

Regular Meeting of the City Council  
Austin Tex January 7 1884

Leon W. Saylor Mayor Presiding.  
Roll call present aldermen Schneider Rector Pillow  
Hancock Wells Campbell Schuber Maas Dickel Odell  
Carrington Hill Platt Ervin Bruck and Brunner 16  
absent aldermen Underhill J. W. Robertson Crocker and  
J. W. Robertson.

Minutes of Dec 17<sup>th</sup> 1883 read and approved

Alderman Maas moved that the regular order  
of business be suspended and the Council consider  
the Question whether or not the Case Johnson vs the City  
shall be appealed Motion adopted

alderman Hill offered the following resolution

Resolved by the City Council of the City of  
Austin First That H. B. Barnhart Esqr be employed  
as special attorney for the City of Austin in the Cause  
of C. & D. Johnson <sup>against</sup> the City of Austin lately decided in  
the district court of Travis County

2<sup>d</sup> That said attorney be instructed to prosecute  
the appeal of said cause to the supreme Court

3<sup>d</sup> That the City of Austin is hereby pledged to indemnify  
such persons as may come sureties upon the appeal  
bond in said cause from all liabilities they may  
thereby incur

4<sup>th</sup> That the sum of fifty dollars is hereby appropri-  
ated to pay said attorney for his services to be render-  
ed in said cause in the supreme Court.

The motion to suspend the rules and place the  
resolution on its second reading was lost by the  
following Vote Yeas aldermen Schneider Rector  
Pillow Hancock Campbell Maas Odell Hill Platt  
Ervin and Brunner Nays aldermen Wells Schuber  
Carrington and Bruck.

A Petition was received from C. E. Anderson  
asking the Council to allow him to build a side  
walk in front of his property on Decan street out  
of 2 inch plank instead of stone gravel or cement  
as required by an ordinance providing for pavement  
on said street

Referred to the street committee

a Petition of Fred Storging asking the Council to relieve him from the paying the full amount of a license issued to C. Dyer and not paid for by him

Referred to the Finance Committee

A petition was received from citizens on Pecan Street requesting the Council to remove the hydrant at the corner of Colorado and Pecan street used by the street sprinkler as the same was a nuisance

Referred to the Water and Gas Committee

The petition of a mason asking that he be allowed to make some necessary repairs on the gallery attached to the ornate hotel was rejected indefinitely.

Alderman Plath in the Chair

a proposition was received from Dr Cordova and Son proposing to sell to the City 30 acres of land near the residence of Mrs Kod Peace for Cemetery purposes

Referred to the Cemetery Committee

a Petition was received from R J Carroll asking for pay of a mule that broke its leg in a bridge of the City Alderman Pillsaw moved that the petition be referred to a Committee of 3. motion adopted

His honor Alderman Plath appointed as the Committee Pillsaw Hancock and Rutor

Alderman Odell submitted a proposition from Ewshande and Son to sell to the City one hundred and four acres of land on the eastern limits of the City for cemetery purposes Referred to the Cemetery Committee

a petition was received from Citizens of the fifth ward asking the Council to locate a hydrant in the northwestern part of said ward for fire protection

Referred to the Fire Committee



The report of the City Treasurer for Dec. 1883 was read and then referred to the Finance Committee

The reports of the City Marshals for Dec. 1883 were received read and referred to the Police Committee  
 Fines assessed in the recorder's Court for Dec. 1883 \$1,776<sup>10</sup>. Fines collected in cash \$456.<sup>25</sup> Fines worked out \$1,75<sup>25</sup>.

The report of the City Sexton for Dec. 1883 was read and referred to the Cemetery Committee

The report of the City Physician was read and referred to the Hospital Committee

Hon W. A. Sawyer Mayor Presiding

The following report was received from the City attorney which was read and referred to the ordinance Committee

City attorney's Office

Austin Tex January 7<sup>th</sup> 1884

To the Hon City Council of the City of Austin  
 Gentlemen

In obedience to a resolution adopted by your honorable body at its last regular meeting directing me to report which ordinances of the City of Austin are in conflict with the laws of the state of Texas I beg leave to say that the Charter of the City of Austin fixes the minimum fine for the violation of an Ordinance at \$50 and the maximum at \$100<sup>00</sup>. Second that Art 896. of the code of criminal procedure of the state of Texas provides among other things that no ordinance of a town or City shall be valid which provides a less penalty for any act omission or offense than is prescribed by the statutes where such act omission is an offense against the state"

so it will be readily seen that when the legislature has imposed a penalty exceeding \$100. for the commission of an offense it will be impossible for your honorable body to pass an ordinance covering the same subject matter

There are a number of ordinances now in force which cannot be executed for the reason stated nor indeed can some of them be so amended as to be made operative.

Among the number thus defective I will mention the ordinances against gaming disorderly houses and malicious mischief.

There are other ordinances subject to the same objections and in my opinion the only way to effect a reconciliation between the laws of the state and the ordinances of the City and thus give effect to the latter will be an amendment of the Charter of the City empowering the Council to increase the maximum penalty for the violation of an ordinance to say \$500<sup>th</sup>. This relief cannot be granted at this time as the matter has not been called to the attention of the legislature by proclamation by the executive of the state.

I will therefore state in conclusion that I will from time to time submit to your honorable body for consideration amendments to such ordinances as in my opinion can be rendered harmonious with the laws of the state on the same subject.

A revision of the City code should be made but it could only partially cure existing difficulties in the absence of an amendment to the Charter as above suggested.

Respectfully

Geo. F. Pendexter

City attorney

The following Report was received from the Street Committee which was adopted on motion of Alderman Hill the Clerk was instructed to furnish the City Marshal with copies of the report and that the Marshal serve the telephone and telegraph Companies each with a copy and notify all parties obstructing the streets to remove all obstructions at once.

To the Hon. W. A. Raylor Mayor and Board of Aldermen.

Your committee to whom was



referred the resolution offered by Alderman Hill to inquire whether or not the Telephone and Telegraph Companies having poles erected in the streets of the City are using or permitting the use of such poles for purposes unauthorized by law and especially with reference to the use thereof.

Have had the same under consideration and beg leave to report as follows.

We are of the opinion that it is a question for the executive and judicial branch of this government to make the enquiry that they are obstructions is perfectly clear. who placed them there or by what authority, can be ascertained by the officers charged with that duty.

Not only are they obstructions but they are in contempt of the Fire ordinance.

The only question, it seem to your committee is are they obstructions and if so enforce the ordinance making it a penalty for such offences we believe no individual or company has the right or do we find any authority in this government or any part of it to grant such provisions and we are clearly of the opinion that no such power is conferred by the charter.

Streets are the property of the general public and held in trust by the municipality for the use of the public and no individual or corporation has the right or is authorized to use the same for purposes other than that for which they were dedicated.

Every individual in the City has a vested right to a free and unobstructed pathway over all the streets of Austin and is a clear interference with the vested rights granted by the Constitution and is the duty of the executive branch of this government to see to it that they enjoy that privilege.

But why select this particular class of obstructions. There are others and we think of a graver character than the one contained in the resolution. Houses have been built in our streets and public walks. Railroads have been constructed along and across our public streets without

permission or even asking permission from the City Council structures have been placed on our most crowded streets in violation of the fire ordinance and ordinance against obstructing the streets.

Your committee would the resolution. Therefore most respectfully refer the resolution back to your honorable body and respectfully ask to be discharged from further consideration of the same.

A. Platt Chairman  
John P. Priskill  
W. B. Brush

Street Committee

Chairman Remmen was excused from further attendance at this meeting.

The following Report was received from the Street Committee which was adopted.

Austin Jan 8<sup>th</sup> 1884

Hon W. A. Taylor Mayor of the City of Austin  
Your Committee on streets to whom was referred an ordinance appropriating three hundred dollars to grade mesquite street and build a bridge on said street would most respectfully beg leave to report that we have had said ordinance under consideration and would recommend that the amount asked for be allowed.

We would also report that we deem it necessary that the City build a bridge on Pine street over Waller Creek and offer an ordinance (as a substitute for the ordinance referred) appropriating the additional sum of \$200<sup>00</sup> to build the bridge on Pine street and would recommend that the substitute ordinance be adopted and passed by your honorable body. Further that the report of the City Engineer be approved and that he take such action in regard to the excavation of Lot 1 Block 100 as will protect the street and alley adjacent thereto also such bridges be removed as may be necessary and that the bridge over Waller creek be refloored at once.



The following Report was received from the printing Committee which was adopted

To the Hon Mayor and Board of Aldermen  
of the City of Austin  
Gentlemen

Your Committee on printing beg leave to report that in compliance with article 44<sup>th</sup> of the ordinances of the City the following awards for printing was made by the Committee

E. J. McQuade. Business Manager. First Class  
E. Von Bockmann Second Class.

Respectfully

H. Warr.

B. E. Wells.

Printing Committee

Alderman Erwin submitted the report of the City Sexton for Nov. 1883 and moved that it be adopted and ordered filed adopted.

Alderman Brush called up an ordinance granting to M. D. Mathis and his associates the right to erect poles in the City of Austin for the purpose of suspending wires and constructing a system of Electric light in the City. The ordinance was read third and passed unanimously.

Alderman Brush called up an ordinance authorizing the assessor and collector of taxes to employ an assistant and fixing the salary of said assistant at \$800<sup>00</sup> per annum. The ordinance was read a third time and passed by the following vote yeas Alderman Schneider Tutor Pillow Hammet Wells Campbell Schuber Meads Odell Carrington Erwin and Brush Nays Alderman Hill and Clark.

Alderman Brush introduced an ordinance levying a license tax for the year 1884 on the keepers of livery and feed stables and the owners and proprietors of hack omnibuses and other vehicles.

The ordinance was read second and third time under suspension of the rules and passed by a two third vote.

The following report was received from the finance committee which was adopted

To the Honorable Mayor and Board of Aldermen of the City of Austin

Gentlemen

We the undersigned committee to whom was referred the petition of the several fire companies of the City of Austin asking for an allowance of \$30. per month for incidental expenses of said Companies beg. leave to state that they have had the same under consideration and recommended that the same be granted and also recommended the passage of the accompanying ordinance fixing the amount as prayed for in the petition

Very Respectfully

J. M. Odell

W. H. Adams

Lewis Hancock

Finance Committee

The Finance Committee introduced an ordinance appropriating the sum of \$30. per month for each of the Companies of the Fire Department beginning Nov 1 1883.

The motion to suspend the rules and place the ordinance on its second reading was lost.

The Finance Committee introduced an ordinance appropriating the sum of \$1898<sup>00</sup>/<sub>100</sub> to pay approved accounts to that amount. The motion to suspend the rules and place the ordinance on its second reading was lost.

Alderman Hancock introduced an ordinance appropriating the sum of \$1747<sup>00</sup>/<sub>100</sub> to pay the payroll for the month of December 1883.

The ordinance was read second and third time under suspension of the rules and passed by the following vote. Yeas: Aldermen Schroeder Tutor Pillow Hancock Wells Campbell Schuler Hoad Odell Harrington Hill Platt Ervin and Brush.

The Mayor presented the official bonds of the following City officers

Bond of Fred Staring Assessor and Collector

Bond of J. D. Howard City Treasurer

Bond of J. K. McFall City Engineer

Bond of C. L. Nitschke City Sexton

Bond of J. L. Burnell City Clerk



The Council authorized the Mayor to approve the bonds of City officers

Alderman Platt offered the following resolution which was laid over

Whereas The Curial grounds heretofore purchased for a Cemetery are squatted and Citizens are in need of ground for that purpose and

Whereas it is important that necessary grounds be purchased at once for the interment of the dead

Therefore be it Resolved by the City Council of the City of Austin That the Mayor and Cemetery Committee be and are hereby authorized and empowered to enter into negotiations and purchase such grounds as in their judgment may be necessary for the future use of the City of Austin and when a majority of said Committee has so selected and purchased said grounds the Mayor is hereby authorized and empowered to enter into obligations for the payment of the same and the Mayor in conjunction with the Cemetery Committee are hereby instructed to immediately thereafter take steps to have the same inclosed and laid off into such blocks and lots walks and passways as may be deemed best for the advantage and future embellishment of the same.

Thos L. Purcell  
City Clerk

Read and approved Jan 27 1884