

PROCEEDINGS
OF THE
COMMON COUNCIL.

REGULAR SESSION

CHAMBER OF THE COMMON COUNCIL OF THE
CITY OF INDIANAPOLIS,
MONDAY, DECEMBER 9TH, 1867, 7 O'CLOCK, P. M. }

The Common Council met in regular session.

Present—His Honor, the Mayor, Daniel Maccauley, in the chair,
and the following members :

Councilmen Brown, Burgess, Coburn, Colley, Cottrell, Davis, Foster, Geisel, Goddard, Henschen, Jameson, Kappes Loomis, MacArthur, Schmidt, Seidensticker, Stanton and Woodburn—18.

Absent—None.

The proceedings of the regular session held November 25, 1867, and of the regular session held December 2, 1867, were read and approved.

His Honor, the Mayor, announced that the special order for the evening was the consideration of the annexation question.

Pursuant to instructions, the City Auditor and City Civil Engineer made the following report :

OFFICE OF CITY AUDITOR, }
 Indianapolis, Dec. 7, 1867. }

To the Mayor and Common Council of the City of Indianapolis:

GENTLEMEN:—The Civil Engineer and City Auditor, in pursuance of an order from your honorable body, hereby report by metes and bounds, and also a plat of the grounds already platted, and those not so platted, within the limits embraced in the report of the Special Committee, made to the Common Council December 2d, 1867, in reference to the annexation of territory on the North and East of the city, which metes and bounds are as follows, to-wit:

“Commencing at the north-west corner of the corporation, and the south-west corner of the south-west quarter of section No. 35, township No. 16, north, range 3 east; thence east to the east bank of Fall Creek; thence along the east bank of Fall Creek to the south line of the north west quarter of section No. 35, township 16 north, range 3 east; thence east on the center line through sections 35 and 36 to the east line of section 36, township 16 north, range 3 east; thence south to the south east corner of said section 36 and the north-east corner of the corporation; thence east to the north-east corner of the north-west quarter of section No. 6, township 15 north, range 4 east; thence south along the center line of the section No. 6, and to the south line of section No. 7, township 15 north, range 4 east, thence west on and along said south line to the south-west corner of section No. 7, township 15 north, range 4 east, and south-east corner of the corporation.

Respectfully submitted,

JOHN G. WATERS, *City Auditor.*
 R. M. PATTERSON, *Civil Engineer.*

Which was received.

Mr. Brown offered the following resolutions:

Resolved, That any action which this Council may take, by which any portion of contiguous territory shall be annexed to the city, shall be upon the express condition that the number of Wards shall not be increased.

Resolved, That in case additions shall be made to the city by extending its boundaries over territory lying north of the present northern boundary line of the city, all contiguous territory shall be annexed, respectively, to the Wards bordering thereon, and the southern boundaries of the 9th, 1st, 2d, 3d and 4th Wards shall thereafter be New York street instead of Washington street, and the northern boundaries of the 5th, 6th, 7th and 8th Wards shall, thereafter, be New York street instead of Washington street.

Resolved, That this Council pledges itself to carry out the provisions of these resolutions by ordinance.

Mr. MacArthur moved to lay the resolutions on the table.

Mr. Brown called for a division of the question.

The first resolution was then read, and Mr. Brown called for the ayes and noes.

The question being to lay the resolution on the table, those who voted in the affirmative were Councilmen Burgess, Davis, MacArthur and Woodburn—4.

Those who voted in the negative were Councilmen Brown, Coburn, Colley, Cottrell, Foster, Geisel, Goddard, Henschen, Jameson, Loomis, Schmidt and Stanton—12.

So the motion to lay on the table was not adopted.

The question being on the adoption of the second resolution,

Mr. Stanton moved to lay it on the table.

Mr. Brown called for the ayes and noes.

The question being to lay the resolution on the table, those who voted in the affirmative were Councilmen Burgess, Loomis, MacArthur, Stanton and Woodburn—5.

Those who voted in the negative were Councilmen Brown, Coburn, Colley, Cottrell, Davis, Foster, Geisel, Goddard, Henschen, Jameson and Schmidt—11.

So the motion to lay on the table was not adopted.

The third resolution was then read, and the motion to lay on the table was put and not adopted.

The question then being on the adoption of the resolutions as a whole,

Those who voted in the affirmative were Councilmen Brown, Cottrell, Foster, Geisel, Henschen and Schmidt—6.

Those who voted in the negative were Councilmen Burgess, Coburn, Colley, Davis, Goddard, Jameson, Kappes, Loomis, MacArthur, Seidensticker, Stanton and Woodburn—12.

So the resolutions were not adopted.

Mr. Brown presented the following :

Resolution and petition of the Common Council of the City of Indianapolis, to the Board of County Commissioners, of Marion County, Indiana, for the annexation of contiguous territory, and to include the same within the corporate limits of the City of Indianapolis, Indiana.

Be it resolved and ordained by the Common Council of the City of Indianapolis, That that the corporate limits of the city be, and are hereby, extended so as to include within said corporate limits the following additions, platted, laid off into lots adjoining said city, records of which have been made in the Recorder's Office of Marion county, Indiana, to-wit: All that parcel of ground, lots, streets and alleys, known as Drake & Mayhew's Addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots streets and alleys, known as West's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Crane's addition to the City of Indianap-

olis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Drake's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Henderson's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as St. Clair's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Martindale's addition to the City of Indianapolis, including the grounds and lots lying between Pennsylvania and Delaware streets south of said City of Indianapolis. All that parcel of ground, lots, streets and alleys, known as Morrison's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Butler's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Calvin Fletcher, Jr.'s addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Davidson's heir's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Preston Davidson's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Davidson's addition to the city of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Williamson's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Aldredge's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Budd's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Blake's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Willard's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Crane & Wesson's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as McIntire's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as J. K. Sharpe's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Yeiser's addition to the City of Indianapolis, including the ground lying between Yeiser's addition and the present corporate limits, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Dunlop & Tutweiler's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Cincinnati and Chicago Railroad Company's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Peru and Indianapolis Railroad Company's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Drake and Buell's subdivision, and all that parcel of ground, lots, streets and alleys, known as Fletcher and Wiley's subdivision. All that parcel of ground, lots, streets and alleys, known as Indianapolis and Cincinnati Railroad Company's addition to the City of Indianapolis, together with the subdivisions thereof. All that parcel of ground, lots, streets and alleys, known as Patterson's addition to the City of Indianapolis, together with the subdivisions thereof, and all that parcel of ground, lots, streets and alleys, known as Patterson, Ray & Fletcher's addition together with the subdivisions thereof.

Be it further ordained. That any addition or subdivision that may have heretofore been laid off into lots and platted, adjoining the city, and a record of the same made in the Recorder's office of Marion county, not specifically above enumerated, is hereby annexed to and included within the boundaries of the city limits of the City of Indianapolis.

Be it further ordained, That for all election, legislative, and other purposes, those additions and subdivisions above enumerated, and laying immediately east of the present corporate limits, shall constitute a Ward in said city, and shall be known as the Tenth Ward.

And that for all election, legislative and other purposes, those additions and subdivisions above enumerated, and laying North of the present corporate limits, and East of Meridian street, shall constitute a Ward in said city, and shall be known as the Eleventh Ward.

And that for all election, legislative and other purposes, those additions and subdivisions above enumerated, and laying North of the present corporate limits, and West of Meridian street, shall constitute a Ward in said city, and shall be known as the Twelfth Ward.

And that for all election, legislative and other purposes, those additions and subdivisions above enumerated, and laying south of the present corporate limits, shall constitute a Ward in said city, and shall be known as the Thirteenth Ward.

And that for all election, legislative and other purposes, those additions and subdivisions above enumerated, laying west of the present corporate limits, be, and they are hereby, attached to the Fourth Ward of said city.

And the Common Council of the City of Indianapolis hereby petition the Board of County Commissioners of Marion county, Indiana, to make an order giving their consent for the annexation and the extending the limits of said city over lands and territory contiguous to the city, not laid off into lots, platted or recorded, the owners of which refuse to give their written consent to such annexation, the same being described within the following boundaries, to-wit: Commencing at the north-west corner of the corporation, and the south west corner of the south-west quarter of section No. 35, township 16 north, range 3 east; thence east to the east bank of Fall Creek; thence along the east bank of Fall Creek to the south line of the north-west quarter of section No. 35, township 16 north, range 3 east; thence east on the center line, through sections 35 and 36, to the east line of section 36, township 16 north, range 3 east; thence south to the south-east corner of said section 36, and the north-east corner of the corporation; thence east to the north-east corner of the north-west quarter of section No. 6, township 15 north, range 4 east; thence south along the center line of the section No. 6, and to the south line of section No. 7, township 15 north, range 4 east; thence west on and along said south line to the south-west corner of section No. 7, township 15 north, range 4 east, and south-east corner of the corporation.

And be it further petitioned, ordained and established, that on said territory not laid off into lots, platted or recorded, being attached to the limits of the city by the order of said Board of County Commissioners, that for all election, legislative and other purposes, the additions, subdivisions and un-laid off lands included in the above description, and laying immediately east of the present corporate limits of the city, shall constitute a Ward, and shall be known as the Tenth Ward of the city.

And that on said territory being attached, as aforesaid, by the Board of County Commissioners, that for all election, legislative and other purposes, the additions, subdivisions and un-laid off lands included in the above description, laying north of the present corporate limits of the city, and east of the extension of Meridian street, shall constitute a Ward, and be known as the Eleventh Ward of the city.

That on said territory being attached, as aforesaid, by the Board of County Commissioners, that for all election, legislative and other purposes the additions, subdivisions and un-laid off lands included in the above description, laying north of the present corporate limits of the city, and west of the extension of Meridian street, shall constitute a Ward, and be known as the Twelfth Ward of the city.

And it is ordered that the foregoing petition be presented to the Board of County Commissioners, of Marion county, Indiana, on Monday the — day of January, A. D., 1868, and that the Clerk of the City of Indianapolis give notice of the time of presentation of said petition, by publishing the same for thirty days in the Indianapolis Journal.

And it is hereby declared that the reasons for such annexation are, that the territory not laid off into lots, platted and recorded, is so surrounded by plots of additions to the city, that to attach said additions, without attaching said territory, would leave the boundary of said city inconvenient, impracticable and unseemly.

Which was received.

Dr. Jameson presented the following remonstrance :

INDIANAPOLIS, Dec. 9, 1867.

To the Mayor and Common Council of the City of Indianapolis:

Having learned that a resolution has been offered in your honorable body, asking to extend the corporate limits of the City of Indianapolis, so as to take within said limits certain territory lying north and east of said city, we, the undersigned, citizens living in the territory east, having purchased our property and made our homes from choice outside of the corporate limits of said city, would respectfully remonstrate against being brought within said limits.

Charles G. French,
Mary E. Noble,
Winston P. Noble,

James Grigsby,
Sam'l A. Hamilton,
And 23 others.

Which was received.

Mr. Cottrell presented the following remonstrance :

INDIANAPOLIS, Dec. 9, 1867.

To the Mayor and Common Council of the City of Indianapolis:

Having learned that a resolution has been offered in your honorable body, to extend the corporate limits of the City of Indianapolis, so as to take within said limits certain territory lying north and east of said city, we, the undersigned, citizens living in the territory east, having purchased our property and made our homes from choice outside of the corporate limits of said city, would respectfully remonstrate against being brought within said limits.

Sam'l Hetselgesser,
W. Cook,
Albert Fremer,

James H. Wallace,
L. W. Hetselgesser,
And 27 others.

Which was received.

Dr. Jameson offered the following motion :

That a committee of five be appointed, with the City Attorney, who shall report on the communication to the Council as to whether the matters therein set forth can be legally granted.

Mr. Stanton offered the following amendment :

That a committee of three, in connection with the City Attorney, be appointed, to whom shall be referred all pending remonstrances and memorials concerning annexation, and that said committee shall embody in their report a resolution annexing all platted additions to the City of Indianapolis.

The question being on the adoption of the amendment,

Mr. Brown called for the ayes and noes.

Those who voted in the affirmative were Councilmen Cottrell, Davis, Goddard, Henschen, MacArthur, Stanton and Woodburn—7.

Those who voted in the negative were Councilmen Brown, Coburn, Colley, Foster, Geisel, Jameson, Kappes, Loomis, Schmidt and Seidensticker—10.

So the amendment was not adopted.

The original motion as offered by Dr. Jameson was then adopted.

His Honor, the Mayor, appointed as such committee Councilmen Jameson, Brown, Woodburn, Cottrell, Stanton and the City Attorney.

REGULAR ORDER OF BUSINESS.

Mr. Brown introduced general ordinance No. 117, entitled:

AN ORDINANCE protecting public morality, decency and order.

Which was read the first time by title, and,

On motion, referred to Committee on Revision of Ordinances and the City Attorney.

Mr. Coburn presented the following communication:

INDIANAPOLIS, Dec. 9, 1867.

To the Mayor and Common Council of the City of Indianapolis:

GENTLEMEN:—A proposal having been submitted to your honorable body some time ago, for the erection of our system of Fire Alarm and Police Telegraph in your city, and a consideration of the matter being postponed for good and sufficient reasons, we now respectfully request that another committee be appointed with power to act, to confer with us and receive plans and estimates for the work, and to agree upon the proper terms of payment in case of a contract being entered into.

Trusting this will meet with favor from your honorable body,

We are, very respectfully,

Your obedient servants,

L. B. FIRMAN,

J. THOMAS ELLIOTT,

Agts. Am. F. A. Tel. Co.

Which, on motion, was referred to the Committee on Fire Department and Councilmen Brown and Jameson.

Mr. Davis offered the following motion:

That the Committee on Fire Department, together with the Chief Fire Engineer, be, and are hereby, directed to examine the building now occupied by the Congregational Church, located on Meridian street, north of Circle street, and to report to this Council the condition of said building, and what action is necessary, if any, in order to protect persons and property.

Which was adopted.

Mr. Davis, also, offered the following motion :

That the Street Commissioner be, and is hereby, directed to fill up the gutter on Market street, west side, at the intersection of Delaware street, so as to make said gutter passable.

Which was adopted.

Dr. Jameson offered the following resolution :

Resolved, That in making the assessment for the year 1868, it shall be the duty of the City Assessor to report weekly the names of all persons assessed and the amount of personal property returned by each for taxation ; and that it shall be the duty of the Clerk to file said reports in his office, and make therefrom on the first day of June, 1868, a list of all persons paying \$2,000 or more, with the several amounts returned by them, which list shall be published in the several daily papers of the city.

The question being on the adoption of the resolution, those who voted in the affirmative were Councilmen Brown, Coburn, Colley, Cottrell, Davis, Foster, Geisel, Goddard, Henschon, Jameson, Kappes, Loomis, MacArthur, Schmidt, Seidensticker, Stanton and Woodburn—17.

No Councilman voting in the negative.

So the resolution was adopted.

Mr. Loomis presented the following communication :

INDIANAPOLIS, Dec. 9, 1867.

To the Mayor and Common Council of the City of Indianapolis :

STATE OF INDIANA, }
MARION COUNTY, } ss:

James K. Bigelow, on his oath, says that the claim presented to the Common Council of the City of Indianapolis at its meeting of the 25th ult., was and is for medical services rendered to the city prisoners in the county jail; that being County Physician, and administering in that capacity to the State prisoners there confined, and learning that it had been the custom with his predecessors to administer to the city prisoners, and that their accounts therefor had been allowed by the Common Council, and having himself thereafter constantly attended said city prisoners, and presented his claims for such services to said Council, they have heretofore been uniformly allowed. Upon the faith of the implied promise of the said Council, he rendered the services for which said claim has been lately presented, that the amount therein charged is very small and inadequate compared with the services rendered.

JAMES K. BIGELOW.

Subscribed and sworn to before me, a Notary Public in and for said county, December 5, 1867.

J. B. BLACK, N. P.

Which was laid over temporarily.

Mr. MacArthur offered the following motion :

That the City Civil Engineer be instructed to examine the grading and graveling of the carriage ways in the City Cemetery, and report at next meeting the amount of work done, and whether done to his satisfaction.

In reference to which, Mr. Brown offered the following motion :

That the motion be referred to the Finance Committee, with instructions to report the facts in the case, and especially when the work was done, and how much is claimed for the same.

Which was adopted.

Mr. Seidensticker offered the following motion :

That the parties engaged in graveling the carriage ways of the Cemetery of the city be notified to stop their work, as the same is unauthorized.

Which Was adopted.

Mr. Schmidt offered the following motion :

That the City Marshal is herewith instructed to notify the Central Railroad Company to plank their crossing at Delaware street.

Which was adopted.

Mr. Schmidt, also, offered the following motion :

That the Street Commissioner is herewith instructed to fill up the west side of bridge across the Canal on Race street to make said bridge passable for wagons.

Which was adopted.

His Honor, the Mayor, presented the following opinion of City Attorney :

INDIANAPOLIS, Dec. 9, 1867.

To the Mayor and Common Council of the City of Indianapolis :

GENTLEMEN:—It is proper that I should submit a statement of the case of *The City vs. Chambers*, lately decided by Hon. John N. Scott, City Judge.

The defendant insisted that the ordinance under which she was prosecuted was invalid, and that the city was bound to prove publication. The Court held the ordinance valid, but decided adversely to the City on the question of publication.

I was of opinion that as it was the sworn duty of the officers of the city, in 1864, to cause these ordinances to be published, that the Courts must presume, until the contrary is shown, that this sworn duty was performed. The authorities are uniform among the earliest cases, being that of Lord Halifax, where it was said, "A person shall be presumed duly to execute his office until the contrary appears." See, also, *Broom's Legal Max.*, 578; 1 *Green. Ev.*, 80; *Burrill on Evidence*, 36—484; 9 *Indiana Rep.*, 20.

I still think the position assumed by the City was correct, and, that unless it can be shown that there was no publication, the City must ultimately succeed. If the defendant can show that the ordinance was in fact never published, of course the City must be defeated.

Before and since the trial my partner and myself have diligently searched and inquired for the files containing the publications. We cannot find the files of 1863. Some one has carried the file from the Journal Office, and although we have examined State, County and City Offices, we have not as yet been able to find any file of the paper embracing the time within which the ordinance must have been published. I have heard of a file some miles distant in the country which I shall send for to-morrow.

If the ordinance was never published, then, of course, it never went into operation, and the old law is yet in force and will so remain until a new ordinance is put in force. I mean by the old law the ordinance existing prior to that now found in the ordinance book. Whatever may be true as to the fact of publication, it is very certain that either the present ordinance or the old is in force, and the City is not without a law.

Your honorable body will at once perceive the embarrassment under which I have labored, and the necessity for the passage of an ordinance similar to that herewith transmitted. Had the rule been declared, as I thought it should be, that the presumption was in favor of the official act, the City would not be required to prove that her officers duly discharge their duties.

I shall spare no pains or labor to ascertain, if it be possible, whether the ordinances now in our present revision were duly published, and should I find that there has been no publication, I shall prosecute upon the old law until the new can be properly published. I shall, as early as I can obtain it, transmit information to you.

Very Respectfully,

B. K. ELLIOTT, *City Attorney.*

Also, general ordinance No. 118, entitled:

AN ORDINANCE relative to the publication of ordinances.

Which was read the first time by title, and referred to the Committee on Revision of Ordinances, together with the opinion of the City Attorney.

REPORTS FROM BOARDS.

Mr. MacArthur, from the Board of Public Improvements, made the following report:

OFFICE BOARD OF PUBLIC IMPROVEMENTS, }
Indianapolis, Dec. 9, 1867. }

To the Mayor and Common Council of the City of Indianapolis:

GENTLEMEN:—The Board of Public Improvements, to whom was referred the motion that the Street Commissioner lay stone flagging at the intersection of Massachusetts Avenue and Alabama street, respectfully report the said improvement to be necessary, and recommend its construction as soon as possible.

Also, that the Indianapolis Gas Light and Coke Company are the only bidders to erect lamp-posts, lamps and fixtures on Market street, between Mississippi and Missouri streets, and on California street, between New York and Vermont streets, their bid being for heavy pattern \$35, and for the light pattern \$33. We recommend that the contract be awarded them.

Respectfully submitted,

JNO. B. MACARTHUR, }
SAMUEL GODDARD, } *Board.*
W. H. LOOMIS. }

Which was concurred in.

By unanimous consent of the Council, Mr. Seidensticker offered the following motion:

That the City Attorney be directed to appeal the city case of the City of Indianapolis vs. Ann Chambers, recently decided against the city, if he believe there is a prospect of success for the city.

Which was adopted.

REPORTS FROM COMMITTEES.

Mr. Davis, from the Committee appointed by Council at the regular meeting held December 2d, 1867, for the purpose of ascertaining the facts in reference to the feasibility of securing Artesian Water, made the following report :

INDIANAPOLIS, Dec. 9, 1867.

To the Mayor and Common Council of the City of Indianapolis :

GENTLEMEN:—Your Committee, to whom was referred the petition of a goodly number of the citizens of Indianapolis, asking an appropriation for the purpose of ascertaining facts in reference to the feasibility of securing Artesian Water, have had the same under advisement, and at a meeting of your committee this P. M., listened with interest to remarks made by Prof. Brown, S. A. Fletcher, Sr., W. H. Talbott and others. From representations made to your Committee, we are of the opinion that the subject is of sufficient importance to justify a special session of Council. And your committee therefore recommend the passage of the following motion.

All of which is respectfully submitted,

J. W. DAVIS,	} Committee.
W. H. LOOMIS,	
THOMAS COTTRELL,	

Which was received.

Mr. Loomis offered the following motion :

That Prof. Brown be invited to address the Council on the subject of Artesian Wells, the same to be delivered at the next regular meeting.

The ayes and noes being demanded on the adoption of the motion, those who voted in the affirmative were Councilmen Brown, Coburn, Cottrell, Davis, Foster, Geisel, Goddard, Henschen, Jameson, Loomis, MacArthur, Seidensticker, Stanton and Woodburn—14.

Councilman Schmidt voting in the negative—1.

So the motion was adopted.

On motion by Mr. Seidensticker, the Council adjourned.

DANIEL MACAULEY, *Mayor*

ATTEST:

D. M. RANDELL, *City Clerk*.