

Chap. 83.

AN ACT to Incorporate the City of Benecia.

Passed April 24, 1851.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

ARTICLE I.

City
incorporated.

§ 1. The district of country in the County of Solano, which is contained within the boundaries hereinafter described, shall be a city by the name of Benecia, and the inhabitants residing therein shall be a corporation under the name and style of the "Mayor and Council of the City of Benecia," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, complain and defend in all Courts and in all actions and proceedings, and may purchase, hold, and receive property, real and personal, within said city ; may lease, sell, and dispose of the same for the benefit of the city ; may provide for the regulation and use of the lands belonging to the city, and may have a common seal, and alter the same at pleasure: *Provided*, they shall not purchase any real estate other than such lands or lots within the same as shall be necessary for the erection thereon of public buildings, or for laying out of streets or public grounds, or may be required for public cemeteries.

§ 2. The boundaries of the City of Benecia shall be as follows: All that tract of land lying on the north side of the Straits of Carquinez, as surveyed by Benjamin A. Barlow, Esq., late City Surveyor, and designated by his map now on file in the office of the Clerk of Solano County; the southern boundary shall extend to the middle of the channel of the Straits of Carquinez.

Boundaries of City.

§ 3. The said city shall be divided into two wards, as follows: 1st Ward, all that part of the city lying east of First street; 2d Ward, all that part of the city lying west of First street.

City to be divided into wards.

ARTICLE II.

Of the Officers of the City and their Election.

§ 1. The officers of the City of Benecia shall consist of one Mayor, eight Councilmen, one Treasurer, one Assessor, one Clerk, one Attorney, one Marshal, and one Surveyor, and such other officers as are hereinafter authorized to be appointed, but no person shall fill and discharge the duties of any two of said offices.

City Officers.

§ 2. The Mayor shall be elected by the qualified electors of the city, and shall hold his office for one year and until his successor be elected and qualified.

Election of Mayor.

§ 3. An equal number of Councilmen shall be elected by the qualified electors of each ward, and shall hold their offices for one year and until their successors are elected and qualified.

Of Councilmen.

§ 4. The Council shall have power to increase the number of wards and to alter the boundaries thereof, and apportion the number of Councilmen to be elected from each ward: *Provided*, such alteration and apportionment be made three months previous to the annual election of City Officers.

Number of wards may be increased.

§ 5. No person shall be eligible to any office herein named, or authorized to be made, who is not a citizen of the United States, and who has not been a resident of the State one year, and of the City of Benecia six months previous to the election.

Who eligible to office.

§ 6. The election of Mayor and Councilmen shall take place on the first Monday of May in each year. The Council shall appoint two Inspectors for each Ward, and designate the places for opening the polls.

Election of Mayor, and when to be held.

§ 7. All the provisions of the law now in force regulating elections, and defining the powers and duties of the officers thereof, shall apply to the election for Mayor and Councilmen under this Act, except that two Inspectors and one Clerk shall be the only officers of election in each ward of the city.

Laws regulating elections.

§ 8. The Inspectors and Clerk of each ward shall deliver to the persons receiving the highest number of votes in the Ward a certificate of election as Councilmen, and shall also transmit to the Clerk of the Council a statement showing the number of votes cast, with the number for each person; such returns shall be opened and counted in the presence of the Council, and a certificate of election be issued under their direction

Certificate of election.

to the person receiving the highest number of votes for that office. When two or more persons have an equal number, and the highest number of votes, a new election shall be called by the Council, and shall take place within ten days thereafter.

Who
entitled
to vote.

§ 9. Any person who shall be entitled to vote for State officers shall be entitled to vote at all City elections, but no person shall be elected a Councilman or be entitled to vote at any City election unless he shall have resided in the Ward in which he votes twenty days next preceding the election.

Commencement
of term of office.

§ 10. The Mayor and Councilmen shall enter upon their duties the first Monday subsequent to receiving their certificate of election. Before entering upon their duties they shall take the oath of office, which may be administered by any Judge or Justice.

President
of Council.

§ 11. The Council at their first meeting after the annual election, and at any other meeting when from any cause it may become necessary, shall elect a President from their own body, who shall preside at all their meetings; and whenever there is a vacancy in the office of Mayor, or whenever the Mayor is absent from the city, or is unable from sickness or any other cause to discharge the duties of his office, the President of the Council shall act as Mayor, and possess all the powers and perform all the duties of Mayor during such vacancy, absence, or disability.

Vacancies,
how filled.

§ 12. Whenever any vacancy shall occur in the office of Mayor or of any Councilman by death, resignation, removal, or otherwise, the Council shall order a special election to fill such vacancy. The person elected to fill a vacancy shall hold his office for the residue only of the term of his immediate predecessor.

Election
of Officers.

§ 13. The Council shall each year, within a month after the annual election, elect the Treasurer, Assessor, Clerk, Attorney, Marshal, and Surveyor of the City, who shall hold their respective offices for one year, and until their successors are elected and qualified, unless previously removed as provided in this Act.

Election of
other officers.

§ 14. The Council shall have power to elect such other officers as they may deem necessary in the government of the City; and in all elections they shall vote viva voce.

ARTICLE III.

Of the Council, its Powers and Duties.

Meetings
of Council.

§ 1. The Council shall meet on the first Monday subsequent to the annual election, and the first Monday of each subsequent month in the year, and at such other times as they shall by resolution appoint. The Mayor may call special meetings at any time by written notice to each member served personally, or left at his place of business or residence.

Quorum.

§ 2. A majority of the Council shall constitute a quorum for the transaction of business, but a smaller number may compel the attendance

of absent members : *Provided*, that no tax or assessment shall be ordered except by a vote of a majority of all the members present.

§ 3. In the proceedings of the Council each member present shall have a vote, and the President shall also have a casting vote when the votes of the members are tied. Voting in Council.

§ 4. The Council shall determine the rules of their proceedings and the qualification and election of their members. Rules of Council.

§ 5. The sittings of the Council shall be open to the public, except when the interests of the city shall require secrecy ; a journal of their proceedings shall be kept by the Clerk under their direction, and the yeas and nays on any question shall be taken and entered on the journal at the request of any two members. Sittings of Council.

§ 6. The Council shall have power within the city : Powers of Council.

1st. To make by-laws and ordinances not repugnant to the Constitution and Laws of the State :

2d. To levy and collect taxes on all property, real and personal, made taxable by law for State purposes, not exceeding one per cent. per annum upon the assessed value of such property, except local assessments for local improvements, as hereinafter provided :

3d. To provide for the draining, grading, paving, planking, improvement, repair, and lighting of the streets, the construction of sidewalks, and keeping the same in repair and free from obstructions.

4th. To construct wharves, as far as ship's channel at the foot or south-ends of all streets running into the water, and also at the foot or west-end of B, C, D, E, and F. streets respectively, and to collect a revenue tax for wharfage at such public wharves :

5th. To provide for the removal of obstructions to navigation in the harbor within the corporate limits of the city :

6th. To provide for the prevention and extinguishment of fires, and organize and establish fire companies :

7th. To regulate the storage of gunpowder, tar, pitch, rosin, and other extremely combustible materials :

8th. To prevent and remove nuisances, and prevent and remove slaughter-houses, haystacks, and whatever else may be injurious to the health and safety of the city :

9th. To license, tax, or regulate, or prohibit tipping houses, dram shops, gaming and gambling houses, and houses of ill fame :

10th. To license, tax, and regulate auctioneers, hawkers, pedlars, and pawnbrokers, and tavern bar-rooms, and billiard tables, bowling alleys, theatrical and other exhibitions, shows and amusements :

11th. To license, tax, and regulate hackney coaches, wagons, carts, drays, and livery stables, and fix the rates to be charged for the carriage of persons and property :

12th. To license, tax, and regulate boatmen and porters, and fix the rates of lighterage and portorage :

13th. To establish and regulate city police and night watch, and

prevent any riot, or disorderly assemblage in any street, house, or place in the city :

14th. To erect a workhouse or house of correction, and provide for the maintenance and government thereof :

15th. To establish a city hospital, and provide for the support of indigent sick :

16th. To erect market houses, establish market places, and provide for the government and regulation thereof :

17th. To provide for the erection of all public buildings required for the city, and regulate and prescribe the manner of building partitioning, walls, and fences :

18th. To provide for the establishment and support of public schools, seminaries of learning, and public libraries, and for the erection of suitable buildings for the same :

19th. To elect a superintendent of public instruction and a board of education, which board shall, at the time of election, be divided by lot into two classes, one half to continue in office two years and the other half to go out of office at the expiration of the first year, upon an election of members in their place for the residue of the term :

20th. To open, alter, and widen streets and alleys, and on the petition of persons owning two thirds of the property along the line of any alley within a block, to close such alleys :

21st. To build and keep in repair bridges, culverts, and flood-gates, and to excavate canals through the bed of any street, on petition of the owners of two thirds of the property bounding or fronting on the proposed canal :

22d. To provide for supplying the city with water, and regulate the use of public pumps and hydrants :

23d. To make local assessments for pumps and all other local improvements, on the petition of the owners of two thirds of the property along the line or fronting on such improvements : *Provided*, such assessment shall not exceed in amount two thirds of the actual cost of such improvements :

24th. To borrow money upon the faith and credit of the city ; but no loan shall be made for a sum exceeding twenty-five thousand dollars, including the amount of any previous indebtedness, without the consent of a majority of the electors of the city previously obtained ; and any excess which may be voted, over and above the sum of twenty-five thousand dollars, without the consent of the electors being first had, shall be collected in an action of debt against the Councilmen voting such excess :

25th. To appropriate money for any item of city expenditure, and to provide for the payment of any debts and expenses of the city : *Provided*, that no contract made in behalf of the city, conditioned for the payment of any sum exceeding five thousand dollars, shall be entered into till proposals for the same shall be invited by public ad-

vertisement for a period of ten days, and in any case the contract shall be given to the lowest responsible bidder or bidders: *and Provided further*, that neither the Mayor, nor any Councilman, or other public officer under city appointment, shall, during the period for which he is elected to serve, be interested in any such contract:

26th. To impose and appropriate fines, forfeitures, and penalties for the breach of any ordinances; but no fine shall be imposed for more than five hundred dollars, and no offender shall be imprisoned for a longer term than sixty days, or made to work on the streets or in the houses of correction for a longer term than thirty days, for one and the same offence:

27th. To compel the attendance of absent members, to punish its members for disorderly conduct, and to expel members, with the concurrence of two thirds of the members elected.

§ 7. It shall be the duty of the Council to provide for the accountability of all officers and other persons elected by them, to whom the receipt and expenditure of the funds of the City shall be intrusted, by requiring sufficient security for the faithful performance of their duties or trusts, which security shall be given by them before entering upon such duties or trusts. In case such security becomes insufficient, additional security may be required, and if not given, the Council by a vote of two thirds of the members may declare the office vacant, and elect another person to fill the vacancy.

Accountability of officers.

§ 8. It shall be the duty of the Council to publish, one month before the annual election of officers in each year, an abstract of the receipts and expenditures of the City, during the year ending on the last day of the month previous to that in which the publication is made; and in every such statement of the different sources of the City revenue, and the amount received from each, the several appropriations made by the Council, the object for which the same were made, and the amount of money expended under each, the amount of money borrowed on the faith and credit of the City; the authority under which each loan was made, and the terms on which it was obtained shall be clearly and particularly specified.

Statement of receipts and expenditures to be published.

ARTICLE IV.

Of the Powers and Duties of the City Officers, and their compensation.

§ 1. It shall be the duty of the Mayor:

1st. To communicate to the Council at their first meeting, and quarterly thereafter, a general statement of the situation and condition of the City, in relation to its government, finances, and improvements, and recommend the adoption of all such measures as he shall deem expedient in relation to the police, security, health, cleanliness, ornament, and improvement of the City.

Duties of Mayor.

2d. To be vigilant and active in causing the by-laws and ordinances to be duly executed and enforced.

3d. To execute a constant supervision and control over the

conduct and acts of all subordinate officers, and to receive and examine all complaints preferred against any of them for violation or neglect of duty.

4th. To sign all contracts made in behalf of the City, and countersign all warrants and licenses issued under order or ordinance of the City.

5th. To maintain the peace and good order of the City, and generally to perform all such actions as may be prescribed by this act, and the ordinances of the Council and the laws of the State.

6th. It shall be the duty of the Mayor also to sign all ordinances passed by the Council if he approve the same, but if he should not approve any ordinance submitted to him, he shall return it with his objections in writing to the Council, who shall cause the same to be entered on their Journal, and proceed to reconsider the ordinance. If after such reconsideration two thirds of the members elect shall agree to pass the ordinance, it shall become a law. If any ordinance shall not be returned by the Mayor within one week after it shall have been presented to him, they shall become effective as if he had signed it.

Of Councilman.

§ 2. It shall be the duty of every Councilman to attend the regular and special meetings of the Council; to act upon communications; to report to the Mayor all subordinate officers who are guilty of a violation or neglect of duty, and to aid the Mayor in maintaining the peace and good order of the City, and in enforcing the by-laws and ordinances of the Council.

Treasurer.

§ 3. It shall be the duty of the Treasurer to receive all moneys belonging to the City, to keep an account of all receipts and expenditures in such manner as the Council shall direct; and he shall, whenever required by a resolution of the Council, present to them a full account of such receipts and expenditures for any period designated in the resolution. All moneys drawn from the City Treasury shall be drawn in pursuance of an order of the City Council, by warrant signed by the Clerk, and countersigned by the Mayor, and such warrant shall specify for what purpose the amount designated therein is to be paid.

Assessor.

§ 4. It shall be the duty of the City Assessor to prepare within such time as the Council shall direct, and present to them, with his certificate of their correctness, a list of all the taxable property, real and personal, within the City, with the valuation thereof, and a list containing the names and occupations of all residents within the City, and to perform such other services in relation to the assessment of property in the City as may be required by the Council.

Clerk.

§ 5. It shall be the duty of the Clerk of the City to keep the Corporate Seal, and all the papers and documents belonging to the City, to file them in his office under their appropriate heads; to attend the meetings of the Council, and keep a journal of their proceedings and a record of all their by-laws and ordinances; to sign all warrants and licenses issued in pursuance of the orders and ordinances of the

Council, and affix the Corporate Seal to all contracts and licenses; to keep an accurate account in a suitable book, under the appropriate heads of expenditure, of all orders drawn on the Treasury, and all warrants issued, with the name of the person to whom issued, the date of the issue, and all licenses issued, to whom and for what purpose issued, the time for which the same were granted, and the sum paid therefor.

§ 6. It shall be the duty of the City Attorney to attend to all actions and proceedings to which the City is a party or interested therein; to give his advice and opinion in writing whenever required by the Mayor or Council; to draw up all contracts and instruments to which the City is a party, and to perform such other services connected with his profession as an Attorney as may be required by the Council. Attorney.

§ 7. It shall be the duty of the City Marshal to execute within the City and return all process issued and directed to him by the Justices of the Peace, or other legal authority within the City; to arrest all persons guilty of a breach of the Peace or of a violation of any ordinance of the Council, and to take them before a Justice of the Peace or other legal authority within the City; to collect the taxes of the City and pay over all moneys into the City Treasury, received in pursuance of the ordinances of the Council; to supervise and control the City Police and Watch; to attend the meetings of the Council and perform such duties while in attendance upon their meetings as may be directed by them, and to perform such other duties as may be prescribed by ordinance. Marshal.

§ 8. It shall be the duty of the City Surveyor to superintend the erection of all public buildings, the public wharves, the grading, paving, and planking of streets, and such other improvements as may be authorized; to see that all the ordinances regulating streets and sidewalks, partition walls, and fences, are complied with; report to the Mayor all nuisances, obstructions, and encroachments on the streets and sidewalks, and perform all such other duties as may be prescribed to him as Street Commissioner. Surveyor.

§ 9. The Council shall define the duties of the officers elected by them whose duties are not herein prescribed, and shall fix the fees and salaries of all officers elected by them. Other officers.

§ 10. The Mayor and Councilmen shall receive no compensation for their services. Compensation.

ARTICLE V.

OF RECORDERS' COURTS AND JUSTICES OF THE PEACE.

§ 1. There shall be a Recorder's Court within the limits of the City whenever, in the opinion of the Council, the interests of the City shall require the existence of such a Court. And when established it shall possess all the powers and exercise all the jurisdiction conferred by law upon Recorders' Courts. Recorder's Court may be established.

§ 2. Until a Recorder's Court be established, the Justices of the Jurisdiction of Justices' Courts.

Peace within the limits of the City shall have jurisdiction : 1st, of an action or proceeding, fine, or forfeiture, imposed by an ordinance of the Council ; and 2d, of proceedings respecting vagrants and disorderly persons.

The like.

§ 3. The Justices of the Peace in the City shall also have jurisdiction of the following public offences committed within the limits of the City : 1st, of petit larceny ; 2d, assault and battery, not charged to have been committed on a public officer in the execution of his duties, or with intent to kill ; 3d, committing a wilful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

Proceedings in Justices' Courts.

§ 4. All proceedings and actions under this act, before the Justices of the Peace within the limits of the City, shall be commenced by complaint setting forth the violation of the ordinance or the acts of vagrancy or disorderly conduct complained of, or the offence charged with such particulars as to the offence, time, place, person, and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint ; and all complaints shall be verified by the oath of the parties making them. To the complaint the defendant may plead, or he may answer or deny the same ; such plea, answer, or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless for good cause shown an adjournment may be granted. In all cases the defendant shall be entitled, if demanded by him, to a trial by a jury of six persons.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

Yeas and nays to be entered on Journal.

§ 1. Upon the passage of all resolutions and ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses, the yeas and nays shall be entered on the journal.

Appropriations.

§ 2. A majority of all the members elected shall be necessary to pass a resolution or ordinance appropriating for any purpose the sum of five hundred dollars or upwards, or an ordinance in anywise increasing or diminishing the City revenue.

The like.

§ 3. All resolutions and ordinances calling for the appropriation of any sum exceeding one thousand dollars, shall lay over for the space of one week and be published in a paper printed in the City, should there be one ; if not, then to be posted up in three of the most public places in the City.

Style of ordinances.

§ 4. The style of the City ordinances shall be as follows : " The Council of the City of Benecia do ordain as followa." All ordinances shall be printed in a newspaper printed in the City ; should there be none, then to be posted up in three of the most public places in the City.

Sales for taxes.

§ 5. The sales of real estate heretofore for taxes by the City authori-

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ties are hereby confirmed, and deeds shall be granted by the Council for the same, and shall have the same validity in law as property sold for taxes due the State.

§ 6. The act entitled "An Act to incorporate the City of Bonecia," Act repealed. passed March twenty seventh, one thousand eight hundred and fifty, is hereby repealed.
