

CHAPTER 122.

ROAD FROM WEST POINT.

AN ACT to re-locate a part of a territorial road leading from West Point, in Lee county, to Salem, in Henry county.

Be it enacted by the Council and House of Representatives of the Territory of Iowa.

SECTION 1. Road from West Point to Salem. That John Woodman, William Steel, and William Stewart, are hereby appointed commissioners to re-locate so much of the territorial road leading from West Point, in Lee county, to Salem, in Henry county, as lies between William Steel's and John Woodman's; said commissioners shall meet at the house of said Steele on the second Monday of February next, or as soon thereafter as convenient, and proceed to re-locate so much of said road as above described.

SEC. 2. In force from passage. This act to take effect and be in force from and after its passage.

Approved, January 16th, 1846.

[114] CHAPTER 123.

DUBUQUE CITY.

AN ACT to incorporate and establish the City of Dubuque.

Be it enacted by the Council and House of Representatives of the Territory of Iowa.

SECTION 1. Town of Dubuque incorporated and corporate bounds defined. That all that part of the territory of Iowa included within the following limits, to-wit:—beginning at a point in the middle of the main channel of the Mississippi river eastwardly and in line with the south boundary of the town of Dubuque, as surveyed and laid out by the commissioners appointed in pursuance of an act of congress, to lay off the towns of Fort Madison, Burlington, Dubuque, etc., thence south sixty-seven degrees, thirty-nine minutes west, to a stone planted in the ground; thence on the westerly boundary, north, twenty-two degrees, thirty minutes west, to a stake and stone; thence on the north boundary, north sixty-seven degrees, thirty minutes east, to the middle of the main channel of the Mississippi river; thence down the said river with said channel to the place of beginning; shall be and hereby is declared to be a city, and the inhabitants thereof are created a body corporate and politic, with perpetual succession by the name and style of the city of Dubuque; and as such by that name shall be capable in law of contracting and being contracted with, of suing and being sued, pleading and being impleaded, answering and being answered unto, in all courts and places in all matters whatsoever, and also of purchasing, using, occupying, enjoying and conveying real, personal [115] and mixed estate, and may have and use a corporate seal, and change, alter and renew the same at pleasure, and shall be competent to have, exercise and enjoy all the rights, immunities, powers and privileges, and be subject to all the duties and obligations incumbent upon and appertaining to a municipal corporation, and for the better ordering and governing said city, the exercise of the corporate powers

of the same, hereby and herein granted, and the administration of its fiscal, prudential and municipal concerns with the conduct, direction and government thereof shall be vested in a mayor and board of aldermen, consisting of thirteen members to be denominated the city council, together with such other officers as are hereinafter mentioned and provided for.

SEC. 2. New corporation succeed to rights of the old. That the said city of Dubuque, shall be, and is hereby invested as the lawful owner and proprietor, with all the real, personal and mixed estate, and all the rights and privileges thereof, together with the property, funds and revenues, and all moneys, debts, accounts and demands due and owing, or in any wise belonging to said city; or which by, or under the authority of any former act or acts, have been acquired, vested in, or is, or may be owing or belonging to the city of Dubuque; and the same are hereby transferred to the corporate body, created and established by this act; and all suits pending and judgments recovered by, in favor of, or against the city of Dubuque, together with all rights, interests, claims and demands in favor of or against said city, may be continued, prosecuted, defended and collected in the same manner as though this act had never been passed.

SEC. 3. Mayor and aldermen elected 1st Monday in April. That the qualified electors of said city shall on the first Monday of April, annually, elect a mayor who shall have resided in said city three years; and the qualified electors of said city, shall at the same time elect thirteen aldermen, who shall have resided in the said city two years, and the mayor and aldermen so elected when assembled together and duly organized, shall constitute the city council, a majority of the whole number of whom shall be necessary to constitute a quorum for the transaction of business; they shall be the judges of the election returns, and qualifications of their own members, and shall continue in office for the term of one year, and until their successors shall be chosen and qualified. They shall determine the rules of their proceedings, and keep a journal thereof, which shall be open to the inspection and examination of every citizen; and may compel the attendance of absent members in such manner and under such penalties as they may prescribe. And they shall meet at some convenient place in said city, on the first Monday in May, and after taking the oath of office before some officer [116] qualified to administer oaths, shall elect from their own body, a president *pro tempore*.

SEC. 4. Treasurer elected by people. That there shall be elected by the qualified electors of said city, on the first Monday of April annually, a treasurer who shall hold his office for the term of one year, and until his successor shall be elected and qualified. He shall perform such duties and exercise such powers not herein specified, as may be lawfully required of him. There shall also be elected by the qualified voters of said city on the first Monday of April annually, a recorder, city marshal and assessor, of said city, who shall hold their offices for the term of one year, and until their successors shall be chosen and qualified, and who shall perform such duties and exercise such powers as may be lawfully required of them by the ordinances of said city.

SEC. 5. Mayor to issue proclamation. That in all elections for city officers, it shall be the duty of the mayor to issue a proclamation to the qualified voters of said city, setting forth the time of such elections, the place or places where the same shall be holden, the officer or officers to be chosen, and cause such proclamation to be posted up in three of the most public places in said city, at least ten days previous to such election. And every such election shall be opened between the hours of eight and ten o'clock in the forenoon and continue open until four o'clock in the afternoon, and shall in all things be conducted agreeably to the laws regulating township elections for the time being; and it shall be the duty of the judges of said elections within two

days thereafter, to make and direct the returns thereof to the mayor of said city at his office, in the same manner that election returns are required to be made by the township trustees for the time being; provided, that in all elections for mayor, the returns shall be made directed to the president *pro tempore* of the city council; and the mayor or president *pro tempore* of the city council, as the case may be, shall within five days after any such election, open the returns which shall have been made as aforesaid, and shall make an abstract of all the votes and file the same with the city recorder, who shall make a record thereof in a book to be kept by him for that purpose, and the person or persons having the highest number of votes shall be declared duly elected; but if from any cause the qualified voters of said city, or any of the respective wards, as the case may be, should fail to effect any election at the time and in the manner herein provided, the mayor shall forthwith issue his proclamation for a second or other election, which in all things shall be notified, conducted, regulated, and the returns thereof made as in and by this act is prescribed, and the person or persons, who shall be chosen at any such second or other election, shall [117] hold their office until the next stated prior for the choice of a successor or successors; and it shall be the duty of the mayor or president *pro tempore* of the city council, immediately to notify such person or persons who may be elected as aforesaid, of his or their election, by causing a written notice thereof, to be served upon him or them by the city marshal; and every person so chosen or elected as aforesaid, shall within ten days after his election, cause himself to be qualified to enter upon the duties of his office, and in default thereof, the office to which he shall have been elected shall be deemed and considered in law to be vacated; and it shall be the duty of the city council, to prescribe the time and manner, and provide the place or places of holding all elections in said city, for city officers and of making the returns thereof, not herein otherwise directed and prescribed; and the said city council shall appoint judges and clerks for all city elections.

SEC. 6. Qualification of electors. That each and every white male citizen above the age of twenty-one years, who shall have been a resident in said city six months immediately preceding any election for city officers, shall be deemed a qualified voter of said city, and shall be entitled to vote in the same or in the ward where he may reside for mayor, aldermen, recorder, treasurer, city marshal, assessor, and such other officers, as are in and by this act directed to be chosen by the qualified voters of said city or of the respective wards therein, and all others which by public ordinance may be required to be chosen or elected; and when any person shall present himself to give his vote and either of the judges shall suspect that such person does not possess the requisite qualification of an elector, or if his vote shall be challenged by an elector who has previously given his vote at such election, the judges of said election shall tender to such person an oath or affirmation in the following form, to-wit: 'I A. B. do solemnly swear (or affirm as the case may be) that I am a citizen of the United States, and that I have been a resident of this city six months immediately preceding this election, am a resident of this ward (if wards shall have been established) and to the best of my knowledge and belief, have attained the age of twenty-one years, and that I have not voted at this election.

SEC. 7. Eligibility of city council. That no member of the city council shall be eligible to any office within the gift of the city council during the year for which he may have been elected, nor shall any member of the city council be interested directly or indirectly in the profit of any contract or job, for work or services to be performed for the city.

SEC. 8. Mayor's duties as a police officer, etc. That it shall be the duty of the mayor to be vigilant and active at all times in causing the laws and

ordinances of said city, to be put in [118] force and duly executed. He shall keep the seal of said city, and all of the records, papers and official documents thereunto belonging. He shall sign all by-laws and ordinances adopted and passed by the city council, and see that the same are published six days before they go into effect. He shall preside when present at the meetings of the city council and be denominated president of the same, and when there is a tie shall give the casting vote. He shall do and perform such other duties as the city council may prescribe and determine, not inconsistent with the provisions of this charter.

SEC. 9. Oath of treasurer, marshal, recorder, etc. That the treasurer, marshal, recorder, assessor, and all other officers under the government of said city, shall before entering upon the duties of their respective offices, take an oath or affirmation to support the constitution of the United States, and faithfully and impartially to perform the several duties of the offices to which they may be respectively elected or appointed, and when required shall give such bond to the city with good and sufficient security in such sum or sums, and with such conditions thereto as the city council may from time to time direct, and in all cases not herein provided for shall respectively be allowed and receive such fees and compensation for their services, and be liable to such fines, penalties, and forfeitures for negligence, carelessness, misconduct in office, and positive violation of duty, as the said city council shall order and determine.

SEC. 10. Meetings of the board. That the city council shall provide the times and places of holding their meetings not herein otherwise provided for, which shall at all times be open to the public, they shall provide by ordinance for the election by the qualified voters of said city, of such other city officers whose election is not herein otherwise provided for, as shall be necessary for the good government of said city and the due exercise of its corporate powers, and which shall have been provided for by ordinance, and all city officers whose term of service is not prescribed and whose powers and duties are not defined in and by this act, shall perform such duties, exercise such powers, and continue in office for such term of time not exceeding one year, as shall be prescribed by ordinance.

SEC. 11. Vacancies, how filled. That whenever the office of mayor, councilmen, treasurer, marshal, recorder, or any other officer in and by this act, specified and provided for shall become vacant by death, resignation, removal from the city or otherwise, it shall be the duty of the council as soon as may be, to appoint some suitable person having the requisite qualifications to fill such vacancy, and the person so appointed shall continue in office during the remainder of the term for which his predecessor was elected or temporary absence of the mayor, the duties of his office during such [119] sickness or temporary absence shall be discharged by the president *pro tem* who shall be obeyed and respected accordingly.

SEC. 12. By-laws and ordinances. That the said city council shall have power, and it is hereby made their duty to make and publish from time to time, all such ordinances as shall be necessary to secure said city and the inhabitants thereof, against injuries by fire, thieves, robbers, burglars and all other persons violating the public peace; for the suppression of riots and gambling, and indecent and disorderly conduct; for the punishment of all lewd and lascivious behavior in the streets and other public places in said city; they shall have power from time to time to make and publish all such laws and ordinances as to them shall seem necessary to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of said city, and the inhabitants thereof, to impose fines, forfeitures and penalties on all persons offending against the laws and ordinances of said city, and provide

for the prosecution, recovery and collection thereof, and shall have power to regulate by ordinance the keeping and sale of gun-powder within the city.

SEC. 13. Organization of fire companies. That the city council shall have power to establish and organize all fire companies and provide them with proper engines, and such other instruments as shall be necessary to extinguish fire and preserve the property of the inhabitants of said city from conflagration, and they shall have power to establish and constitute landing places, wharves, docks and basins in said city at or on any of the city property, and fix the rates of landing, wharfage and dockage of all steam-boats, boats, rafts and other water crafts, and of all goods, wares, merchandize, produce and other articles that may be moored at, landed on, or taken from any landing, wharf, dock, or basin belonging to said city.

SEC. 14. Restrictions as to buildings. That for the purpose of more effectually securing said city from the destructive ravages of fire, the said city council shall have power and authority on the application of three-fourths of the whole number of owners and proprietors of any square or fractional square in said city, to prohibit in the most effectual manner, the erection of any building or the addition to any building before erected more than ten feet high in any such square or fractional square, except the outer walls thereof shall be composed entirely of brick or stone and mortar, and to provide for the most prompt removal of any building or addition to any building which may be erected contrary to the true intent and meaning of this section.

SEC. 15. To regulate taverns and tippling houses. That the city council shall have power, and it is hereby made their duty to regulate by good and wholesome laws and ordinances all taverns, ale, beer, cider and porter shops, and places where spirituous liquors are sold in less quantities than one gallon, and all other houses of public entertainment in said city, all theatrical exhibitions, and public shows, and all exhibitions of whatever name, or nature to which admission is obtained on the payment of money or any other reward; to license and establish ferries across the Mississippi river from said city to the opposite shore, and to impose reasonable fines and penalties for the violation of any such laws and ordinances. And the said city council shall have full and exclusive power to grant or refuse license to tavern keepers, inn holders, retailers of spirituous liquors by less quantities than one gallon, keepers of ale, porter, cider, beer houses and shops, and all other houses of public entertainment, showmen, keepers and managers of theatrical exhibitions, and other exhibitions for money or other reward, auctioneers for the sale of goods, wares and merchandize, horses and other animals at public auction, keepers of billiard tables, ball and ten pin alleys, and keepers of ferries from said city across the Mississippi river to the opposite shore; and in granting any such license it shall be lawful for said city council to exact, demand and receive such sum or sums of money as they shall think reasonable and expedient; to annex thereto such terms and conditions in regard to time and place, and other circumstances under which such license shall be acted upon, as in their opinion the peace, quiet, and good order of society and said city may require, and for the violation of such terms and conditions as aforesaid the city council shall have power to revoke or suspend any such license whenever the good order and welfare of said city may require it, in such manner as shall be provided by ordinance: provided, that no power herein granted to the said city council shall be so construed as to impair, interfere with, or in any way affect any right or rights now existing by virtue of any acts heretofore passed by the legislative authority of this territory establishing ferries across the Mississippi river opposite the town of Dubuque, in Dubuque

county, but the same shall be and remain as though this act had not been passed.

SEC. 16. Abatement of nuisances. That the city council shall have power, and they are hereby authorized to require and compel the abatement and removal of all nuisances within the limits of said city, under such regulations as shall be prescribed by ordinance; to cause all grounds therein where water shall at any time become stagnant to be raised, filled up, or drained, and to cause all putrid substances of either animal or vegetable to be removed; and to effect these objects the said city council may from time to time, give order to the proprietor or proprietors, or to his, her, or [121] their agent or agents, and to the non-resident proprietors who have no agents therein, notice by publication in one or more of the newspapers printed in said city, for the period of two weeks, of all or any grounds subject at any time to be covered with stagnant water, to fill up, raise or drain such ground at their own expense, and the said city council shall designate how high such grounds shall be filled up and raised, or in what manner they shall be drained and fix some reasonable time for filling up, raising or draining the same, and if such proprietor or proprietors or agents shall neglect or refuse to fill up, raise or drain such grounds in such manner and within such time as the said city council shall have designated and fixed, they shall cause the same to be done at the expense of the city and assess the amount of the expenses thereof on the lot or lots of ground so filled up, raised or drained as aforesaid, and place the assessment so made as aforesaid, in the hands of the city collector, who shall proceed to collect the same by the sale of such lot or lots if not otherwise paid in such manner and under such restrictions and regulations as may be prescribed by ordinance: provided, the proprietor or proprietors shall have the privilege and right to redeem such lot or lots within one year after such sale, by paying to the purchaser or purchasers the amount by them paid together with ten per cent. interest on the same.

SEC. 17. Supervisors and other officers. That said city council shall have the exclusive power of appointing supervisors and other officers of the streets and highways within the said city, and if collected in money or labor any sum not exceeding one dollar annually as a road tax from each and every person liable by law to pay such tax or labor on the highways; they shall have the power whenever public convenience or safety shall require it, to prohibit hogs, cattle, horses and all other description of animals from running at large in the streets, lanes, alleys, commons and other public places in said city; they shall have power to license and regulate all carts, wagons and drays, and every description of two and four wheeled carriages which may be kept in said city for hire, and all livery stables, brokers and loan offices.

SEC. 18. Public schools. That the said city council shall have power whenever they deem it expedient, to provide for the establishment and support of public schools within said city, and to pass all ordinances necessary and proper for the good government of the same.

SEC. 19. Collection and disbursement of city revenue. That all monies raised, recovered, received or collected by means of any tax, license, penalty, fine, forfeiture or otherwise under the authority of this act, or which may belong to said city shall be paid in to the city treasury, and shall not be drawn therefrom except by or- [122] der or under the authority of the city council. And it shall be the duty of the city council to liquidate and settle all claims and demands against said city, and to require all officers, agents or other persons intrusted with the disbursement or expenditure of the public money to account to them therefor at such time and in such manner as they may direct, and they shall annually publish for the information of the citizens

a particular statement of the receipts and expenditures of all public moneys belonging to said city, and also of all debts due and owing to and from the same. And the city council shall have power to pass all such laws and ordinances as may be necessary and proper to carry into effect the powers herein and by this act granted.

SEC. 20. Publication of laws and ordinances. That every law or ordinance of said city before it shall be of any force or validity, or in any manner binding on the inhabitants thereof or others, shall be signed by the mayor and published in one or more newspapers in said city at least six days.

SEC. 21. Owner, to include leases for a term of years. That for the purpose of opening or improving any street, lane, alley, market space, public landing or common, or other purposes, the term owner or owners used in this act, is hereby declared to mean any person or persons who may own any lease upon lands for any term not less than ninety-nine years renewable forever, on any freehold estate either for life or otherwise, upon any ground to be affected by partition, and such tax shall be a lien upon the real estate upon which it may be assessed from the time of filing such petition until it shall be fully paid and satisfied.

SEC. 22. Grading streets and wharves. That said city council shall have exclusive power to establish and regulate the grade of the wharfs, streets, and banks along the Mississippi river within the corporate limits of said city.

SEC. 23. Duty of justices of the peace. That the justices of the peace in said city shall have full power and authority and it is hereby made their duty at such times as the same by the city authorities shall be required of them or any of them, to issue all needful process for the apprehension of offenders against the by-laws, ordinances and regulations of said city, and to hold a court for the trial of all offences within the said city, and the same to fine, imprison or discharge as the by-laws, ordinances and regulations of said city and the facts of the case may require. And for that purpose they and each of them are authorized and required to cause to come before them when necessary, a jury of six citizens of said city who shall be qualified voters of said city. And all such offenders on conviction shall be liable for the costs of prosecution and judgment shall go accordingly, and in case of acquittal the same shall be paid by the corporation, having first been allowed by the city council, and all process [123] in behalf of said city shall run in the name of the United States for the use and benefit of said city and shall otherwise conform to the requisitions and provisions that may be made by the city council, and shall be signed, executed and returned by the marshal of said city, and until other provisions shall be made by said city authorities it shall be lawful for said justices or any of them to commit all offenders against said by-laws, ordinances and regulations on conviction, to the jail of Dubuque county. And in case where a portion or all the punishment shall be imprisonment, the keeper of said jail is hereby required to receive such persons on the proper warrant of such justices or justice of the peace into his custody in said jail in the same manner as in ordinary cases. And all expenses of such imprisonment in cases where the same cannot be collected from the person so convicted and imprisoned shall be paid out of the treasury of the corporation; the fees of the justices and jurors in such cases shall be the same as are allowed by the statute.

SEC. 24. Jury of six citizens. That all trials for the violation of the by-laws, ordinances and regulations, shall be in a summary manner, and that no person shall for any offense be deprived of his or her liberty, or fined in

any sum greater than twenty dollars, unless convicted by a jury of six citizens of said city qualified to vote as aforesaid.

SEC. 25. Corporation to hold and convey property. That the said city council shall have the custody, care and management of all real, personal and mixed estate, and other corporate property of said city, and all the real, personal and mixed estate, money, funds and resources which from time to time may be owned by, or of right belong to said city, with full power to purchase, hold, possess, use and occupy, and to sell and convey the same for the use and benefit of the said city, and the inhabitants thereof: provided, that the city council shall not have power to sell any real estate belonging to the said city of Dubuque, unless the qualified voters thereof in pursuance of ten days' previous notice given by order of the city council and published in one or more of the newspapers printed in said city, setting forth the time, place and purpose of voting, and there shall be a majority of written or printed ballots given expressing their consent thereto.

SEC. 26. Levy and collection of taxes. That to defray the current expenses of said city, the city council shall have power to levy and collect taxes on the real and personal property therein: provided, that the amount of taxes shall not in any one year exceed the sum of twenty-five cents on each one hundred dollars worth of property taxed. They shall also have power whenever in their opinion the interest of said city shall require it, to levy and collect a tax on dogs or other domestic animals not included in the list [124] of taxable property for territorial and county purposes, which said taxes shall be collected by the city collector and paid into the treasury in such manner and under such restrictions and regulations as may be prescribed by ordinance; the city council shall have power to cause to be opened, paved or re-paved, or improved any street, lane, alley, market space or public landing on petition of not less than two thirds of the number of owners of any square or parts of square of said city, boundary [bounding] or abutting on such street, lane, alley, market space or public landing so to be opened, paved, re-paved or improved; and to levy and collect a special tax for defraying the costs and expenses of the same by an equal assessment on the first front boundary and abutting as aforesaid.

SEC. 27. Borrowing money, requisites before. That whenever in the opinion of the city council it is expedient to borrow money for any public purpose, the question shall be submitted to the citizens of Dubuque, the nature and object of the loan shall be stated, and a day fixed for the electors of the said city to express their wishes, the like notice shall be given as in cases of an election, and the loan shall not be made unless two thirds of all the votes polled at such election shall be given in the affirmative.

SEC. 28. Adoption of this charter. That before this act shall take effect and be in force, a vote shall be taken upon the adoption of the same by the qualified voters residing within the limits of said city, at such time and place, and under such regulations as the present mayor and aldermen of said city may prescribe and determine: provided, that a majority of the whole vote cast, shall be deemed necessary to adopt and carry into effect this act.

SEC. 29. This charter a public act. That this act shall be taken and received in all courts, and by all judges, magistrates and other public officers, as a public act, and all printed copies of the same which shall be printed by or under the authority of the council and house of representatives, shall be admitted as good evidence thereof without any other proof whatsoever.

SEC. 30. Repealing clause. That all acts and parts of acts heretofore passed relative to the incorporation of said city of Dubuque and coming within the purview of this act, be and the same is [are] hereby repealed.

Approved, January 19th, 1846.