

Regular meeting of the City Council, Austin, Texas, August 5th 1909.

Hon A P Wooldridge, Mayor, presiding: Roll called:

Present Mayor Wooldridge, Councilmen Bartholomew Gracy & Powell 4

Absent Councilman Hart 1

On motion of Mayor Wooldridge Councilman Hart was granted a leave of absence for two weeks beginning August 4th 1909.

On motion Mayor Wooldridge was assigned the duties of Supt of Police and Public Safety, during the absence of Councilman Hart, by the following vote:

Yeas Councilmen Bartholomew, Gracy & Powell 3

Mayor Wooldridge not voting.

The minutes of the last regular meeting were read and adopted.

The Mayor laid before the Council a petition from Miles Leonard asking the Council to refund him certain pound fees, which was read and on motion referred to Mayor Wooldridge, Actg Supt Police and Public Safety.

The Mayor laid before the Council a petition from J A Littleton asking damages which was read and referred to the City Attorney for investigation and report.

Reports of City Officers:

The Mayor laid before the Council the following reports from City Officers, viz: Assessor & Collector, City Clerk, City Marshal, City Sexton, Matron of the Hospital. The reports were read and referred as follows, viz:

Those of the Assessor & Collector and Clerk to Councilman Gracy, those of the Marshal & Matron of the Hospital to Mayor Wooldridge and that of the Sexton to Councilman Bartholomew.

The City Attorney presented the following report, viz:

Austin, Texas, August 4th 1909.

The Honorable City Council,

Austin, Texas.

Gentlemen:

In compliance with your directions to give my opinion of the proper construction of Article XI., Section 16, of the City Charter, I have the honor to advise you as follows.

Section 16 provides that every ordinance imposing a penalty, fine, imprisonment, or forfeiture for violation of the provisions thereof, shall after the passage of the same be published in every issue of a daily paper published in the City for ten days, and shall not take effect until such publication has been completed.

It is not necessary to refer to the remaining provisions of this section for the purpose of your inquiry. It is only necessary to determine the legal meaning of the words "Daily Paper". I have been able to find only two authorities in point. In the case of Tribune Publishing Co vs Duluth, 47 N W, 309, wherein the City Council of Duluth had designated the Duluth Tribune as the official paper for the publication of legal notices, under a requirement of the City charter that the official paper should be some daily newspaper published in the City, and it being proven that this paper was published only six days in each week, missing the Monday issue, it was held by the Supreme Court of Minnesota that a newspaper printed and published six days consecutively each week, is a daily paper. In the case of Richardson vs Tobin, 45 Cal, 30, wherein there was a charter provision that all legal notices should be published for a

Councilman Hart, two weeks leave absence

Mayor to act as Supt Police, etc, during absence of Hart.

Petition Miles Leonard to refund pound fees.

Petition J A Littleton for damages

Reports City officers

Opinion City Attorney in Contract for Newspaper printing

.period of ten days in a daily newspaper,the SupremeCourt of that State announced the rule that a paper,which according to its custom is published every day of the week except one,is a daily newspaper.

This decision was approved in two cases in Washington,and although the authorities on the point are very meager,several text writers have favored the rule above announced.

The Courts of this State,however,have never construed these terms,and ⁱⁿ event a question should ever be reviewed in Texas involving the construction of these two words in connection with the publication of legal notices,it does not necessarily follow that the rule laid down in the other States that I have mentioned will be approved.

In addition to this,I should call the attention of the Council to the fact that penal laws are strictly construed and the regularity of their enactment closely scrutinized by our Courts;and in event it should be decided by our Courts that the words " daily paper means a newspaper published every day of the week,every ordinance imposing a penalty,which hereafter be enacted by the Council and published in a newspaper issued only six days in the week,would be in jeopardy.

However,under the law as I find it,it is my opinion that ,if the penal ordinances of the City are published the full number of days required by the charter in every issue of a paper which is published in the City only six days in the week,that the requirements of the charter with reference to the publication of penal ordinances will be complied with.

Very respectfully yours ,

J Bouldin Rester

City Attorney.

On motion the report was received and ordered filed.

The City Attorney submitted the following opinion.

Austin,Texas ,August 4th 1909.

The Hon City Council,City of Austin,Texas.

Gentlemen :

In answer to your inquiry as to when ordinances passed by the City Council become effective,I have the honor to advise you the following:

Article 10,of the City Charter,provides that no ordinance passed by the Council shall go into effect before the expiration of ten days after the time of the final passage except when otherwise required by the general laws or by the provisions of the charter and except an ordinance for the immediate preservation of the public peace,health or safety.It is also provided that no granting of any franchise shall be construed to be an emergency measure,and that all franchise ordinances must be submitted to a vote of the people,under the certain formalities provided for .

Article 11,Section 15,provides that every ordinance or resolution appropriating any money ,or ordering any street improvement or sewer,or making or authorizing the making of any contract,or granting any franchise or right to occupy or use the streets ,highways,bridges,or public places in the City,shall be complete in the form of which it is

*Opinion City Attorney
on Charter provision
passage of Ordinance*

.finally passed, and must remain on file with the City Clerk for public inspection for at least one week before the final passage or adoption thereof.

Article 12, Section 16, provides that every ordinance imposing a penalty, fine, imprisonment or forfeiture for the violation of the provisions thereof, shall, after the passage of same be published in every issue of a daily paper published in the City for ten days, and shall not take effect until such publication has been completed.

Therefore I take it that every ordinance of a general nature not involving the appropriation of money or street improvements or the making of any contract involving the appropriation of money or the granting of any franchise or right to occupy the streets or any other public places in the City, shall not become effective, until the expiration of ten days from the time of the final passage. Such an ordinance, however, may become immediately effective, if it contains a statement of its urgency, shewing in express terms that its enactment is immediately necessary for the preservation of the public peace, health or safety. In no event can the grant of a franchise be held to be an emergency measure. Every ordinance, however, appropriating money or ordering street or sewer improvements, or authorizing the making of any contract or granting any franchise or right to occupy or use the public places in the City for any purpose, must remain on file with the City Clerk in the form in which it is finally passed at least one week before the final passage thereof, and upon the final passage thereof, shall not become effective before ten days from and after the final passage. Such an ordinance under a proper construction of this provision, cannot be amended or altered after it is placed on file with the City Clerk but must be passed in the form it is at that time. This class of ordinances may also bear the emergency clause, except in the case of the granting of franchises, and may become immediately effective upon a statement of its urgency. No class of ordinances is carried into immediate effect by the emergency clause unless passed by a four fifths (4/5) vote of the Council.

Ordinances carrying penalties and forfeitures must be published for ten days after their passage, before they become effective, and if such publication is completed shall become effective after the expiration of the full term of publication.

Very Respectfully,

J Bouldin Rector
City Attorney.

On motion the opinion was received and ordered filed.

By Councilman Powell an ordinance to regulate the moving of buildings through and over the streets, alleys and property of the City of Austin, to prevent the moving or interfering with the electric wires of the City of Austin, and providing a penalty for the violation hereof.

The ordinance was read the first time and laid over until this evening.

By Councilman Powell an ordinance appropriating the sum of \$ 162.00 for the purpose of purchasing a wagon. The ordinance was read the first time, and on motion the rule was suspended and the ordinance placed on its second reading by the following vote :

Yeas Mayor Weeldridge, Councilmen Bartholemew, Gracy & Powell 4
Nays none.

*Ordinance regulating
moving of buildings*

*Appra to purchase
Wagon Oct 1st*

The ordinance was read the second time and laid over until the next regular meeting.

On motion the Council recessed subject to the call of the Mayor.

August 5th 1909, 4.30 P M

The Council was called to order by the Mayor : Roll called:

Present Mayor Wooldridge, Councilmen Bartholemew & Gracy 3

Absent Councilmen Councilman Powell 1

Absent excused Councilman Hart 1

By Councilman Gracy an ordinance appropriating the sum of \$ 900.00 for the purpose of paying the Fed Diem of the Board of Equalization .

The ordinance was read the first time and on motion the rule was suspended and the ordinance placed on its second reading by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholemew & Gracy 3

Nays none. *The ordinance was read the second time and laid over until next meeting*

By Councilman Gracy an ordinance appropriating the sum

of \$ 2350.00 for the purpose of paying the salaries of regular employees Sanitary Dept for the year 1909. The ordinance was read the first time

and on motion the rule was suspended and the ordinance placed on its second reading by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholemew & Gracy 3

Nays none. *The ordinance was read the second time and laid over until next meeting*

By Councilman Gracy an ordinance appropriating the sum of ~~\$ 25,000.00~~

\$ 25,000.00 for the purpose of paying salaries of Officers and Employees for the year 1909. The ordinance was read the first time and on motion the rule was suspended and the ordinance placed on its second reading by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholemew & Gracy 3

Nays none.

The ordinance was read the second time and laid over until the next regular meeting.

On motion the Council recessed subject to call of the Mayor.

August 6th 1909.

The Council was called to order by the Mayor, with all members present, except Councilman Hart, who had been excused.

Councilman Gracy moved that the contract for Newspaper printing for the term ending December 31st 1909, be awarded to the Tribune Publishing Co, they being the lowest bidders, which motion prevailed by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholemew Gracy & Powell 4

Nays none.

The Mayor laid before the Council the House moving ordinance , which was passed under suspension of the rules by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholemew, Gracy & Powell 3

Nays none.

On motion the Council recessed subject to call of the Mayor.

August 10th 1909.

*Per Diem Board
of Equalization, Appraiser*

*Appraiser Salaries regular
Employees Sanitary
Dept*

*Salaries Officers &
Employees 1909*

*Newspaper printing
contract awarded to
Daily Tribune*

*House moving
Ordinance*

The Council was called to order by the Mayor, with all members present, except Councilman Hart, who had been excused.

Mayor Wooldridge offered the following resolution, viz :

Be it resolved by the City Council of the City of Austin: That a cordial invitation be and the same is hereby extended to the Knights and Ladies of Honor of the State of Texas, to hold their annual convention for the year Nineteen Hundred and eleven in this City. The resolution was unanimously adopted.

On motion the Council adjourned.

J. M. Johnson
City Clerk.

*Invitation
Grand Lodge Knights
Ladies of Honor*