Winnepago County, } ss.  
City of Menasha. }

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

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

Warrant to be issued upon filing of complaint.

SECTION 3. It shall be sufficient to give the number of the section or sections and the title of the ordinance, by laws, regulation or resolutions, or of the laws violated in such complaint and said complaint may be sworn to before any officer authorized to administer oaths in the courts of this state. Upon the filing of such complaint in the office of any justice of the peace of said city, he shall issue a warrant thereon substantially as follows:

Form of warrant.

State of Wisconsin, }  
Winnepago County, } ss.  
City of Menasha, }

To the sheriff or any constable of said county, and to the chief of police of the city of Menasha, greeting:

Whereas ..... has this day complained to me in writing, on oath, that ..... did on the ..... day of ..... 18.., violate the ..... section or sections of an ordi-

nance, by-law, regulation or law (describing it by its title) which said ..... is now in force and effect, as said complainant verily believes.

Therefore, in the name of the state of Wisconsin, you are hereby commanded to arrest the body of said ..... and him forthwith bring before me, a justice of the peace of said city, to answer to said city of Menasha, on the complaint aforesaid.

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

.....  
Justice of the Peace.

SECTION 4. Upon the return of the warrant the court 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 so to do, shall recognize with security, for his appearance, in such sum as the court shall direct, or in default thereof, may be put in charge of the officer who made the arrest, or be committed to the common jail of Winnebago county. The complaint made as aforesaid shall stand in lieu of a declaration, and the plea of "not guilty" shall put in issue all subject matter which pertains to the defense of the action.

Justice may require defendant to recognize with security.

SECTION 5. A printed copy of an ordinance, by law or resolution passed by the city council and published in a newspaper or in pamphlet or book form, shall be *prima facie* evidence of its due passage and publication, and may be received in evidence after issue joined, and before the commencement of the trial thereof, either party may demand that the case may be tried by a jury of six men. Upon such demand of a jury, the justice shall direct a proper officer to write down the names of eighteen persons of the county qualified to serve as jurors in courts of record, subject to like qualifications. From such list of names, each party, commencing with the party demanding such jury, may strike alternately six names; and in case of absence of either party or his refusal to strike out, the justice shall appoint some person to strike out such names; parties may agree to try a cause with a less number of

Printed copy of ordinance to be prima facie evidence. Right of trial by jury.

jurors than six. The practice in the trial of causes before justices of the peace wherein the city of Menasha is plaintiff, shall be subject to all the rules of law and evidence applicable to those governing courts of justices of the peace under the general laws of the state of Wisconsin, unless otherwise herein provided. And either party may challenge jurors for causes known to law, and any such jurors excused for cause or for any other reason, may be supplied in the manner provided for in the laws of this state, applicable to the trial of causes in justices' court. And if no jury be demanded it shall be deemed a waiver of a jury trial. Each juror shall receive for his services one dollar per day, and the same fees for travel as allowed jurors in courts of record in this state.

Witness and juror fees need not be paid in advance. Executions upon judgment.

SECTION 6. Witnesses and jurors shall attend before the justice court in all city and criminal prosecutions, without the payment of fees in advance or a tender thereof, upon the process of the court duly served, and in default thereof their attendance may be enforced by attachment. In case the jury, after being kept a reasonable time shall fail to agree, they shall be discharged. And thereupon the court shall adjourn the cause to a day certain, and issue a new venire as aforesaid. 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 for the costs of suit; but if not guilty, the costs shall be taxed against the city. Executions issued upon judgment obtained for violation or non observance of ordinances or by-laws of the city, may contain a clause directing the imprisonment of the defendant in the common jail of Winnebago county for such a time as shall have been provided by the ordinance under which the judgment shall be rendered, in case of the non-payment thereof by the defendant, and all fines, penalties, and forfeitures when collected, shall be paid into the city treasury for the use of the city. The execution upon any judgment recovered in any such

action may also require that in case nothing shall be found from which the amount can be collected, the defendant shall be taken and imprisoned in the common jail of the county of Winnebago for a term not exceeding ninety days, unless the judgment be sooner paid and the term of such imprisonment shall be inserted in the execution and commitment to perform hard labor during the term of such imprisonment. In case nothing be found from which the amount can be collected, the defendant shall be imprisoned in the common jail of said county according to the terms of the execution.

Such execution may be in the following form:

State of Wisconsin, }  
 Winnebago County, } ss.  
 City of Menasha. }

Form of execution.

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

Whereas, the said city of Menasha, on the . . . . day of . . . . . 18 . . . . received a judgment before the undersigned, a justice of the peace, in and for said city and county, against . . . . . for the sum of . . . . . dollars, together with . . . . . dollars costs of suit for violation of (here insert the number of section, chapter or title of the ordinance and offense set forth in the complaint) These are therefore in the name of the state of Wisconsin to command you to levy distress on the goods and chattels of the said . . . . . (excepting such as the law exempts), and make sale thereof according to law in such case made and provided, to the amount of said sums, together with your fees and twenty-five cents for this execution, and the same return to me within thirty days to be rendered to the city of Menasha, for said judgment and costs; and for want of such goods and chattels whereon to levy to take the body of the said . . . . . and him convey and deliver unto the keeper of the common jail, of said county, who is hereby commanded to receive and keep said . . . . . in safe custody in the common jail, and at hard labor for the term of . . . . . unless the aforesaid sum and all legal expenses be sooner paid and

satisfied, or until he be discharged thence, by due course of law.

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

.....  
Justice of the Peace.

Form of com-  
mitment.

**SECTION 7.** The form of the commitment may be substantially the same as that of execution aforesaid, leaving out all that relates to the levy and sale and return of writ. The defendant in all city prosecutions under this act, may appeal to the county court of Winnebago county from any judgment rendered against him or her, if within twenty-four hours thereafter he file a notice of appeal, together with a bond in such sum as the justice may require, conditioned for his appearance at the next regular term of the county court of Winnebago county, which bond may be in the form now required of defendants on appeal in criminal cases before justices of the peace, under the laws of this state. Upon any appeal being taken and allowed, the justice of the peace shall stay all further proceedings in the case; and the defendant, if in custody, shall be discharged, and the justice of the peace shall within twenty days thereafter transmit the papers in the case so appealed with a transcript of his docket to the clerk of the county court.

Right of appeal  
to county  
court.

City to audit  
jail and offi-  
cer's fees.

**SECTION 8.** The jail fees and officer's fees for commitments in prosecutions in behalf of the city, shall be audited and allowed by the city council, when the same cannot be collected of the defendant before his discharge, and said city council may by resolution direct the justice of the peace to discharge from the city jail any person confined for a judgment due said city; but such discharge shall not operate as a release of the judgment unless said city council shall so direct in their resolution.

Justice may or-  
der prisoner  
discharged,  
when. No  
execution to  
be issued  
against body  
of defendant  
after commit-  
ment.

**SECTION 9.** Upon filing a certified copy of such resolution attested by the clerk of the city council, the justice of the peace shall order such defendant discharged from custody, and make an entry of such discharge upon his docket; an execution may issue or be renewed by indorsements from time to time before or after the return day thereof, and before or after the commitment of the defendant until the judgment is satisfied or

released. But after the defendant shall have been committed no execution shall be issued against the body of the defendant, nor, if previously issued shall authorize the taking of the body of the defendant thereon. It shall be the duty of the chief of police, policemen and constables of the city of Menasha, and they are hereby authorized and required, to summarily arrest without warrant, and take before any justice of the peace, of said city, any person who shall be found within the corporate limits of said city in a state of intoxication; or who shall be guilty of any boisterous revelry or obscenity, or any breach of the peace, by making any improper noise or disturbance, or indecent exposure of his person, or by firing guns, or fighting or threatening to fight, or in any other manner shall be engaged in violating any ordinance of said city made for the preservation of the peace and good order thereof, and said justice shall have power to hear, try and determine all such offenses. And any person convicted of any offense specified in this act where no other punishment is specified by law, or by any ordinance of said city, shall be punished by fine of not less than three dollars, nor more than fifty dollars, or by imprisonment in the county jail of Winnebago county not less than five days, nor more than ninety days in the discretion of the justice, and in all cases the justice shall impose the payment of the costs of prosecution upon the person so convicted as a part of the punishment, and in default of payment of any such fine or costs, the justice shall commit the defendant to such common jail for such number of days, not exceeding ninety nor less than five, as he may deem proper. But in case any person shall be committed for the non-payment of any such fine, or costs, he shall be discharged upon payment of the same, together with the costs and expense of his imprisonment to the sheriff or other officers having charge of such police station or common jail. Any officer making any arrest under the provisions of this act, may, if necessary, commit the person arrested to such police station without process, and such person shall be delivered up to such officer by the keeper of such police station on demand and without process; provided, that if such officer

Drunken person, police may arrest without warrant.

General provisions of law regarding the trial for criminal offenses, fees, etc., to apply.

does not demand the person so committed within twenty-four hours (Sundays excepted) after such committal, the officer having charge of such prison shall discharge the person so arrested from confinement. All of the general provisions of the law concerning the trial of criminal offenses, the fees of the officers and proceedings in which upon trial, the justice finds he has not final jurisdiction of the case, shall govern trials under this act, unless otherwise provided in this act; provided; that in all convictions under this act where a punishment for the offense is prescribed in the general statutes of this state, or in any ordinance of said city, the penalty as prescribed by such statute or ordinances shall be imposed upon the person so convicted. In all cases which by the provisions of this act, no other punishment is provided, the common council shall have power to pass ordinances, by-laws or regulations, and for the violation of which they may fix a penalty therefor which shall not exceed a fine of fifty dollars, or by imprisonment not exceeding ninety days for any one offense, and may also provide that in default of payment of any judgment rendered for such violation or omission, defendant may be imprisoned in the common jail of Winnebago county, not exceeding said ninety days.

General laws of state to apply to all proceedings in justices' courts.

SECTION 10. All the general laws of the state of Wisconsin, relative to the proceedings in justices' courts in civil or criminal proceedings shall apply to the courts of such justices elected under this act, and all general provisions of law concerning the trial of criminal offenses, and the conducting of criminal prosecutions, appeals from the judgments of the justice, the fees of officers, and proceedings in which upon trial, the justice finds he has not final jurisdiction of the case, shall govern. When an act or omission declared to be an offense by the general laws of the state, is also made an offense by the provisions passed pursuant to this act, a conviction or an acquittal in a prosecution under the general law shall be a bar to a prosecution under this act or such ordinance. The person accused shall have the same right to a removal of the case for prejudice as provided by the

general laws of the state, except without the payment of fees for such removal.

SECTION 11. The city of Menasha shall be entitled to the use of the common jail of said county, for the commitment thereto, of any person found guilty of violating any of the ordinances, by-laws or resolutions of said city of Menasha under this act.

City to have use of county jail.

## CHAPTER XIII.

### BOARD OF HEALTH.

SECTION 1. It shall be the duty of the mayor of the city of Menasha to appoint annually, on the third Tuesday in April, or within one week after entering upon the duties of his office, a committee consisting of four aldermen, one from each ward, who shall be known as the board of health of said city, and whose duty it shall be to examine into and consider all measures necessary for the preservation of the public health in said city, and to see that all ordinances and regulations in relation thereto be observed and enforced.

Board of health, how constituted.

SECTION 2. Said board shall choose one of their members president, who shall preside at all meetings of said board and shall perform such other duties as are herein prescribed or may be required of him by any ordinance or resolution of the common council of said city.

President board of health.

SECTION 3. The clerk of said city shall be the clerk of said board, and shall keep a full record of all the acts, orders, resolutions, rules, regulations and proceedings of said board, in a book to be provided for that purpose, and copies of any such acts, orders, resolutions, rules, regulations and proceedings made from such record thereof, and certified by said clerk under the corporate seal of said city, shall be received as evidence in all courts and places.

City clerk to be clerk of board.

SECTION 4. The common council shall have power to appoint, and at pleasure, to remove, a health officer for said city, to define his general duties, and in case of necessity, to provide for the necessary assistance to him, and to fix the compensation of such appointees and employes. The board shall have power to authorize such health

Council may appoint or remove members of board at pleasure.

officer to exercise any or all of the powers conferred on them, and all directions and orders of the health officer made under such authority of the board of health, shall have the same force and effect as if made by the said board.

Powers of board.

SECTION 5. The said board of health and health officer, or any person acting under their orders, shall have authority to enter into and examine at any time, all buildings, lots and places of all descriptions within the city for the purpose of ascertaining the condition thereof so far as the public health may be effected thereby.

Board to adopt measures for general health of city.

SECTION 6. The board of health shall give all such directions and adopt all such measures for cleansing and purifying all such buildings, lots and other places, and for causing the removal therefrom of all nauseous substances producing a disagreeable smell or tending to cause sickness or disease, as in their opinion shall be deemed necessary, and they may do or cause to be done whatever in their judgment shall be needful to carry out such measures. Every person who shall disobey any orders of the board of health which shall have been personally served upon him requiring him to abate or purify any premises owned or occupied by him in the manner or at the time described in the order, shall, on complaint of the board of health, or any member thereof, or any person serving such order before any justice of the peace of said city, be liable to arrest and summary trial and punishment by fine not less than ten dollars nor more than fifty dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment in the discretion of the court.

Penalty for violation of.

Board may abate nuisances at expense of city, when.

SECTION 7. It shall be lawful for the board of health, in all cases where they may deem it necessary for the more speedy execution of their orders, to cause any such nuisance or nuisances to be abated or removed at the expense of the city, and also to cause any such nuisance or nuisances which may exist upon the property of non-resident owners or upon property, the owners of which cannot be found or are unknown and cannot be ascertained, to be abated or removed in like manner at the expense of the city, and the sum or sums so expended in the abatement or removal of such nuisance or nuisances in such cases shall

be a lien in the same manner as any tax upon real estate, upon the lots or premises from or upon which such nuisances shall be abated or removed; the board of health by their president shall certify to the city clerk the description of such property, and the cost of abating or removing such nuisance or nuisances thereon, and the city clerk shall insert the amount of such cost in the next tax roll of said city thereafter as a special tax to be collected, as other taxes in said roll are collected, and payment thereof may be enforced in like manner as other special taxes upon real estate are levied and collected in said city; provided, that the common council shall, from time to time, on application of said board of health, appropriate and set apart out of the general fund of said city, such means as the council in its discretion shall deem necessary for the purposes of this chapter; and the expenses which the said board are authorized by this section to incur, shall be paid exclusively out of the funds so provided by said city, and said board shall not be authorized to create any liability on the part of said city in excess of the sums which shall have been appropriated and set apart as aforesaid for their use.

Expense of to be a lien upon real estate.

SECTION 8. It shall be the duty of the board of health, by resolution, to direct any bedding, clothing, putrid or unsound beef, pork, fish, hides, or skins of any kind, or any other articles found within said city, which in their opinion will be dangerous to the health of the inhabitants thereof, to be destroyed or buried, and they may employ such persons as they may deem proper to remove or destroy such articles, and every person who shall in any manner resist or hinder any person so employed, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than three dollars nor more than one hundred dollars, or imprisonment not exceeding three months, or both. It shall also be their duty to procure suitable places for the reception of persons sick from any pestilential or infectious disease, and in all cases where sick persons cannot otherwise be provided for, to procure for them the proper medical and other attendance and provisions, and to forbid and prevent any communication with any house or

Destruction of articles dangerous to public health. Penalty for interference.

family infected with any contagious disease except by physicians and nurses.

Discontinuance of business detrimental to public health.

SECTION 9. It shall be the duty of the board of health, on complaint being made to them, or whenever they shall deem any business, trade or profession, carried on by any person or persons, or corporation in the city of Menasha, detrimental to the public health, to notify such person or persons or corporation to show cause before the board of health, at a time and place specified in such notice, why such business, trade or profession should not be discontinued or removed, which notice shall not be less than three days (except that in case of epidemic or pestilence, the board of health may, by general order, direct a shorter notice, not less than twenty-four hours), and may be served by leaving the same at the place of business, or residence of the parties to be affected thereby. Cause may be shown by affidavit, and if, in the opinion of the board of health, no good and sufficient cause be shown why such business, trade or profession should not be discontinued or removed the board shall order the said parties to discontinue or remove the same within such time as the board may deem reasonable and necessary, and the order of the board shall be final and conclusive.

Penalty for failure to obey lawful orders.

SECTION 10. Any person or persons failing or refusing to obey such lawful order of the board of health, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than ten dollars, nor more than one hundred dollars, or by imprisonment of not more than three months, or by both such fine and imprisonment; and such person or persons shall be subject to like punishment for each and every day that he, she or they shall continue such business, trade or profession after the expiration of the time specified in the order of the board of health, for the discontinuance or removal of the same.

Ex-parte affidavit of service of notices to be prima facie evidence.

SECTION 11. In all trials for the violation of the provisions of this chapter, the *ex parte* affidavit of service of any order, notice or requirement of said board of health, purporting to be made by the person who made such service, and stating the time, place and manner of service, shall be deemed and taken as *prima facie* evidence of the due ser-

vice of such order, notice or requirement, in all trials in any court.

**SECTION 12.** All fines mentioned in this chapter shall be collected as other fines, and when so collected shall be paid into the city treasury and credited to the contingent fund.

Fines to be paid into treasury.

**SECTION 13.** The board of health, during the prevalence of the Asiatic cholera, or of any epidemic disease, shall have power, when by them it is deemed necessary, to take possession of and occupy as temporary hospitals, any building or buildings in said city; but the city of Menasha shall pay for the use of such property so taken, a just compensation.

Special power during prevalence of epidemic disease.

**SECTION 14** It shall be the duty of each and every practicing physician in the city of Menasha:

Requirement of physicians.

1. Whenever required by the board of health of said city to report to said board at such times and in such forms as they may prescribe, the number of persons attacked with any pestilential, contagious or infectious disease, attended by such physicians for the twenty-four hours next preceding such report, of any such pestilential, contagious or infectious disease.

To report number attacked with pestilential disease.

2. To report in writing to said board of health every patient he shall have, laboring under any pestilential, contagious or infectious disease within twenty-four hours after he shall ascertain or suspect the nature of such disease.

To report number having pestilential disease.

3. To report in writing to the board of health, when by them required, the death of any patient who shall have died of any disease within twenty-four hours thereafter, and to state in such report the specific nature and type of such disease.

To report deaths from pestilential disease.

**SECTION 15.** Any practicing physician who shall neglect or refuse to perform the duties required of him by or in any section of this chapter, shall be considered guilty of misdemeanor, and on conviction thereof, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each offense.

Penalty for failure of physician to report.

**SECTION 16.** The common council of said city shall, in making their annual estimates and levying for the expenses of the city government, estimate and provide such sums as may be necessary for the compensation of such officers and all other employes, which the said board of health are authorized to appoint by this chapter, and for all

Council to make annual appropriation for expenses of board of health.

other necessary expenses incurred by said board in the performance of the duties prescribed in this chapter and such expenses shall be audited and allowed and paid as other expenses of said city.

Council may prescribe additional duties.

SECTION 17. The common council of the city of Menasha shall have power to futher define the duties of the board of health, and to pass such ordinances in aid of the powers of the board of health as may tend to promote and secure the general health of the inhabitants of said city.

Police and civil officers to aid board of health.

SECTION 18. It shall be the special duty of the members of the police force of said city, and of all magistrates and civil officers and all citizens of the state to aid, to the utmost of their power, the board of health and the officers mentioned in this chapter, in the performance of their respective duties, and on requisition of the president of said board of health officers, it shall be the duty of the police of said city to serve the notices of said board, and to perform such other duties as such board may require.

## CHAPTER XIV.

### BONDED INDEBTEDNESS.

Bonded indebtedness of town in aid of railways to be apportioned between town and city, how.

SECTION 1. The outstanding and existing indebtedness against the town of Menasha upon the unpaid bonds, with the coupons attached, heretofore issued by said town of Menasha to the Wisconsin Central railroad company and the Milwaukee & Northern railroad company, shall be apportioned between said town and city in the ratio of one-fourth to said town and three-fourths to said city, and shall be paid by said town and city in such *pro rata* shares; provided said city shall not be required to pay any portion of such bonded indebtedness where it has already provided and paid its *pro rata* share thereof, or to pay any larger proportion of said coupons so attached to said bonds than the proportion hereinabove named, and upon the payment of the same shall be discharged from any further liability or payment upon said coupons, and all sums heretofore paid by said city on said coupons shall be credited to said city in discharge of its obligations. And the said town and city of Menasha shall re-

spectively provide for the payment of, and pay their, and each of their, *pro rata* shares of such indebtedness as aforesaid, which remains unpaid, and a legal obligation upon said town and city to pay at all times, when and as the same shall become due and payable, and each one of said corporations, town and city, shall be liable to the other for all costs and damages incurred by either one, in consequence of the failure of the other corporation to provide for and pay its *pro rata* share of indebtedness as aforesaid.

SECTION 2. If said town of Menasha shall fail to provide for, and pay its *pro rata* share of any of the aforesaid bonded indebtedness, for any cause whatever, and the said city of Menasha shall have provided for, or shall provide for, and be ready and willing to pay its *pro rata* share of such indebtedness, the said town of Menasha shall be liable to the city of Menasha for all costs and damages which it may sustain by reason of the non payment by said town of its share of such indebtedness, and shall, alone defend any and all suits, actions or proceedings that may be instituted in any court against said town as sole defendant, or against said town and city as joint defendants, or against said city as sole defendant, to enforce payment of the same, and shall save said city harmless from any and all costs, damages and judgments, and from the payment of any sum whatever, arising or growing out of the same.

Penalty for failure of town to pay its *pro rata* share of bonded indebtedness.

SECTION 3. If the said city of Menasha, shall fail to provide for and pay its *pro rata* share of any of the aforesaid bonded indebtedness, for any cause whatever, and the said town of Menasha shall have provided for, or paid, or shall provide for, and be ready and willing to pay its *pro rata* share of such indebtedness, the said city of Menasha shall be liable to the town of Menasha for all costs and damages which it may sustain by reason of the non payment by said city of its *pro rata* share of such indebtedness and shall alone defend any and all suits, actions or proceedings that may be instituted in any court against said town as sole defendant, or against said town and city as joint defendants, to enforce payment of the same and shall save said town harmless from any and all costs and

Penalty for failure of city to pay its *pro rata* share of indebtedness.

damages, and judgment, and from the payment of any sum whatever arising or growing out of the same.

Joint action to be brought against city and town for failure to pay maturing bonded indebtedness.

**SECTION 4.** If any of the aforesaid bonded indebtedness of said town shall not be paid at maturity, the holder of the same may institute and maintain any joint action, suit or proceeding against said town and city, to enforce payment thereof, and each shall be liable for its *pro rata* share of the costs and expenses incurred therein; provided, that if either said town or said city shall have before any such action or proceeding shall be commenced, purchased, paid or taken up its *pro rata* share of any such bonded indebtedness, or if it shall after suit is commenced and before judgment, tender to the person owning and holding any of said bonds or coupons, its *pro rata* share of the amount due thereon if tendered before suit commenced, and if after suit commenced, its *pro rata* share of the amount due thereon and costs incurred in said action up to the time of said tender, and if said tender shall be refused, no action shall be maintained against the party making said tender, when the same was made before suit commenced; and when made as aforesaid after suit commenced, shall be dismissed as to the party making said tender. Or either party may pay to the plaintiff in any such action after judgment, or to the clerk of the court in which judgment may be rendered, its *pro rata* share of said judgment as herein provided, and upon such payment being made, such judgment shall be discharged, as to the party making said payment. The said party making said tender or said payment as aforesaid, shall not be liable to the party making no tender or payment for any costs or proceedings in said action.

Action against either party to be dismissed, when.

Council to levy special tax to pay certificates of appropriation, etc., heretofore issued to pay bonded indebtedness.

**SECTION 5.** In all cases where certificates of appropriation or interest bearing orders have heretofore been issued, to borrow money, to purchase and take up any such bonded indebtedness, under and in pursuance of the laws incorporating said city and the several amendments thereto, and which were provided to be paid by a special tax to be levied in each year specified in the resolution authorizing the issuing of the same, the said common council may, and it is hereby made its duty

to levy a special tax or taxes to pay the same, according to the terms of such resolution, and said certificates of appropriation, whenever the same or any portion thereof shall become due. Said special tax or taxes may be levied at any time, and shall be assessed and levied upon the last equalized assessment of the real and personal property of said city, previous to the levying of any such special tax. And immediately after the said special tax shall be levied as aforesaid, the clerk of said city shall assess, and make out upon a tax roll made from such assessment, such tax in the same manner as provided by law for the assessing, calculating and making out taxes in other cases; and upon completion of said tax roll, the said clerk shall immediately make out a duplicate copy of such tax lists or roll to which shall be appended a warrant as provided in and by the charter of said city, so far as the same shall be applicable, signed by the mayor and clerk of said city, and sealed with the corporate seal of said city, and shall deliver said tax list and warrant to the treasurer of said city, and thereupon such treasurer shall, at once, proceed to collect the taxes and assessment specified and made out in such tax list, in the same manner as provided for the collection of taxes in other cases, and shall be possessed of the same powers and rights. And he shall have for collecting such taxes one *per cent.* for ten days from the date of the warrant, and two *per cent.* thereafter. Such warrant shall be returnable to the county treasurer of Winnebago county, in forty days from its date, and at the expiration of such time, the treasurer of said city shall return such tax list and warrant to said county treasurer, with a list of all lands, lots and personal property upon which the taxes have not been paid, with the taxes assessed thereon, and all such taxes not then collected and so returned to the county treasurer shall draw interest after such return at the rate of twenty *per cent. per annum* up to the day of the sale of lands for taxes. And provided any such tax may be paid prior to such sale, by paying the amount of such tax with interest at the rate of twenty *per cent. per annum* and two *per cent.* for collection, and all costs thereon to that date. And the county treasurer

Tax, how  
levied.

shall possess the same powers and rights in collecting such taxes so returned as in other cases, and shall proceed to advertise and sell all lands on which such taxes shall remain unpaid, at the same time, and in the same manner, and with the same effect, as provided by law for the sale of lands for taxes, and all such taxes returned to the county treasurer and collected by him, shall be by him paid over to the treasurer of said city with the interest collected thereon.

Council may by resolution adopted by a majority of all the members levy special taxes.

SECTION 6. The common council of said city, may, by resolution, passed by a majority of all the members of said council, assess and levy said special taxes at the same time and in the same manner as other annual city, school, state and county taxes are assessed and levied, and determine that said special taxes shall be inserted for collection in the annual tax roll of said city as other taxes. And upon the passage of said resolution, the city clerk shall make out and calculate said special taxes and insert the same in a separate column, in said annual tax roll for collection, to be collected at the same time and in the same manner as other taxes in said roll. All the laws of the state, relative to the collection and return of taxes, and the sale of lands for the non payment of the same, shall govern and apply to the collection and return of said special taxes and the sale of lands for the non-payment of the same, as herein provided for.

City not to be liable upon bonded indebtedness, when.

SECTION 7. Nothing herein contained shall render said city of Menasha liable upon any such bonded indebtedness, either principal or interest, where it has already paid its *pro rata* share of such indebtedness, and no action thereon shall be commenced or maintained against said city of Menasha, but provided that this act shall not effect any suit commenced or pending by the town of Menasha against any of the holders of such bonded indebtedness, to determine its validity, but said city of Menasha shall not be liable for any cost therein, when it shall have provided, taken up, or paid its *pro rata* share of such indebtedness.

## CHAPTER XV.

## MISCELLANEOUS PROVISIONS.

**SECTION 1.** No person shall be an incompetent judge, justice, witness or juror by reason of his being a resident or freeholder of the city of Menasha, in any proceeding or action in which the city shall be a party in interest.

Resident or freeholder not incompetent judge, justice, etc.

**SECTION 2.** All ordinances, by-laws, rules or regulations now in force in the city of Menasha, and not inconsistent 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.

Ordinances, etc., heretofore passed to remain in force, when.

**SECTION 3.** All property, real or personal, now or at any time hereafter belonging to said city, or to either of the wards thereof, or any department thereof, shall be exempt from levy and sale under, and by virtue of any execution; nor shall any real or personal property of any inhabitant of said city, or of any individual or corporation thereof, be levied on or sold under, or by virtue of, any execution issued to satisfy or collect any debt, obligation or contract of said city.

City, ward and property of individuals exempt from execution issued to satisfy obligation of city.

**SECTION 4.** The said city may lease, purchase and hold real or personal estate, sufficient for the public use, convenient or for necessities of said city, and may improve, sell and convey the same. All property, real and personal or mixed belonging to the city of Menasha, shall be and continue to be, vested in the corporation created by this act.

City may purchase, lease or hold real or personal estate. ;

**SECTION 5.** No general laws of this state contravening the provisions of this act, shall be considered as repealing, amending or modifying the same unless such purpose be expressly set forth in such law.

General laws contravening act not to repeal.

**SECTION 6.** Chapter 127 of the general laws of the state of Wisconsin, for the year 1874, and the several acts amendatory thereof, and all acts and parts of acts relating to the government of said city, inconsistent with or contravening the provisions of this act are hereby repealed; provided, the repeal of said acts shall not revive any acts or parts of acts heretofore repealed, and shall not in any manner affect, injure or invalidate any con-

Chapter 127, laws of 1874, and acts amendatory contravening this act repealed.

tracts, grants, license or right accrued or established in favor of, or against said city, or any proceeding suit or prosecution had or commenced in any civil case previous to the time when such repeal shall take effect; but every such act, right, grant, license or proceeding shall remain as valid and effectual as if the provisions so repealed had remained in force; but the subsequent proceedings shall conform to the provisions of this act when applicable.

Penalties and forfeitures how affected by repeal.

SECTION 7. No offense committed and no penalty or forfeiture incurred, previous to the time when any of the acts aforesaid shall be repealed, shall be affected by such repeal except that when any punishment, forfeiture or penalty, shall have been mitigated by the provisions of this act, the provisions of this act shall apply to, and control any judgment to be pronounced after this act shall take effect for any offense committed before that time.

Failure to hold election or organize council not to affect corporation.

SECTION 8. 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.

City to have exclusive jurisdiction of Fox river within corporate limits.

SECTION 9. All that part of the Fox river within the limits of said city, shall be kept under the exclusive jurisdiction of said city, and the common council of said city are hereby 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.

City and ward officers, terms of.

SECTION 10. All city and ward officers, elective and appointive, shall hold their respective offices for the term for which they shall have been re-

spectively elected or appointed unless they shall be sooner removed as provided in this act or a vacancy has otherwise occurred, and until their successors shall be elected or appointed and qualified.

SECTION 11. 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 and 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 such bridges, by any vessel or water craft, 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 or vessels.

General laws for preservation of bridges to apply.

SECTION 12. 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 in suits against city, how made.

SECTION 13. The common council of said city may, at any time appoint four 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 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.

Survey and plats of city, who to make.

SECTION 14. The survey and land marks so made and established shall be *prima facie* evi-

Survey and landmarks to be prima facie evidence.

dence 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.

Deeds and leases, how drawn.

SECTION 15. When the city of Menasha shall deed or lease any real estate, or any interest therein, owned by said city, the party of the first part shall be the city of Menasha, and the person or persons authorized to execute such deed or lease need not be named in the body thereof.

Deeds and leases, mayor to execute, when.

SECTION 16. 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 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.

Attested copy of ordinance or resolution to be attached.

SECTION 17. 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 lease or deed, 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.

Council may forbid the selling of intoxicating liquors to certain persons, when.

SECTION 18. 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.

SECTION 19. The common council of the city of Menasha is hereby authorized to cause this act, together with any other acts or parts of acts of the legislature of Wisconsin relating to or affecting said city, and also any ordinances, by laws, resolutions, rules or regulations of said city or any of its departments, and any other acts, resolutions, contracts or other documents relating to or affecting said city to be printed or published in book or pamphlet form, and the same shall be admitted and may be read in evidence in all courts in legal proceedings, from such printed books, so published by order of said common council, and such books shall be deemed *prima facie* evidence of the contents and due passage, and shall be sufficient publication of all such acts or ordinances, by-laws, rules, resolutions or regulations.

Council may cause act, and other acts affecting city, etc., to be published.

SECTION 20. 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 said 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. In letting the city printing the common council shall have the right to reject any and all bids.

Clerk to advertise for proposals for printing, when.

Board of  
review, how  
composed.

**SECTION 21.** The board of review shall meet at the office of the common council on the fourth Monday of June, each and every year, at nine o'clock in the forenoon, and shall proceed in all respects as town boards of review are required to proceed so far as the same is applicable, reviewing, correcting and equalizing the assessment rolls of the several wards of the city. The mayor shall be president of the board of review, and the city clerk the clerk thereof.

Completion of  
assessment  
roll, notice of,  
how given.

**SECTION 22.** When the assessment roll shall be completed, the assessors shall give one week's notice in the official paper, if there be one, if not, in some paper published in said city, and shall fix a time and convenient place where they will hear any objections of parties deeming themselves aggrieved by such assessment; and after hearing the same, the assessors shall make such alterations or reductions as justice or equity shall require; provided, the time of hearing of such objections shall not be more than one week from the expiration of such notice.

Officers to take  
and file oath of  
office before  
entering upon  
duty.

**SECTION 23.** Any person appointed or elected for, or to any of the offices under this act, 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, and all the officers so elected or appointed except mayor, aldermen, city attorney, fire warden, firemen, and assessors, shall give bond or bonds to the city of Menasha, in such penal sum, with such conditions, such surety, and qualifications as the common council may require, to be approved by the council. The council may from time to time require new, further or additional bonds from any such officer, and upon his neglect to give same, may remove him from office; provided, 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. All officers shall qualify within ten days after notice of their election or appointment.

Taxes to be  
levied to take  
up certificates  
of appropriation,  
etc.

**SECTION 24.** It is hereby made the duty of the common council of the city of Menasha, to assess, levy and collect all taxes necessary to take up and pay all certificates of appropriation or interest bearing orders outstanding against the city, issued by the city, to take up bonded indebted-

ness in bonds issued by the town of Menasha, to the Wisconsin Central Railroad company, and the Milwaukee & Northern Railroad company; as the said orders become due also to assess and levy and collect all taxes necessary to pay all other legal and existing indebtedness against said city, as the same becomes due.

SECTION 25. Whenever a vacancy shall occur in the office of mayor, any alderman or justice of the peace, it shall be the duty of the common council, within ten days after such vacancy shall occur, to order a special election to fill said vacancy.

Special elections to fill vacancies.

SECTION 26. All city and ward officers, elected and appointed, shall qualify as provided in this act, within ten days after notice of their election or appointment, and whenever any officer shall fail to qualify as herein provided, his office shall be declared vacant.

Failure to qualify within time limited to vacate office.

SECTION 27. The city may acquire, purchase, hold and own lands for cemeteries or burial places for the interment of the dead either within or without the limits of said city, as the common council may deem necessary for the public welfare and suitable for the convenience of the inhabitants; and may prohibit the interment of the dead within said city, or may limit such interment to such cemeteries or burial places as the council may prescribe; and the council may require and cause any bodies buried within the city to be taken up and buried elsewhere.

City may acquire, purchase and hold lands for cemetery purposes.

SECTION 28. The common council of said city shall have the power to pass such ordinances, rules and regulations for the laying out, improving and ornamenting such cemeteries, and for the protection and regulation of the same, and all property therein, and to provide by ordinance for the punishment of any person who shall violate any of such rules, regulations or ordinances, the same as if such cemeteries were situated within the limits of such city.

Council may provide for the regulation and improvement of cemeteries.

SECTION 29. Whenever the common council shall deem it proper and for the best interest of said city, it may sell, dispose of, and convey any lands and real estate that has heretofore been purchased for cemetery purposes, or that is now or hereafter shall be owned and held by said city for such purposes; provided, such lands that shall

Council may dispose of lands heretofore purchased for cemetery purposes.

be actually occupied by interred bodies, shall not be so sold until such city shall have arranged for the interment of such bodies, and shall have caused their removal.

Forfeitures  
and license  
moneys.

SECTION 30. 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 in this act.

Public act.

SECTION 31. This act is hereby declared to be a public act, and shall be liberally construed in all courts of this state.

SECTION 32. This act shall take effect and be in force from and after its passage and publication in the official state paper, without other publication mentioned in chapter 20 of the revised statutes of Wisconsin.

Approved March 30, 1891.

No. 591, A.]

[Published April 2, 1891.]

## CHAPTER 124.

AN ACT to revise, consolidate and amend chapter 152, of the laws of 1889, entitled, "An act to incorporate the city of Superior."

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

### CHAPTER I.

Corporate  
name and  
powers.

SECTION 1. All the territory hereinafter described lying and being within the county of Douglas, in the state of Wisconsin, shall be and remain a city by the name of Superior, and the people now residing therein, and all those who may hereafter become residents of said territory, shall be a municipal corporation by the name of Superior, and they shall have the general powers usually possessed by municipal corporations at