

CHAPTER XXII.

March 7, 1867.

An Act to amend an Act, approved March 3d, 1864, entitled an Act to amend an Act entitled an Act to amend an Act entitled an Act to incorporate the City of Red Wing.

SECTION 1.—Repeals incorporation act.

2.—Powers of council.

3.—Further powers.

4.—Repeals chapter 5 of incorporation act.

5.—Amends section 5 of said act.

6.—Adds additional sections to chapter 4.

7.—Repeals section 17, chapter 6, of said act.

2.—When act to take effect.

Be it enacted by the Legislature of the State of Minnesota:

Repeals incorporation act

SECTION 1. That section two of chapter two of an act approved March third, eighteen hundred and sixty-four, entitled "an act to amend an act entitled an act to amend an act entitled an act to incorporate the city of Red Wing," be, and the same is hereby amended so as to read as follows:

Powers of council

SEC. 2. The elective officers of said city shall be a mayor, recorder, three councilmen, two justices of the peace, a treasurer and two constables. All other officers necessary for the proper management of the affairs of said city shall be appointed by the city council. The mayor, recorder, treasurer, and all officers appointed by the city council shall each hold their offices for one year, and until their successors are elected and qualified. The justices of the peace and constables shall hold their offices for two years, and until their successors are elected and qualified; and the councilmen shall hold their offices for three years, and until their successors are elected and qualified: *Provided*, That the constables elected at the first election after the passage of this act shall be divided by lot into two classes, the first of which shall go out of

office at the end of one year, and thereafter one constable shall be elected at the annual election in each year: *And provided further*, That the councilmen heretofore elected under the provisions of said act, approved March third, eighteen hundred and sixty-four, and now serving as such councilmen, shall hold their respective offices for the unexpired term for which they were elected, and at each annual election after the passage of this act one councilman shall be elected: *And provided further*, That the city council shall have power, for due cause, to expel any of their own members, and to remove from office at pleasure any officer or agent under the city government, due notice first being given to the officer complained of.

SEC. 2. That the following new sections be, and the same are hereby added to said chapter two:

SEC. 11. The city council shall have power to elect an assessor, a city attorney and city marshal for said city. All police officers and watchmen of the city shall possess the powers of constables at common law or by the laws of this state, and it shall be their duty to execute and serve all warrants, process, commitments and all writs whatever, issued by any of the justices of the peace of said city, for any violation of the laws of the state of Minnesota, or of the ordinances or by-laws of said city, and shall have power to pursue and arrest any person fleeing from justice in any part of this state, and when performing the duties of constables aforesaid shall be entitled to like fees.

Powers of council.

SEC. 3. That chapter five of said act be and the same hereby is amended so as to read as follows:

Further powers

Section 1. The city council of said city, by a vote of not less than two-thirds of the members present, and constituting a quorum, at any stated or special meeting, such vote to embrace a majority of all the members elect, shall have power to lay out, open, alter and vacate public squares, streets, grounds, highways and alleys, and to widen and straighten the same: *Provided*, That, whenever it shall be required to take private property for the purposes aforesaid, they shall proceed in the manner hereinafter provided:

First—The city council upon ordering any improvement, above mentioned, to be made, shall ap-

Further powers

point three commissioners, who shall each be a disinterested free-holder and qualified voter of said city, to view the premises, and assess the damages, which may be occasioned by the taking of private property or otherwise, in making said improvement. Said commissioners shall be notified as soon as practicable by the city recorder of said city, to attend at his office, at a time to be fixed by him, for the purpose of qualifying and entering upon their duties, and in case any such commissioner, upon being so notified, shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to said city not exceeding fifty dollars, and shall be liable to be prosecuted therefor, before any of the justices of the peace of said city, as in the case of fines imposed for a violation of an ordinance of said city: *Provided*, That the city council may, in their discretion, for good cause shown, excuse any person or persons so appointed, from serving as such commissioner. The city council shall fill all vacancies in such commission.

Second.—The commissioners shall be sworn by the city recorder, to discharge their duties as commissioners in the matter, with impartiality and fidelity, and to make due return of their actions and doings to the city council.

Third.—The said commissioners shall, with all reasonable speed, with the assistance of the city surveyor of said city, or any other surveyor designated by the city council for that purpose, cause a survey and plat of the proposed improvement to be made and filed with the city recorder, exhibiting, as far as practicable, the land or parcels of property required to be taken, or which may be damaged thereby, and shall thereupon give notice, by publication in the official paper of said city, for at least two weeks, to the effect that such plat has been filed, and that the said commissioners will meet at a place and time designated by them, and thence proceed to view the premises, and assess the damages for property to be taken, or which may be damaged by such improvement.

Fourth.—At the time and place appointed, according to such notice, the said commissioners shall view the premises, and may hear any evidence or proof

offered by any party interested, and adjourn from day to day, if necessary, for the purpose aforesaid. When their view and hearing aforesaid shall be concluded, they shall determine and assess the amount of damages to be paid to the owner or owners of each parcel of property proposed to be taken, or which may be damaged by such improvement, and in so doing, shall take into consideration the value of the property proposed to be taken, with such other damages as may be incident thereto, and also the advantages which will accrue to such owner or owners in making such improvement. Further powers

Fifth.—If there shall be any building standing, in whole or in part, upon any land to be taken, the said commissioners shall, in each case, determine and assess the amount of damage which should be paid to the owner or owners thereof, in case such building, or so much thereof as might be necessary, should be taken, and shall also determine and assess the amount of damages to be paid to such owner or owners, in case he or they should elect to remove such building, and the damages in relation to buildings aforesaid shall be assessed separately from the damages in relation to the land upon which they are erected.

Sixth.—If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate in it less than an estate in fee, the injury or damage done to such persons or interests respectively, may be awarded to them by the commissioners, less the benefits resulting to them from the improvement.

Seventh.—The said commissioners having ascertained and assessed the damages aforesaid, shall make and file with the city recorder, a written report to the city council of their action in the premises, embracing a schedule or assessment of the damages in each case, with a description of the land and the name of the owners, if known to them, and also a statement of the costs of the proceeding.

Eighth.—Upon such report being filed in the office of the city recorder, said city recorder shall give at least two weeks notice, by causing to be published in the official paper of said city a notice that such

Further powers assessment has been returned and filed, and that the same will be confirmed by the city council at a meeting thereof, to be named in such a notice, and which shall be at least ten days after the last publication of such notice, unless objections are made in writing by persons interested in any land required to be taken. Any persons interested in any building standing in whole or in part upon any land required to be taken, shall, on or before the time specified in said notice, notify the city council, in writing, of their election to remove such buildings (if they so elect) according to the award of the commissioners. The city council upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power, in their discretion, to confirm, revise or annul the assessment, giving due consideration to any objections interposed by parties interested.

Ninth.—The damages assessed shall be paid out of the general funds of said city, and shall be paid or tendered, or deposited and set apart in the treasury of said city, to and for the use of the parties entitled thereto, within one year from the confirmation of such assessment and report, and the land or property required to be taken for the purposes aforesaid, shall not be appropriated until the damages awarded therefor to the owner thereof, shall be paid or tendered to the owner or his agent, or deposited and set apart for his use as aforesaid; and in case the said city council should be unable to determine to whom the damages, in any particular case, so awarded, should be paid, or in any case of disputed claims in relation thereto, the damages in such cases may be deposited, by order of the city council, in the district court of Goodhue county, in the same manner as moneys are paid into court, until the parties entitled thereto shall substantiate their claims to the same.

Tenth.—In case any owner or owners of buildings as aforesaid, shall have elected in manner, as aforesaid, to remove his or their buildings, he or they shall so remove them within thirty days from the confirmation of said report, or within such further time as the city council may allow for the purpose, and shall thereupon be entitled to payment from

said city of the amount of damages awarded in such case, in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected to remove) to remove the same, within the time prescribed, such buildings, or so much thereof as may be necessary, upon the payment or depositing the damages awarded for such taking, in manner aforesaid, may be then taken and appropriated, sold or disposed of, as the city council shall direct, and the same, or the proceeds thereof, shall belong to said city. Further powers

Eleventh.—When any known owner of lands or tenements, affected by any proceedings under this act, shall be an infant, or labor under legal disability, the judge of the district court of Goodhue county, or, in his absence, the judge of any court of record may, or the court commissioner of said county may, upon application of said commissioners, or of the mayor of said city, or such party, or his next friend, appoint a suitable guardian for such party, and all notices required by this act shall be served on such guardians.

Twelfth.—Any person feeling himself aggrieved by such assessment, may, by notice in writing, served on the mayor of said city, a copy whereof, with proof of service, shall be filed in the office of the clerk of the district court in said Goodhue county, within twenty days after the confirmation of said report or assessment, appeal from such assessment to the district court aforesaid. Such appeal shall be tried by the court or jury as in ordinary cases, but no pleadings shall be required, and the party appealing shall specify in the notice of appeal, the grounds of objections to such assessment, and shall not be entitled to have any other objections, than those so specified, considered, and a transcript of such report, certified by the city recorder, or the original thereof, shall be *prima facie* evidence of the facts therein stated, and that such assessment was regular and just and made in conformity to law. The judgment of said district court shall be final. Such appeal shall be entered and brought on for trial, and be governed by the same rules in all other respects as appeals from justices of the peace in civil actions.

SEC. 4. All of said chapter five of said act, approved

Repeals chap 5

March third, eighteen hundred and sixty-four, is hereby repealed.

Amends sec 7, chap 4

SEC. 5. That section seven of chapter four of said act be, and the same is hereby amended, so as to read as follows:

Sec. 7. The cost of surveying, making, grading, repairing and cleansing of streets, alleys, public grounds, reservoirs and gutters, shall be paid out of the general funds of said city, but no such improvement shall be ordered by the city council, except by a vote of not less than two-thirds of the members present, and constituting a quorum, at any stated or special meeting, such vote to embrace a majority of all the members elect. The cost of making and repairing sidewalks shall be paid out of the fund of the proper district.

SEC. 6. That the following new sections be and the same are hereby added to said chapter four.

Divides city into districts

Section 9. For the purpose of making and repairing sidewalks the city council shall, by ordinance, divide said city into so many districts as they may deem convenient, and shall have power to change, alter or abolish such districts.

Sidewalks

Section 10. Whenever a majority of the resident owners of real estate, situate in such district, shall petition the city council of said city to make a sidewalk within such district, which petition shall set forth the description of the real estate owned by each petitioner, said city council shall proceed to cause such sidewalk to be made under its direction, and in the manner prescribed by said council. And said city council shall further have the power to order any sidewalk to be made in any such district, or in any part thereof, whenever, in their discretion, the interests or convenience of the public require such sidewalk.

Cost of sidewalks how repaired

Section 11. The city council shall, for the purpose of defraying the cost and expense of making and repairing sidewalks, levy a tax upon the taxable property of the district in which such sidewalks are situate, which tax shall be levied and collected in the same manner as taxes for the general purposes of said city are now levied and collected.

Repeals sec 17, chap 6

SEC. 7. That section seventeen of chapter six of said act, approved March third, eighteen hundred and sixty-four, be, and the same is hereby repealed.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved, March 7, 1867.

CHAPTER XXIII.

March 7, 1867

An Act to amend an act entitled "An Act to Incorporate the Town of Saint Cloud and to Repeal a former Charter of said Town," approved March 8th, 1862."

SECTION 1.—Amends former charter of St. Cloud.

2.—Amended further by adding additional section.

3.—Amends by providing for annual election of officers.

4.—Defines who shall be elected officers.

5.—How vacancies filled.

6.—Qualifications for officers and voters.

7.—Election districts—judges of election—how elections to be conducted.

8.—Provides for special election.

9.—When offices deemed vacant.

10.—Term of office of elective officers.

11.—Licensing powers of council.

12.—Fines and penalties—how enforced.

13.—How action to be brought, etc.

14.—Amends miscellaneous provisions of former act.

15.—When act to take effect.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That section two of chapter one of an act entitled an act to incorporate the town of Saint Cloud and to repeal a former charter of said town, approved March 8th, 1862, be amended so as to read as follows:

Sec. 2. The territory included within the following