

Minutes of a Regular Meeting of the City Council
Austin, Texas, September 7th 1896.

Hon. Lewis Hancock, Mayor, presiding.
Roll called.

Present Aldermen: Beatty, Fischler, Glass, Goch, Haynes, Horton, Linn, Mitschke, Platt, Powell, Priddy, Robertson, Schmidt, Shelley, Stamp, Taylor, Tobin, Townsend and Towner.

Absent Aldermen: Glusker, Lawless and Rosengren.

Alderman Shelley moved to dispense with the reading of the minutes, and that they be approved as printed. Carried.

Alderman Linn moved to suspend the regular order of business to allow him to present an application of Recorder Curleton for leave of absence. Carried.

Recorder Curleton granted leave of absence for 1 week from Sept. 21 1896.

Alderman Linn then moved that leave of absence be granted the Recorder for one week, commencing September 21st, which motion prevailed.

Pet. of Citizens Exonors addition regarding stock law

By Alderman Tobin. Petition of Citizens of Exonors Addition asking that the provisions of the stock law be extended to include the Exonors Addition. Referred to Special Committee.

Pet. of E. W. Goldbeck

By Alderman Mitschke. Petition of E. W. Goldbeck in regard to the use of West Twenty-seventh Street. Read and referred to the Street Committee.

Pet. of Geo. S. Drumm to erect Public Market on Trinity Street

By Alderman Platt. Petition of John S. Drumm asking authority to erect a public scale on Trinity Street, between Fifth and Sixth Streets. In motion of Alderman Platt the petition was granted.

Pet. of Citizens on N. 11th St.

By Alderman Shelley. Petition of Citizens of West Eleventh Street asking that certain improvements be made on West Eleventh Street. The petition was referred to the Street Committee with power to act.

Reports of City Officers

The reports of City Officers for the month of August were then laid before the Council, and on motion the same were referred to their appropriate committees without reading.

Aldermen Lawless and Rosengren entered the Council Chamber. The following is a synopsis of the reports of the City Officers for the month of August:

City Assessor's Collection

By the City Assessor and Collector:

To Collections as follows:

General Revenue Tax.	\$ 8707.63
Interest and Sinking Fund, Waterworks Tax.	6947.00
Interest on old Bonds	604.40
School Tax.	2362.65
Total.	\$ 18,692.77

Referred to Finance Committee.

On the City Clerk.

Warrants issued against the Exonors' bonds. \$640.00
Warrants issued against the Exonors' bonds. \$2740.00

Referred to Finance Committee.

On the City Clerk.

Balance on hand General Fund \$ 4124.82
 Balance on hand Interest on old Bonds 1027.27
 Balance on hand Earnings Fund 2558.13
 Balance on hand Waterworks and Electric Light Fund 33,740.78
 Balance on hand Interest and Sinking Fund Waterworks Bond 22,852.11

Referred to Finance Committee.

City Marshal

By the City Marshal,

Total amount of fines assessed in Recorder's Court \$ 375.00
 Amount paid in Cash \$ 189.50
 Worked out 177.00
 Carried over 58.50 \$ 375.00
 Collected on back fines 24.00
 Pound fees for August 34.00
 Total number of arrests, - 59.

Referred to Police Committee

City Physician

By the City Physician

Number of Patients in Hospital August 1 st 1896.	70
" " " admitted during "	17
" " " discharged " "	16
" " Deaths - " "	3
" " Patients remaining " 31 st "	13
" " Visits made to Paupers during August	79
" " Prescriptions " "	165
" " Cases of Diphtheria " "	1
" " " " Scarlet Fever " "	1

General health of the City is good.

Referred to Hospital Committee

City Sexton

By the City Sexton.

Total number of Deaths during August 1896. 19
 White. 18
 Colored. 1
 Male. 17
 Female. 2

Referred to Cemetery Committee.

Report of City Auditor.

The City Auditor reported that he had examined the books and reports of the City Clerk and the City Assessor and Collector and found them correct. Also that he had examined the receipts and deposits with the City Treasurer of the Earnings Fund, and the monthly reports of the City Treasurer, and found the same correct.

Report of Supt of Wks.

The Superintendent of the Water and Light Plant, presented his report, showing that seven new consumers of water for the month and six old consumers again connected, making forty three additions. Sixty seven new consumers were connected during the month, and six old consumers again connected, by means of new mains, & service pipes. The total number of consumers of water for the month was 100. The total number of consumers of water for the year is 1000.

four by request. Total number of consumers August 31st 1896 854.

The receipts for the month were as follows:

For Water	\$ 1153.80
For Electric Light	1718.96
For Electric Power	341.94
Total	\$ 3214.50

There was also collected and redeposited from sundry persons the sum of \$147.11.

Total number of gallons of water pumped during the month 150,664,951
Average number of gallons pumped per week, four hours was 4,862,154.
The bills and accounts approved for payment during the month were 5073.66.

On motion the report was ordered filed.

Alderman Fisher for the Street Committee to whom was referred the report of the City Engineer in regard to the bridge across Steving Branch, South Austin, presented their report, recommending that the bridge be repaired at once. Adopted.

Alderman Haynes moved that Superintendent Maddox be allowed to read his resignation.

Alderman Taylor moved that the matter be postponed, to come up after the regular order of business. Lost.

The motion of Alderman Haynes was then adopted. Superintendent Maddox then tendered his resignation, to have effect when his successor had been appointed and qualified.

Alderman Shelley moved that the resignation be accepted to have effect at once, which motion prevailed by the following vote:

- Yeas, Aldermen Fischer, South, Sawless, Kitzschke, Platt, Robertson, Shelley, Stump, Taylor, Tobin and Zilker. 11.
Nays Aldermen Deaky, Glass, Haynes, Horton, Linn, Powell, Redd, Roschorn, Schneider and Townsend 10

Alderman Platt, for the Committee on Claims and Accounts, to whom was referred the claims of Mrs. Annie J. Huddle and Mrs. Mary Miller for damages to land overflowed by the Lake, presented their report, which was read and ordered to lie over to come up under the head of new business.

Alderman Townsend, for the Finance Committee, presented the following report, which was read:

Austin, Texas, Sept. 1st 1896.

The Honorable City Council:

Gentlemen, The Finance Committee and the Mayor, by ordinance changed with the date of investing the sinking fund, beg leave to report that they have advertised for bids for from 5000 to 15,000 of Austin City Bonds for said fund. A different date bid was received as follows for \$500000 Bonds:

- Five thousand dollars at 105 and interest.
- Five thousand dollars at 105 and interest.
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Alouf Lewis report in regard to bridge over Steving Branch in South Austin

Sup't. Maddox read his resignation as Sup't. W.C.

Sup't. Maddox resignation accepted to have effect at once.

Com. on Claims & Acc'ts. report on claims of Mrs. J. Huddle & Mrs. W. Miller for damages to land overflowed

Finance Com. report on bids received for Austin City Bonds for investment of Sinking Fund

Two thousand dollars at 9 1/2% and interest.

Five thousand to 10,000 at par, flat.

One thousand dollars 6 per cent Bonds at 10 1/2% and interest.

These offers were most of them subject to sale of the Bonds if the offer was immediately accepted, and the committee not being authorized to close any trade for Bonds, could only receive them subject to the action of the Council. In the meantime all the best offers have been withdrawn. The Bonds offered the City at 9 1/2, 9 3/4 and 9 1/4 are no longer obtainable. Under the circumstances the Committee does not feel justified in recommending the purchase of Bonds at figures higher than these, when better offers have been made in the last few weeks.

The Committee believes it best to advertise over again for bids to be opened on September 2nd the day of the next regular Council meeting at which meeting the best offer can be accepted, the money appropriated, and the matter closed at once, and will take this course unless objection is offered.

As bids are to be advertised for over again, the Committee thinks it fair to all bidders that the names of none of the bidders be disclosed.

Very respectfully,
Lewis Hancock, Mayor;
G. W. Townsend,
A. C. South,
W. D. Shelley, Finance Committee.

On motion, the report of the Committee was adopted and the Committee authorized to advertise again for bids.

Ulderman Platt, for the Committee on Claims and Accounts, to whom report on pet. of G. R. Davis for damages, was referred the petition of G. R. Davis for damages to person asked for further time in which to make their report. Granted.

The report of the Fire Commissioners on the application of North Austin Fire Company was read, and on motion the report was laid over to come up under the head of new business.

The Mayor then read the following message to the Council:

Mayor's Office, September 7th 1896.

To the Honorable City Council:
Gentlemen, In pursuance of the ordinance governing the Water and Light Plant, passed at your special session on the 29th of August, and your action under the same, I notified Messrs. H. A. Stuber and Walter Johnson of their appointment in temporary charge of the plant, and addressed the following letter to Mr. John W. Maddox:

Mayor's Office August 31st 1896.

John W. Maddox, Esq., - Present:
Adm. Dir. In pursuance of the ordinance passed by the City Council at its special session August 29th 1896, I appointed Mr. Walter Johnson and Mr. H. A. Stuber to have charge of the Water and Light Plant. I have the honor to acknowledge the receipt of your letter of the 29th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Your obedient servant,
Lewis Hancock, Mayor.

Comm. on Claims & Accounts report on pet. of G. R. Davis for damages, with further time

Fire Commissioners report on North Austin Fire Co.

Mayor's Message in regard to management of W & L Plant.

Mayor's letter to Mr. Maddox.

Independent.

Respectfully,
Lewis Hancock, Mayor.

to which is received the following reply:

Austin, Tex., August 31st 1896.

Hon. Lewis Hancock, Mayor of the City of Austin:

Dear Sir, In reply to your communication of this date, informing me that I am "relieved of duty as Superintendent," I desire to say that I do not so understand the action taken by the City Council and by you as Mayor of the City.

I am, very respectfully,

(Signed) "Geo. W. Maddox, Superintendent."

I thereupon made a careful examination of the ordinance in question and of its effect upon the control of the Plank. I found that certain preliminaries had been omitted which, perhaps, resulted in delaying temporarily the taking effect of the changes contemplated by said ordinance, but that such preliminaries could be readily complied with and the ordinance put into immediate effect, provided the ordinance itself was not invalidated by causes outside of itself. But a further examination disclosed the fact that this ordinance, passed August 29, 1896, and the original ordinance for the government of the Water and Light Plank, passed January 7, 1895, contained many clauses imposing forfeitures and penalties, and that neither of said ordinances had ever been published for ten days, as is required by section 31 of the City Charter, the effect of which, seemed to be to render inoperative both ordinances. I submitted the matter to the City Attorney and received the following reply:

Austin, Tex., September 7th 1896.

Hon. Lewis Hancock, Mayor, Austin Texas.

Dear Sir, At your request I have carefully examined the original and amended ordinances providing for the government of the City Water and Light Plank, the first of which was adopted on the 7th day of January, 1895, and the other on the 31st day of August, 1896, as well as several other amendments to the first named ordinance.

I find that neither the original ordinance nor the amendment of August 29 have been published in conformity with the Charter, and am, therefore, of the opinion that they have never been in effect. It will be observed that these two ordinances impose fines and forfeitures for the violation of several of their provisions, and while they are not altogether penal in character, yet the sections declaring the penalties and forfeitures are so interwoven with, and dependent upon, the others that in my opinion, no part of either ordinance could have effect until after publication in full. Section 31, page 10 of the present Charter of the City of Austin contains the following provision:

That every ordinance imposing a penalty, fine, imprisonment or forfeiture for violation of its provisions, shall, after its passage, be published in words and figures, and shall be published in full, for ten days, before it shall be in effect.

Super Maddox letter to Mayor.

City Attorney Banderker's letter to Mayor.

publication has been completed."

Similar charter provisions have frequently been construed by the Court and the rule seems clearly established that where the publication is made a condition precedent to the taking effect of an ordinance, the requirement must be complied with in order to put the ordinance into effect. The following authorities, among numerous others, sustain this position:

"Dillon on Municipal Corporations, volume 1, section 331.

"Dillon on Municipal Corporations, section 143, page 263.

American and English Encyclopedia of Law, volume 1, page 241

"This citation of authorities could be greatly enlarged, but I think an examination of those here referred to, together with the cases sustaining the rule laid down, will justify the conclusion at which I have arrived.

After an examination of these ordinances, and a discovery of what I regarded was a serious omission, likely to produce confusion, I thought it best to prepare a substitute for all ordinances on this subject, separating the penal provisions from those not of a penal character, and embodying such in two separate ordinances.

The result of this you will find in the two ordinances which I herewith enclose.

In the preparation of these ordinances I had the valuable assistance of Hon. Wm. F. North, the author of the first ordinance on this subject, and to him am indebted for the very efficient aid he has rendered.

I believe that you will find that the substitutes preserve everything of value contained in the original ordinances, and simply matters by removing all question that has arisen because of the omission to make publication as required by the charter.

The sections of the original and amended ordinances denouncing penalties and forfeitures are as follows:

Sections 11, 13, 16, 28 and 37.

Very respectfully,
(Signed) "Geo. F. Pendexter, "City Attorney".

If the opinion herein expressed is correct, and it seems to me that it is, the consequences are grave and far-reaching. It follows that the original Water and Light ordinance passed January 7th 1895, has never gone into effect and that all acts done under it, including the election of a Water and Light Commission and the selection of a Superintendent, are invalid.

It further follows that all amendments thereto, including the ordinance passed August 29th, are certainly inoperative, and probably void. The original ordinance, passed January 7th 1895, might certainly be put into effect by publication for ten days as required by the charter. But this would be very costly to the City, the ordinance being long, long and containing many provisions not pertinent thereto. And even if the original ordinance were to amend this ordinance, including the provisions of August 29th, it would be very costly, and would not be an independent act. It would be a mere amendment of an ordinance that has never been published, and would not be a valid act.

to be passed over again and to be published for ten days. It therefore follows that if the opinion of the City Attorney is well founded, there is no ordinance in force governing or protecting the City Water and Light Plant, establishing rates, controlling tapping, plumbing, waste, etc. This condition of affairs should be remedied at once and all doubt set at rest as to questions raised.

In view of the gravity of the situation, I requested the City Attorney and Mr. H. J. North, the author of the original Water and Light ordinance, to prepare a new ordinance, or substitute one, which would cover all the subjects, two ordinances; one containing those provisions which are purely civil in their character, and which can go into effect immediately upon its passage, and the other a short ordinance containing all the penal provisions, and which can be published without undue expense to the City.

In compliance with my request, Mr. North and the City Attorney together prepared the two ordinances referred to above in the City Attorney's letter, and which I herewith lay before you. I recommend that they receive your immediate consideration, and that they be passed at the earliest practicable moment. As the two together are substantially a compilation or re-enactment of what the Council has already done, or at least wished to do, I trust they will meet your unanimous approval and be speedily enacted into law.

Respectfully,
Lewis Hancock, Mayor.

Alderman Taylor moved to suspend the regular order of business and that the Council take up the Water and Light ordinances mentioned in the Mayor's message, which motion prevailed.

Alderman Smith was excused from further attendance at this session of the Council.

Ord. providing for management & operation of Water Works

The Mayor then laid before the Council an ordinance entitled "An ordinance providing for the management and operation of the Waterworks, Electric Light and Power Plants of the City, and establishing rules and regulations for the government thereof and fixing rates for service."

The ordinance was read the first time and, on motion of Alderman North, the rules were suspended and the ordinance was placed upon its second reading by the following vote:

Ayes Aldermen Blatz, Fischer, Glass, North, Hayes, Horton, Lawrence, Mitschke, Platt, Padd, Robertson, Rosenbaum, Schneider, Shelley, Skimpf, Taylor, Tolson, Townsend and Smith - 19.
Nays Alderman Powell - 1

The ordinance was then read a second time by caption.

Alderman North moved that the City Clerk be authorized to have printed and distributed to the members of the Council a copy of the ordinance and that the ordinance be published with a copy of the same to be sent to each member of the Council.

City Clerk authorized to have printed and distributed to the members of the Council a copy of the ordinance and that the ordinance be published with a copy of the same to be sent to each member of the Council.

The ordinance was then read a third time by caption and passed by the following vote:
Ayes Aldermen Blatz, Fischer, Glass, North, Hayes, Horton, Lawrence, Mitschke, Platt, Padd, Robertson, Rosenbaum, Schneider, Shelley, Skimpf, Taylor, Tolson, Townsend and Smith - 19.
Nays Alderman Powell - 1

Ord. providing for protection of H.W.S. light plants etc.

At a meeting of the Council, held on Monday, October 13, 1886, Mayor [Name] laid before the Council an ordinance entitled "An ordinance providing for the protection of the Water Works and Electric Light and Power Plants, gas works and property of the City of Austin and providing penalties for the violation of its provisions."

The ordinance was read a second time and a motion made by Alderman [Name] to suspend the rules and bring the ordinance on its second reading was lost by the following vote:

Ayes Aldermen Fischer, Stahl, Horton, Sanders, Kitchick, Powell, Roberson, Shelby, Stump, Taylor, Townsend and Zisker 13.

Nays Aldermen Dealy, Glass, Haynes, Platt, Ridd, Rosenzweig and Schneider 7.

On motion Aldermen Fisher and Schneider were excused from further attendance at this session of the Council.

Alderman Fischer moved to suspend the regular order of business to allow Alderman Powell to offer a resolution. Carried.

Alderman Powell offered the following resolution, which was read and adopted:

Resolution by Ald. Powell authorizing City Marshal to employ 1 man for the month of Sept. to enforce dog ordinance.

Be it resolved, That the Marshal be empowered to employ one person for the month of September to enforce the dog ordinance, at a salary not to exceed forty dollars.

On motion Alderman Horton was excused from further attendance at this session of the Council.

Alderman Ridd moved that the Council adjourn until Wednesday night next. Lost.

City Engineer granted two weeks leave of absence from Sep. 10 to Oct. 10.

On motion of Alderman Townsend the City Engineer was granted a leave of absence for two weeks from the 10th inst.

Alderman Kitchick moved to suspend the regular order of business and take up the appropriation bills, which motion prevailed.

Ord. Appropriating \$500 for extra Street Labor

By Alderman [Name]. An ordinance appropriating the sum of \$500 to pay extra street laborers.

Alderman Dealy was excused from further attendance at this session of the Council.

The ordinance was passed under suspension of the rules by the following vote:

Ayes Aldermen Fischer, Glass, Stahl, Haynes, Sanders, Kitchick, Platt, Powell, Ridd, Roberson, Rosenzweig, Shelby, Stump, Taylor, Townsend and Zisker 16.

Nays Aldermen [Name].

Ord appropriating \$76.00 to pay extra Sanitary Labor for Sept

By Alderman Glass. An ordinance appropriating the sum of \$76.00 to pay extra sanitary laborers for the month of September 1886.

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

Ayes Aldermen [Name].

Nays Aldermen [Name].

The ordinance was then read a second time by caption. Alderman Zilker moved to amend by adding "and extra teams". Alderman Glass moved to amend the amendment of Alderman Zilker by making the amount appropriated \$1000 instead of \$750.00.

Alderman Goeth moved to adjourn ^{until} 8.30 p.m. Wednesday, the 9th inst. Lost by the following vote:

Was Alderman Goeth (Robertson) 11 by vote Townsend 4. Ayes Alderman Fischer, Glass, Haynes, Nitschke, Platt, Powell, Redd, Rosenberg, Shelley, Taylor and Zilker 11.

The vote was that taken on the amendment offered by Alderman Glass, and the same was lost.

The amendment of Alderman Zilker was lost.

On motion of Alderman Fischer the rules were further suspended and the ordinance placed upon its third reading and final passage by the following vote:

Ayes Alderman Fischer, Glass, Goeth, Haynes, Nitschke, Platt, Powell, Redd, Robertson, Rosenberg, Shelley, Stumpf, Taylor, Townsend & Zilker 15. Nays None!

Ord. appropriating \$2473.89 out of Earnings Fund to pay Approved Accounts

By Alderman Townsend. An ordinance appropriating the sum of \$2473.89 out of the Earnings Fund for the purpose of paying Approved Accounts. The ordinance was passed under suspension of the rules by the following vote:

Ayes Alderman Fischer, Glass, Goeth, Haynes, Nitschke, Platt, Powell, Redd, Robertson, Rosenberg, Shelley, Stumpf, Taylor, Townsend & Zilker 15. Nays None!

Ord. appropriating \$1101.00 out of General Fund to pay approved accounts.

By Alderman Townsend. An ordinance appropriating the sum of \$1101.00 out of the General Fund to pay Approved Accounts.

The ordinance was read first time and a motion made to suspend the rules and place the ordinance on its second reading was lost by the following vote:

Ayes Alderman Fischer, Glass, Goeth, Haynes, Nitschke, Platt, Powell, Redd, Robertson, Rosenberg, Shelley, Taylor, Townsend and Zilker 14. Nays Alderman Stumpf 1.

Mayor authorized to appoint a temporary Water and Light Com. to operate the plant, who shall employ a Supt. temporarily

Alderman Powell moved that the Mayor be authorized to appoint a temporary Water and Light Committee to operate the plant, who shall be authorized to employ a Superintendent, temporarily, which motion prevailed.

Ord. appropriating \$750.00 to repair bridge over Newing's Branch

By Alderman Redd. An ordinance appropriating the sum of \$750.00 to repair the bridge over Newing's branch in South Austin.

The ordinance was passed under suspension of the rules by the following vote: Ayes Alderman Fischer, Glass, Goeth, Haynes, Nitschke, Platt, Powell, Redd, Robertson, Rosenberg, Shelley, Stumpf, Taylor, Townsend & Zilker 15. Nays None!

Alderman John Lawless Fischer appointed temporary Water and Light Com.

On Motion of Alderman Redd, Alderman Evin, Lawless, and Fischer the temporary Water and Light Committee provided for in the resolution of Alderman Powell.

Committee on Council adjourned.

Geo. C. Johnson Secy. Council