

PROCEEDINGS OF COMMON COUNCIL.

REGULAR SESSION—JUNE 1, 1891.

The Common Council of the City of Indianapolis, met in the Council Chamber, Monday evening, June 1st, A. D. 1891, at 8:00 o'clock, in regular session.

PRESENT—Hon. W. M. Hicklin, President *pro tem.* of the Common Council, in the Chair, and 19 members, viz: Councilmen Burns, Cooper, Coy, Davis, Dunn, Gauss, Markey, Martindale, Murphy, Myers, McGill, Nolan, Olsen, Rassmann, Sherer, Stechhan, Sweetland, Trusler, and Weber.

ABSENT, 5—viz: Councilmen Austin, Gasper, Pearson, Woollen, and President Yontz.

The Proceedings of the Common Council for the regular session held May 18th, 1891, having been printed and placed upon the desks of the Councilmen, said Journals were approved as published.

COMMUNICATIONS, ETC., FROM THE MAYOR.

His Honor, the Mayor, submitted the following communication; which was received:

To the Members of the Common Council:

Gentlemen.—I have approved Appropriation Ordinance No. 3, passed by your honorable body on May 18th, 1891.

THOMAS L. SULLIVAN, Mayor.

REPORTS, FROM CITY OFFICERS AND OFFICIAL BOARDS.

The City Clerk, for the Board of Health, submitted the following communication and recommendation; which were referred to the Committee on Public Property:

Indianapolis, May 26, 1891.

To the Mayor and Common Council:

Gentlemen.—Our Board have made a personal inspection of the premises known as the "Pest House," situated on the bank of Fall Creek, north of the City Hospital. We find that the city owns here about eleven and one-half ($11\frac{1}{2}$) acres of ground, together with buildings and outbuildings devoted to the care of small pox patients. The ground is subject to yearly overflow, and the buildings are worthless, and beyond repair. We have reason to believe that the city can enter into an agreement with the county to erect jointly suitable quarters for a pest house, and would respectfully request permission to dispose of the present grounds, and apply the proceeds to the erection of a new set of buildings.

Respectfully,

F. A. MORRISON, Pres't.
GEORGE J. COOK, Sec'y.
ALLISON MAXWELL.
Board of Public Health.

To the Members of the Common Council:

Gentlemen:—I have the honor to refer to you a communication from the Board of Health, recommending the sale of certain property belonging to the city, and with the proceeds the erection, jointly with the county, of suitable quarters for a pest house. Practically, the city has no pest house. The building designed as such, is little better than a ruin, and is very necessary that immediate steps be taken to supply such a building. Therefore I recommend that you comply with the request of the Board of Health.

THOMAS L. SULLIVAN, Mayor.

The City Clerk, for the City Comptroller, submitted the following communication and recommendation; which were referred to the Committee on Ways and Means and Public Health:

DEPARTMENT OF PUBLIC HEALTH, ROOM 9, COURT HOUSE, }
Indianapolis, May 26, 1891. }

To W. W. WOOLLEN, City Comptroller:

Sir:—For a number of years past vault and cist-pool cleasers have, by order of the Common Council and Board of Health, been depositing the contents of such vaults and cist-pools in White River, near the crossing of the Belt Railroad. This material is carried down by the current and deposited along the river banks for many miles, to the annoyance and detriment of the residents of the vicinity. The County Board of Health have served notice upon the city to discontinue such method of disposal of waste material immediately. We have investigated the matter, and beg leave to report the following facts with recommendations:

The Sellers Farm is now leased to private parties, and such lease will not expire, so we are informed, until November 1, 1891. The city owns two pieces of ground along the river bank; one lot above, and twenty-five lots one mile below the Belt Railroad. In view of all the circumstances, we would recommend, as a temporary measure, until a portion of Sellers Farm can be placed at our disposal and arrangements made for the complete destruction of garbage and contents of vaults, that you set aside a sufficient amount to cover the expense of burying said material upon one or the other above mentioned pieces of ground. We are informed through the Engineer's office, that the expense will probably not exceed ten dollars (\$10.00) per day for the summer months, or from June 1st to September 1st, 1891—seven hundred and ninety dollars (\$790.00). There is an imperative demand for prompt action, and we would request your immediate attention.

Respectfully,

F. A. MORRISON, Pres't.

GEORGE J. COOK, Sec'y.

ALLISON MAXWELL,
Board of Public Health.

To the Honorable, the Common Council of the City of Indianapolis:

Gentlemen:—I beg to call your attention to the accompanying report of the Board of Health and Charities, in reference to the disposal of the city's garbage and waste matter, and respectfully recommend that the sum of eight hundred dollars be appropriated by the Council to said department, to enable it to dispose of said garbage and waste matter in the manner named in the accompanying report.

Very respectfully,

W. WESLEY WOOLLEN,
City Comptroller.

The City Clerk, for the City Comptroller, submitted the following communication and recommendation; which was referred to the Committee on Ways and Means:

DEPARTMENT OF PUBLIC WORKS, OFFICE OF THE BOARD, }
Indianapolis, June 1, 1891. }

W. W. WOOLLEN, Esq., City Comptroller;

Dear Sir:—Please ask the Council for an appropriation of \$1,300.00 for the use of this Board in making repairs necessary to preserve the City Hospital grounds from the washings of Fall Creek during high water.

Very respectfully,

A. W. CONDUIT, Chairman.

DEPARTMENT OF FINANCE, OFFICE OF CITY COMPTROLLER, }
Indianapolis, June 1, 1891. }

To the Honorable, the Common Council of the City of Indianapolis:

Gentlemen:—I ask your attention to the inclosed communication to me from the Board of Public Works. The water has cut into the bank of Fall Creek west of the City Hospital, and taken off several feet of ground belonging to the city. The necessity for protecting the city's property there is imperative, and I respectfully recommend the Council to appropriate thirteen hundred dollars to the Board of Public Works for that purpose. No estimate was made for this expenditure in the regular Appropriation Ordinance passed by your honorable body on the 18th ult.

Very respectfully,
 WILLIAM WESLEY WOOLLEN,
 City Comptroller.

REPORTS FROM STANDING COMMITTEES.

The Committee on Public Light, through Councilman Hicklin, submitted the following report; which was read and received:

To the President and Members of the Common Council:

Gentlemen:—Your Committee on Public Light, to whom was referred General Ordinance No. 14, 1891, an ordinance granting The Postal Telegraph Cable Company the right to erect poles on certain streets in the city, have had the matter under consideration, and herewith return said ordinance, and recommend its passage.

Respectfully submitted,
 W. M. Hicklin,
 Michael J. Burns,
 Robt. Martindale,
 Committee on Public Light.

The Special Committee on re-districting the City, submitted the following recommendation:

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

Gentlemen:—Your Special Committee on re-districting the City of Indianapolis into Wards, would respectfully report the ordinance hereto attached, and recommend its passage.

Respectfully submitted,
 W. M. Hicklin,
 Michael J. Burns,
 Ed. A. Austin.

Which was read and adopted, by the following vote:

AYES, 13—viz: Councilmen Austin, Burns, Coy, Gauss, Hicklin, Markey, Murphy, McGill, Nolan, Olsen, Rassmann, Sherer, and Weber.

NAYS, 10—viz: Councilmen Cooper, Davis, Dunn, Gasper, Martindale, Myers, Pearson, Stechhan, Sweetland, and Trusler.

From the above Committee. Read the first time:

G. O. No. 16, 1890—An ordinance to divide the City of Indianapolis, Indiana, into fifteen Wards, and to establish the boundaries of the same, under and by virtue of an Act entitled "An act concerning the incorporation and government of cities having more than one hundred thousand population, according to the last preceding United States census, and matters connected therewith, and declaring an emergency;" approved March 6th, 1891.

The former Light Committee, through Councilman Gauss, submitted the following recommendation; which was referred to the Board of Public Works:

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

Gentlemen.—The undersigned Committee have received from the Board of Public Works a communication of which the following is a copy:

"Indianapolis, May 1st, 1891.

CHARLES A. GAUSS, Chairman Electric Light Committee Common Council, City:

Dear Sir.—It is the desire of this Board that your Committee take up the matter of the present electric lighting with the Brush Company, and settle it as per agreement made by them with your Committee. This Board has endeavored to settle this matter, but as the agreement of the Brush Company was that it should be settled on terms satisfactory to your Committee, we have been unable to arrive at a settlement with them at a price that we would deem satisfactory.

Very respectfully, (Signed) A. W. CONDUIT, Ch'n."

As a former Committee on Public Light, we gave the lighting subject much careful attention, and the lowest and best bid received was from the Indianapolis Brush Electric Light and Power Company, which proposed to furnish under General Ordinance No. 44, 1886, four hundred 2000-candle power electric arc lights on an all-night schedule on a five year contract for \$105 00 per light per year. The said company has been furnishing one hundred and nineteen such lights on an all-night schedule from and inclusive of the 2d day of January to and inclusive of the 18th day of March, 1891, on which date, at the request of said Board, said company submitted to its proposition.

We therefore recommend that the Indianapolis Brush Electric Light and Power Company be paid for said one hundred and nineteen lights for said period, that is from and inclusive of the 2d day of January to and inclusive of the 26th day of March, 1891, at the rate of \$105 00 per year, deducting from said sum an amount equal to two and one-half per cent. per annum, for the reason said special tax of 2½ per cent. does not apply to the Brush Electric Company until January 1892, under Special Ordinance No. 44.

Respectfully submitted,

Chas. A. Gauss,
W. M. Hicklin,
Otto Stechhan,
Committee on Public Light.

The Committee on Education, through Councilman Olsen, submitted the following recommendations; which were adopted:

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

Gentlemen.—Your Committee on Education, to whom was referred a communication from the School Board, would respectfully recommend that at the election to be held in School Districts Nos. 1, 2, 10 and 11, in the City of Indianapolis, Saturday, June 13th, 1891, for the election of one School Commissioner for each of the above named districts, to serve for a term of three years, the following named persons be appointed to constitute the election boards of said districts respectively, to-wit:

1st District—Inspector, Adolph Seidensticker; Judges, John Reynolds and Samuel E. Rauh.

2d District—Inspector, T. E. Johnson; Judges, Daniel H. Wiles and William W. Spencer.

10th District—Inspector, Fred. Riebel; Judges, William C. Griffith and Austin F. Denny.

11th District—Inspector, Frederick W. Schaefer; Judges, Norman S. Byram and Eben A. Parker.

And that the voting places in each of said districts be as follows:

1st District—At No. 1 School House.

2d District—At No. 2 School House.

10th District—At No. 10 School House.

11th District—At No. 11 School House.

Respectfully submitted,

O. R. Olsen,
R. J. Nolan,
Committee on Education.

Councilman Pearson moved—

That the ordinance governing the fire limits of the City of Indianapolis be referred to the Committee on Public Safety, Chief Fire Engineer and Building Inspector, with instructions to report to this body any amendments or changes they may deem necessary.

Which was adopted.

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

Under this order of business the following entitled ordinances were introduced:

By Councilman Markey. Read the first time:

G. O. No. 17, 1881—An ordinance designating the license fee to be paid the City of Indianapolis by distilleries and breweries, and the depots or agencies in said city of all breweries and distilleries, and all wholesale dealers in malt liquor, as provided for by the Act of the General Assembly of Indiana, approved March 6, 1891.

Councilman Markey moved to suspend the Rules for the purpose of placing G. O. No. 17, 1891, on its final passage.

Which motion failed of adoption by the following vote:

AYES, 12—viz: Councilmen Austin, Burns, Coy, Hicklin, Markey, Murphy, Nolan, Olsen, Pearson, Rassmann, Sherer, and Weber.

NAYS, 10—viz: Councilmen Cooper, Davis, Dunn, Gasper, Gauss, Martindale, McGill, Stechhan, Sweetland, and Trusler.

By Councilman Rassmann. Read the first time:

G. O. No. 18, 1891—An ordinance to vacate a portion of Alabama street, for Union Railway purposes.

Councilman Rassmann presented the following petition; which was read and ordered filed with the above ordinance—G. O. No. 18, 1891:

Indianapolis, December 17, 1890.

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

Gentlemen:—Your petitioner, the Indianapolis Union Railway Company, in carrying out the powers granted by the Act of the General Assembly of the State of Indiana in relation to union railway companies, approved March 2d, 1885, deems it necessary that the following portion of Alabama street, in said City of Indianapolis, should be vacated, viz: That part of Alabama street extending from a line across said street at a point three hundred and fifty-six and four-twelfths feet south of the south line of Maryland street (measured on the west line of Alabama street) to the north line of Louisiana street.

The purpose for which it is proposed to use the ground forming said portion of said street sought to be vacated, is to enlarge your petitioner's track system in the City of Indianapolis, to facilitate the transaction of its business and the business of its proprietary companies and of other railroad companies whose tracks connect with your petitioner's tracks, and to facilitate the bunching of the railroad tracks on that part of Virginia avenue which is coincident with Alabama street over which it is proposed to construct on said Virginia avenue a viaduct.

Wherefore your petitioners pray your honorable bodies to ordain the vacation of the above described portion of said Alabama street.

We, the undersigned, being the owners in fee-simple of more than one-half of the real estate fronting on both sides of Alabama street, in the City of Indianapolis, Indiana, estimated by the frontage in feet upon said street, commencing at a line drawn across said street equidistant from the termini of that portion of said street proposed to be vacated as in the above and foregoing petition is prayed, and extending along said street fifteen hundred (1,500) feet in each direction, in consideration, among other things, of the proposed removal of all railroad tracks in Louisiana street between Virginia avenue and the west line of Alabama street, in the event of the construction of a viaduct on Virginia avenue in accordance with the provisions of General Ordinance No. 62, of the year 1890, do hereby consent to the granting of the prayer of said petition.

W. N. JACKSON, Sec'y.

THE INDIANAPOLIS UNION RAILWAY CO.,

By M. E. INGALLS, Pres't.

Connecticut Mutual Life Insurance Co, by Jno. S. Spann & Co., agents, 100 feet; John C. Davis, 226 feet, Wm. T. Cannon, 236½ feet; Board of County Commissioners of Marion County, Indiana, by Jacob A. Emrich, Michael H. Farrell, Joseph L. Hunter, Board of Commissioners of Marion county, Ind., 225 feet; Mary L. Cones, by C. B. Cones, 67½ feet; The Lake Erie & Western R. Co., by Geo. L. Bradbury, General Manager, 140 feet; Estate of Isaiah Mansur, per Amelia B. Mansur, 195 ft.; The Indianapolis Union Railway Co., by W. N. Jackson, Sec'y., 34 feet; The Cleveland, Cincinnati, Chicago & St. Louis Railway Co., by M. E. Ingalls, Pres't, 659 ft.

By the request of the Cleveland, Cincinnati, Chicago & St. Louis Railway Co., holder by succession by consolidation of the lease and option contract by us to the Cincinnati, Indianapolis, St. Louis & Chicago Railway Co. *

Nicholas McCarty, Margaret R. McCarty Harrison, John C. S. Harrison, Frances J. McCarty, Henry Day, Henry McCarty Day, Margaret McCarty Day, by Nicholas McCarty, their attorney in fact.
The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co., by James McCrear, Vice-President, 64½ feet.

* All those parts of Squares 84 and 99, in Indianapolis, Marion county, Indiana, formerly held by the Cincinnati, Indianapolis, St. Louis & Chicago Railroad Company, and now held by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company under lease option contracts to the said Cincinnati, Indianapolis, St. Louis & Chicago Railroad Company, dated November 3, 1888, and recorded in the office of the Recorder of Marion county, Ind., in Record 174, at pages 388 and 398, to which reference is here made, (663 feet.)

Councilman Stechhan presented the following remonstrance; which was read and ordered filed with the above G. O. No. 18, 1891:

In the matter of the proposed Vacation of Alabama Street.

To the Common Council of the City of Indianapolis:

Gentlemen:—The property holders on south Alabama street have appointed their committee, consisting of Frank M. Dell, H. T. Conde, Lorenz Schmidt, John W. Ray and Emil Deitz, to urge upon your honorable body that it do not attempt to vacate south Alabama street, or any part thereof, as requested in the petition of the Union R. R. Company. We ask attention to the following reasons:

1. Under the new charter, the Council has no power to vacate a street. That power is now placed entirely in the hands of the Board of Public Works. The Council can not, therefore, lawfully vacate any street, but should refer the matter to the Board of Public Works, which alone has power to act.

2. Even if the new charter had not repealed all previous laws on the vacation of streets, the Council alone has never had any power to vacate a street; and any ordinance to that effect would be void. The provision in the "Act for the incorporation of Railroad Companies," etc., passed in 1885, by which an attempt is made to authorize the Council to vacate a street, is probably unconstitutional and void. The Constitution of this State provides that every Act shall embrace but one subject, which shall be expressed in the title. The title to this Act nowhere indicates that it contains any provisions touching the power of the city government of Indianapolis, or the Council, in the matter of vacating streets. These provisions also relate to an entirely different subject from that of the incorporation of the Union Railroad Company. These provisions are, therefore, void. The Council has no power, as a legal proposition, to order the vacation of south Alabama street. As the Board of Public Works unquestionably have the power, the Board should act upon this matter.

3. Even if the Council, as well as the Board of Public Works, has the power to vacate a street, this power ought not to be exercised, for the reason that if the Council vacates the streets, no provision is made in the law for the payment of damage to property holders. The vacation of this street will damage the property of citizens located north and south of the proposed vacation, many thousands of dollars. It is an irreparable injury. If the street is to be vacated, these citizens, in all justice, should be paid reasonable damages for the injury they suffer. If the Board of Public Works is left to act on the question of vacation, the new charter provides that the Board shall investigate and assess the damages suffered by each piece of property. These damages can not be assessed if the Council vacates the street. There is no sound reason why this street should be vacated without the payment of damages. It is simple justice to do this, and this can be done by leaving the matter of vacation to the Board of Public Works, which, under the charter, will assess damages. These damages the Union Railway Company has already assumed and agreed to pay, by accepting the ordinance of last December. It is expressly provided that the Union Railway Company will hold the city harmless, and will pay all damages which will be assessed for the property holders. This the company should be required to do; and in order that it may do so, the street should not be vacated by the Council, which can not allow damages to any one, but by the Board of Public Works, whose duty it is to investigate and assess damages to property.

4. The Council should not vacate Alabama street, because by so doing it parts with the power conferred by the charter to require a viaduct to be built at this point. The new charter gives the Council the right to require a railroad company to erect viaducts at a point where railway tracks cross a street. This justifies an ordinance for a viaduct on Alabama street; but if the Council vacates Alabama street, then it is no longer a street, and the chances are that the power will be lost forever for the track to be bridged at this point. The future of the city must be kept in mind. The time may come when it will be desirable to require a viaduct to be built at this point. It would seem that justice requires that approaches be built now for the proposed viaduct for Alabama street. But if this is not required, the power should at least be reserved to require a viaduct to be built in the future. This can not be done if the street is unconditionally vacated.

5. This whole matter should take the usual course, by being referred to the Board of Public Works for action. As for the Council the action it should consider is whether or not it should exercise its power now, to compel the Union Railroad Company to provide approaches on Alabama street to the Virginia avenue viaduct. Since the vacation of Alabama street is for the pecuniary benefit of the railroads, ought not the road in return to bridge the tracks? The railroad company should be treated with fairness and justice—the general interests of the city must be looked after; but it is not right that the property holders on Alabama street should have their pecuniary interests sacrificed to the extent of thousands of dollars when the city has full power to protect them without oppression or injustice to any one.

6. The provision in the ordinance of December, 1890, to the effect that the city agreed to vacate south Alabama street, was illegal and void, because no Council can bind any subsequent meeting to exercise a legislative power, and because the

Council neither then or now had any power to vacate a street, or to agree to vacate it. When the ordinance was passed, that power could only be exercised by the City Commissioners, and now it can only be exercised by the Board of Public Works. Whether the city shall vacate Alabama street is one question, and whether it ought not to provide for the payment of reasonable damages to the property holders, is another question. And whether the city shall not protect her property holders, by requiring approaches to be built to the viaduct for Alabama street, is a third question. This last question is most important, and belongs to the Council alone, under the powers granted by the charter.

7. We respectfully ask that the matter of vacating Alabama street be referred to the Board of Public Works, and protest against any action being taken by the Council on this point, as illegal and void. We further ask the Council to exercise its power, by requiring approaches to the Virginia avenue viaduct to be built for Alabama street, and an ordinance to be passed for that purpose.

FRANK M. DELL,
EMIL DEITZ,
LORENZ SCHMIDT,
JNO. W. RAY,
H. T. CONDE.

To the Mayor and Common Council, and Board of Public Works of the City of Indianapolis:

Gentlemen:—We, the undersigned, owners of real estate fronting on Alabama street, hereby remonstrate against the proposed vacation of part of Alabama street, petitioned for by the Indianapolis Union Railway Company and others, because by such vacation their property will be seriously damaged.

Wm. Dell, cor. Alabama and Maryland, 40 feet; Christina Bade, 49 feet; John W. and Edward Schmidt, 130 feet; Fred. Dietz and Maria Dietz, 157 feet; Emil Dietz, 38 ft.; W. J. Lowrey (agent for M. L. McBriarty, formerly Maloney) 22½ feet; R. B. Harsein, 39 feet—and 45 others.

This is to certify, That the foregoing remonstrance is a correct copy of the original, which said original is on file and in the hands of the undersigned.

LORENZ SCHMIDT.

By Councilman Sweetland. Read the first time :

G. O. No. 19, 1891—An ordinance to amend Section one of an ordinance entitled "An ordinance establishing stands for certain public vehicles, and providing penalties for the violation thereof;" ordained and established the 5th day of January, 1891.

On motion, the Common Council then adjourned.

Wm M. Hillier, President *pro tem.*

Attest: *E. Swift*, City Clerk.