



WESTERN AUSTRALIA.

ANNO VICESIMO SECONDO

VICTORIÆ REGINÆ.

NO. X.

An Ordinance to alter the existing Law providing for the Improvement of the City of Perth, and to make other Regulations instead thereof.

WHEREAS the general System for the Management and Improvement of Towns in Western Australia as by Law heretofore established has been found to be inefficient and unsuited to existing Circumstances in the City of Perth, and it has been deemed expedient that the existing Law upon the Subject, so far as relates to the said City, should be altered, and that the legal Possession of, and Right of Property in, as well as the Improvement and Care, Superintendence, Management, and Disposal of the Lands, Houses and Tenements, Soils, Trees, Markets, and Market Places, Public Streets, Paths, Roads, Bridges, Ways, and other Thoroughfares, and of and in all Pounds, Jetties, Wharves, Posts, Fences, Sewers, Drains, Culverts, and Water Courses, and other Public Works within the Limits of the said City, and of and in all Funds in any Manner arising therefrom, connected therewith, or applicable thereto, which have hitherto been in the Possession, Power, Custody, or Control of the Trustees of the Perth Town Trust, as established by an Ordinance passed in the Fourteenth Year of the Reign of Her present Majesty, intituled *An Ordinance to provide for the Improvement of Towns in Western Australia*, shall be vested and reposed, carried out, and executed, as hereinafter specified and provided respectively: Be it there- Preamble.

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fore enacted, by His Excellency the Governor of the said Colony and its Dependencies, by and with the Advice and Consent of the Legislative Council thereof, that the said Ordinance shall not, after the Election of the First City Council under this Ordinance, as hereinafter provided, extend or apply to the City of Perth, but shall be considered as repealed in so far as relates to that City, and to the several Matters and Things, Incidents and Appurtenances aforesaid, and that all existing Officers and other Persons who have been elected or appointed either to Places of Trust, or for the discharge of ministerial Duties, or otherwise under the Provisions of the said Ordinance for the said City, shall, from and after the said Election, cease to hold or enjoy the said Places, and to discharge the said Duties, respectively, and the same are hereby abolished as from that Period: But all pending and duly authorized Contracts entered into by or with such Officers, or any of them, or by any Person properly empowered on their Behalf, shall and may be carried out and enforced by or against the Perth City Council as hereinafter established; and all Rates and Assessments that have been heretofore declared or made under the Provisions of the said Ordinance as against or in respect of Tenements or Hereditaments within the Limits of the said City, and that have not as yet been levied, shall and may be recovered and enforced in like Manner as hereinafter provided for the Recovery of Rates imposed under this Ordinance.

14 Vict. No. 15. to be inapplicable to the City of Perth.

Saving in favour of duly authorized and pending Contracts and rates assessed under repealed Ordinance.

Property in lands, streets, funds, &c., to vest in the Perth City Council.

II. THAT the legal Possession of and Right of Property in all Lands, Houses, and Tenements, Markets, and Market Places, Public Streets, Paths, Roads, Bridges, Ways, and other Thoroughfares, Trees, Woods, and Soil, and in all Public Pounds, Jetties, Wharves, Posts, Fences, Sewers, Drains, Culverts and Water Courses within the Limits of the said City, with their and every of their Rights, Members, and Appurtenances, and of and in all Monies and Funds, Cart and Dog Licenses, Right of Pasturage on and over all Town Reserves, Fees on account or in respect of such Depasturage, Poundage Fees, Timber Licenses, Fees to fell, use and sell Timber, and other Trees, and other Sources of Income whatsoever, in any Manner arising from, connected with, or applicable to the said several Hereditaments and Premises, which have heretofore been in the Possession, Power, Custody, or Control of the said Trustees, shall be and they are hereby divested from those Trustees, and shall and do by this Ordinance vest in the Perth City Council, constituted from Time to Time by Election as hereinafter provided: Provided, nevertheless, that it shall be lawful at any Time hereafter for the Governor of the Colony by Order under his Hand to authorize and direct that any Person or Persons nominated by him for that Purpose in and by such Order with his or their Servants, and Labourers, Horses and Carts, shall have and possess full and free Right and Liberty of Ingress and Egress to, upon, and from all and singular the said Lands and Woods, and to examine, dig for, quarry, cut, and carry away all such Stone, Lime, and Soil, Trees, and other Timber as shall be required

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for the Purpose of any Public Building or Work which may be mentioned in that behalf in such Order: Provided always that Nothing in this Ordinance contained shall be deemed or taken to restrain or interfere in any way with the Right of the Governor, as heretofore exercised to specify, lay out and set apart for Purchase, or other Public Purpose any waste or unappropriated Portion or Portions of the said Lands.

III. THAT the Improvement, Management, Care, Superintendence, and Disposal of all the said Lands, Houses and Tenements, Markets, and Market Places, Streets, Paths, Roads, Bridges, Ways and other Thoroughfares, Pounds, Jetties, Wharves, Posts, Fences, Sewers, Drains, Culverts, and Water Courses, as also of the said Monies and Funds, shall be and are hereby vested in and made exercisable by the City Council hereinafter constituted from Time to Time, and the said City Council, are hereby empowered, to alter, extend, pave, flag, macadamize, or otherwise improve, repair, and keep in good Order and Condition, all and every such Streets, Paths, Roads, Bridges, Ways, and Throughfares, Pounds, Jetties, Wharves, Sewers, Drains, Culverts and Watercourses, and other the Premises aforesaid, by and with all such Monies, Means, and other Resources, as it may possess, or can lawfully command from Time to Time under or by Virtue of this Ordinance, and also to use and employ all such Convict or other Prisoners' Labour, Materials, Implements, and Things whatsoever as the Governor of the said Colony from Time to Time shall authorize or sanction; and the said City Council is hereby further empowered to make, or cause to be made in Manner aforesaid, all such proper Sewers, Gutters, Drains, and Water Courses along or under the said Streets, Paths, Roads, Bridges, Ways and Throughfares, for carrying off the Water, Mud, or other Filth, and again to remove and alter the same as Occasion shall or may require, and to place Bars or other Fences across or along the said Streets, Paths, Roads, Bridges, Ways or Thoroughfares, when under or preparatory to their Alteration or Repair, and to erect Posts or Railing, and suspend Chains for Guarding Footways, Gutters, or the like, and generally to do and make, or cause to be made and done, all Acts and Things whatsoever that may be necessary and proper for accomplishing the several Purposes aforesaid.

Management of the lands, streets, funds, &c., vested in City Council.

Its Powers.

IV. THAT upon the passing of this Ordinance and from Time to Time thereafter it shall be lawful for the said City Council to appoint a fit and suitable Person to be and to be styled "Supervisor of the Perth Trusts" under this Ordinance, and to remove or suspend from his Office such Person from Time to Time as they shall consider right, and upon the Death, Resignation, or Removal from Office of any such Supervisor, to appoint another fit and suitable Person to be Supervisor of the Perth Trusts in his Place and Stead: And it shall also be lawful for the said Council from Time to Time, as Occasion may require, to appoint, remove and suspend, and to regulate and direct the Employment of all such other and subordinate Officer or Officers, under and for the Purposes of this Ordinance, as shall be considered essential to the due Execution of those Purposes;

Council to appoint Supervisor.

Provisions for the appointment of other officers, if essential.

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Securities to be given.

and every Officer to be appointed under this Ordinance shall and will, if the City Council shall deem expedient, before entering upon his or their respected Duties hereunder, give Security by himself and two solvent Sureties in a reasonable Sum, to be fixed by the City Council, for the fair and diligent, faithful and efficient discharge of his Duties according to the best of his Skill and Ability.

Salaries.

V. THAT by and out of the Monies or Funds specified in the Seventh Section hereof, the said Supervisor, and such other Officer or Officers as aforesaid, shall be entitled to receive and be paid from Time to Time such yearly Salaries respectively and at such Periods of Time, as the said City Council shall direct: Provided that such Salary or Salaries shall not in any one Year exceed in all the One-sixth Part of the Income received by or accruing and due to such Council during such Year.

Accounts to be kept and published.

VI. THAT the said City Council shall keep, or cause to be kept, under proper Headings a just and correct Account of all Receipts, Mortgage Debts, and Disbursements had, contracted, and made under this Ordinance, and the same shall be duly prepared previous to and be audited half-yearly by two Ratepayers to be appointed for that Purpose at each of the General Meetings of the Ratepayers to be held in every Year under and by Virtue of the Twenty-Fifth Section hereof, and shall without any Delay thereafter be published in the *Government Gazette*, or in Two of the local Newspapers; And the Books of Account of the said Council shall at all reasonable Times be accessible to any Ratepayer of the said City of Perth, who shall also be at Liberty to take Extracts therefrom.

Funds, how derived or composed.

VII. THAT the Monies and Funds available for the Purposes of this Ordinance shall be such as shall or may accrue from the Sources following, or any of them—that is to say, the Rents, Issues, Profits, Fines, Penalties, and Dues of, or arising from or out of, or in Consequence of Injury done to the before-mentioned Lands, Houses, and Tenements, Markets, and Market Places, and other Property; and all Fees for Cart and Dog Licenses, Fees on account or in respect of Depasturage on Town Reserves, Poundage Fees, Fees on Timber Licenses, and Fees to fell, use, and sell Timber and other Trees, heretofore payable to the said Trustees; and all other Tolls and Dues, and other Sources of Revenue appertaining or incident thereto; and all Compositions to be made or reserved in lieu thereof; all Licenses, Tolls, and Dues which may hereafter become or be made payable at or by reason of the Use or otherwise in respect of any Lines or Mode of Communication, Lands, Tenements, Markets, or Woods within or adjacent to the said City or the Neighbourhood thereof, and which Licenses, Tolls, and Dues the said Governor is hereby empowered to establish by Proclamation, and to grant from Time to Time as he shall see fit; voluntary Subscriptions of Money, Labour, or Materials for local or general Objects; any real Property, Goods, or Chattels, Sum or Sums of Money which may from Time to Time be conceded out of

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the Colonial Revenues by the said Governor, with the Advice and Consent of the Legislative Council, or that may be appropriated by any Ordinance; City Rates and Assessments which are now, or may hereafter become payable under the said Ordinance or this Ordinance, and Loans raised as hereinafter provided for special or general Purposes under this Ordinance.

VIII. THAT, subject to the Proviso hereinafter contained, it shall be lawful for the City Council, from Time to Time and at any Time to borrow and take up on Mortgage of the ordinary annual Rates or yearly Assessments for the Rates of the said City, by any Instrument in the Form contained in the Schedule to this Ordinance annexed, marked A., or to the like Effect, any Sum or Sums of Money not exceeding Four Hundred Pounds in any One Year, in Sums not less than One Hundred Pounds each, and at such Rate of Interest and for such Period as to the said City Council shall appear necessary and expedient for the Purposes of this Ordinance, and to secure by such Instrument the Repayment of every such Sum so borrowed, with Interest thereon, upon and by Charge of the several Premises specified or referred to in the Second and Seventh Sections of this Ordinance or any Part thereof, and the Person or Persons advancing such Sum shall not be bound to see to the Application thereof, or of any Part thereof; and also that the said Members of the City Council do not, either collectively or individually, incur to the Lender or Lenders thereof, or his or their Assignee or Assignees any personal Responsibility in respect of the re-payment of Monies legally borrowed by them pursuant to the Provisions hereof, but that the same with Interest thereon shall be chargeable against, and be re-payable out of the Funds or Premises mentioned in that behalf in the Ninth Section hereof; and that Counterparts of all such Instruments shall be made, filed, and preserved by the said City Council, who shall also enter true Copies of them, one after another, according to the Order in which they shall be granted, in a Book to be kept for that Purpose, which at all reasonable Times shall be open to the Inspection of any Ratepayer of the said City, or of any Mortgagee or intending Lender of Money under this Ordinance, and any such Person shall also be at Liberty to take Extracts or make Computations therefrom; and the Person entitled to the Security represented by any such Instrument may transfer the same and all Benefit thereof to any other Person by an Endorsement thereon, signed by him or her and stating that he or she thereby assigns such Security and Benefit to the Person proposing to become the Assignee thereof; and every such Assignee may in like Manner transfer the same again, and so *toties quoties*; and shall cause a Memorandum of the Date thereof, and of the Names of the Parties thereto, to be taken and entered by the said City Council in the Margin of the Copy of the Instrument, or original Security, as contained in the Book last mentioned; and such Entry shall be Notice of the Fact of the Assignment to all Persons whomsoever; and the Person to whom such Security shall be granted, or any such Assignment thereof be made, and his or her Executors, Administrators,

Council may borrow Money, and charge Loan on Rates by Deed of Mortgage.

Lenders not bound to see the application of the money.

Records of Mortgages to be kept.

Transfer may be made.

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Restraint on borrowing power.

Accounts to be kept and published of Mortgage debt.

Certificate shewing amount to be issued.

Penalties attaching on City Council.

Rents &c. to be paid to the City Council,

Application thereof.

and Assigns, shall be Creditors upon the mortgaged Premises in an equal Degree one with another, and shall not have any Preference or Priority of Claim as arising from the respective Dates of their original Securities, or otherwise in relation thereto: Provided always, and it is hereby expressly declared that in Case the principal Monies borrowed under this Section, and remaining due at any one Time shall, either by themselves or along with any Interest that may then happen to be in Arrear thereon, amount in the Whole to the sum of One Thousand Pounds, the Power of raising Loans given and conferred in the Commencement of this Section, shall cease and be in Abeyance until the Debt so due shall be reduced to some less Sum, and then, but not sooner, it shall be lawful for the said City Council at any Time to exercise such Power, in Manner aforesaid, by borrowing at Interest any other Sum or Sums which shall not, together with the Balance of the Debt still continuing unpaid, exceed the said sum of One Thousand Pounds, it being the Intention hereof that the Debt affecting the said Rates and Assessments shall not at any Time exceed such Sum for Principal and Interest; and the said City Council shall make true and correct Entries from Time to Time in the Accounts hereinbefore directed to be kept of all Sums borrowed and repaid under this Section, and of the Balance remaining due for Principal and Interest from Time to Time up to the gale Day last preceeding; and a correct Statement of the same shall be published by such City Council along with, and in the same Manner as those Accounts; and previous to the Completion of any Loan under this Section, the said City Council shall issue a Certificate under the Hand and Seal of the Chairman of the Council for the Time being, to the Person or Persons proposing to make such Loan, stating the Amount then due for Principal and Interest, and such Certificate shall be considered as conclusive Evidence of the Fact against all Parties whomsoever. And if the said City Council shall willfully, or without due Precaution and Care, fail to comply with any of the Duties required of them, either by this, or by the Sixth, Ninth, or Fourteenth Section hereof, respectively, the Members guilty thereof shall be deemed to have committed a Misdemeanour, and upon Prosecution and Proof thereof before the Court of General Quarter Sessions of the Peace, shall be liable to Fine or Imprisonment, in the Discretion of the Court.

IX. THAT after the taking Effect of this Ordinance, all and singular the Rents, Issues, Profits and Dues, Interest, Dividends, and other Annual Proceeds of or arising from the said Lands, Houses and Tenements, Markets and Market Places, Streets, Paths, Pounds, Jetties, and all other the several Hereditaments and Premises, Funds, Loans, Rates, Assessments, Matters and Things whatsoever specified or referred to in the Second, Seventh, and Eighth Sections hereof respectively, shall be paid to and received by the said City Council, and shall be applied by them from Year to Year First in Payment of the Interest accruing due from Time to Time upon all Loans previously and duly contracted under the Eighth Section of this Ordinance, and then remaining unpa-

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tified, and secondly in repayment of the principal Money comprised in such of those Loans as the said Council may then be liable to discharge, and thirdly in the payment of the Salary or Salaries, if more than One shall be payable, mentioned or referred to in the Fifth Section hereof, and fourthly in the payment of the Costs, Charges, and Expenses which shall be necessarily incurred in carrying into Effect the Provisions of this Ordinance; and the said City Council is hereby required, prior to the First Day of December in each Year, to prepare a Plan or Statement in Writing, to be signed by the Chairman thereof for the Time being, of the various Works and Improvements which it proposes to make and execute, in pursuance of these Provisions, in or about the said City, during the Year next ensuing, and of the estimated Cost thereof; as well as a Statement of the Works and Improvements that have been effected during the past Year; and also to estimate, as nearly as may be, what Amount will be required in all to meet the several Payments above enumerated, and how far the several Sources of Revenue mentioned in this Section, independent of Rates and Assessments, will be sufficient for that Purpose, and what Sum will be necessary to make up the Deficiency or total Amount required: and the Accounts which the said City Council is directed to publish under the Sixth Section hereof, shall contain a true Summary of such Plan, and a correct Statement of the result of such Estimates respectively; and in order to raise such a Deficiency or Sum, or such Part thereof as the said City Council shall in their Discretion consider advisable, having regard to such Plan and Estimates, the said City Council is hereby authorized and required from Time to Time to order a Rate or Rates to be struck within the Limits of the said City; and for that Purpose to direct an Assessment to be made by themselves, or by a Valuator, if any, to be appointed for that Purpose under the Fourth Section hereof, upon every occupied House, Store, Shop, Mill, Tenement, or other Building, Piece of Land, Allotment, Garden, or other Premises within the said Limits, according to its full, fair, and average annual Value, clear of all Outgoings, and also an Assessment upon every Building, that has been unoccupied for a Period of Six months previous to the making of such Valuation and upon every unoccupied or waste piece of Land within such Limits, according to or on One-Tenth of its full, fair Value; and to enter each such Assessment or Valuation in a Book to be kept by the said City Council for that Purpose, which is also to be open for Inspection and the taking of Extracts at all reasonable Times by every Ratepayer of the said City. And the said City Council is hereby required, upon the Completion of such Assessment, to give speedy Notice thereof in the *Government Gazette*, or in Two of the local Newspapers, and that the Particulars of the same may be inspected as aforesaid; and upon the Assessment so made the said City Council is hereby authorized and required to cause such Rate or Rates to be levied not exceeding One Shilling in the Pound upon the Valuation or Sum assessed in any one Year; and the same shall be declared by the said

Plans and Estimates of Works &c. to be prepared.

Mode of taking assessments.

Assessments when made to be published.

Rates not to exceed One Shilling in the pound upon Assessments and Declaration thereof to be published.

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City Council, and the Declaration be published as aforesaid, at least Two Weeks previous to being levied.

Rates recoverable by
Distress.

X. . THAT the said City Council shall be and is hereby empowered and required in Case of the Non-Payment of any Portion of such Rate or Rates within Fourteen days after Demand made on their Behalf, or by the said Valuator, on or at the Residence of the defaulting Occupier of the rated Premises, or (if the same be unoccupied) on the Owner or his Agent, or by a Posting upon the Property, and in Case no Notice of Appeal shall have been served as hereinafter provided, to issue a Warrant from Time to Time, under the Hand and Seal of the Chairman thereof from Time to Time directed to the Bailiff to be named thereon, and enjoining him to levy the Amount by Distress and Sale by public Auction of the Goods and Chattels that may be found on the Premises so rated, or that may have been removed therefrom to avoid Seizure and can be retaken, or that belong to the Occupier and can be distrained in any part of the Colony; and in the Event of no, or of insufficient Goods being so found, taken, or distrained, to satisfy such Distress, the Landlord or Owner of the Premises, or his Agent if the other be absent from, or cannot be reached in the Colony, shall be and is hereby declared liable for the Amount, which may be recovered by Distress and Sale of the Goods and Chattels of such Landlord or Owner, if found within any part of the Colony, or by ordinary Action of Debt to be brought and prosecuted against such Landlord, Owner, or Agent as hereinafter directed: Provided that no Sale of Goods or Chattels under this Section shall take place until the Expiration of Five Days after the Seizure thereof: Provided also that if any Person shall think himself aggrieved by the Valuation put upon his Holding, or in respect of which he or his Goods and Chattels are rendered liable hereunder, it shall be lawful for such Person to appeal against the same to the Civil Court by serving a Notice to that effect on the Chairman of the said City Council at any Time within Ten Days after the Publication of the before mentioned Notice of such Valuation having been made, and by depositing in the Hands of such Chairman the Amount of the Rate assessed on such Valuation and complained of by the Appellant, together with a Sum of Two Guineas to answer Costs, and such Court shall have Power to hear and determine all such Appeals, not only as regards the Subject Matter thereof and the Disposal of the Deposit, but also to adjudicate on all the Costs involved, as Justice may require: Provided, however, that if any Owner, Landlord, or Occupier of Premises shall consider himself wronged by any such Distress as aforesaid made upon his Goods or Chattels, and shall, whether there has been a previous Appeal against the Valuation or not, lodge the Amount for which such Distress has been made in the Hands of the Chairman of the said Council, along with a Sum of Two Guineas to cover Costs, and shall serve him with Notice of Appeal against the Distress at any Time prior to Sale, then, but not otherwise, it shall be lawful for such Person to appeal to the said Court against such Distress, and the said Court is hereby empowered to hear and finally determine the same, and to confirm or disallow the Distress

Appeal to Civil Court
against valuation.

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and to make such other Orders in the Matter in all Respects as it shall deem just.

XI. THAT the Rates leviable under this Ordinance shall be wholly payable in the first instance by and recoverable from, the respective Occupants, if any, of the Property rated, but each such Occupant by whom any Rate may be paid shall, in the Absence of any Agreement to the contrary, be entitled to deduct one Half of the Amount from the next Gale of Rent payable to the Landlord, or his Agent, or other Person entitled to receive the same, and in Case there be no actual Occupant of the said Premises, then the said Rates shall be levied in like Manner as is hereinbefore provided in Case of an insufficient Distress thereon.

Rates payable by Tenant in first instance.

XII. THAT all Rates leviable under this Ordinance shall be recoverable at the Discretion of the said City Council, not only by Means of Distress, as hereinbefore provided, but also by Action at Law for so much Monies due and owing to the said City Council by Virtue of this Ordinance, as well in the said Civil Court where the Sum in Demand shall Amount to or exceed Five Pounds, or the Defendant is not or cannot be found at the Time of Action within the Jurisdiction of any of the Courts next mentioned, as also where the Debt claimed is less than Five Pounds, in any Court of Requests, Magistrates' Court, or Petty Debt Court within the Jurisdiction of which such Defendant may then reside or be found, and it shall be accordingly lawful for the said City Council, in the Name of the Chairman for the Time being to commence prosecute Proceedings for the Recovery of such Rates in any such Court as aforesaid, subject to the Conditions aforesaid, and the said City Council may also be sued in the name of its Chairman as aforesaid in all such Cases in which an Action will lie for any unlawful or improper Act or Neglect done or suffered by the said City Council in or about the Execution of the Provisions of this Ordinance; and no Action, Suit, or other Proceeding shall be abated or become voidable by Reason of the Death of, or Vacation of his Office by any such Chairman, but a Suggestion of the Fact of such Death or Vacation, and of the Name and Residence of his Successor, shall be entered, as often as the same shall happen, on the Record of such Action, Suit, or other Proceeding, which shall be thenceforth prosecuted and followed up in the Name of or against the Chairman for the Time being as the Case may be.

Assessments recoverable in Civil Court if £5 and upwards; and in Court of Requests &c., if less than £5.

XIII. THAT every such Chairman of the City Council shall be and is hereby required to enter up Satisfaction of Judgment when the same shall be satisfied, in any Action, Suit, or other Proceeding under this Ordinance, and the Members of the said City Council shall be and are hereby exempted from Personal Liability for any Damages or Costs awarded against the said City Council in any Action, or on the Hearing of any Petition, or of any Appeal or other Proceeding brought under this Ordinance, unless the Court awarding such Damages or Costs, or before which the same shall be awarded by the Verdict of a Jury, shall certify that they were caused or induced by the unlawful, vexatious, or negligent Conduct of such City Council; but otherwise in Default of

Chairman to enter Satisfaction of Judgment.

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such Certificate all such Damages and Costs shall be paid out of the Funds of the said City Council.

List of defaulters to be published.

XIV. THAT the said City Council shall cause to be published in the First Number of the *Government Gazette*, or in Two of the local Newspapers issued next after the First Days of January and July respectively in each Year, a List of all Persons who shall be in Arrear of or for any Rate, whether Assessed by Virtue of this, or of the said recited Ordinance, and of the Amounts due by them respectively, and in respect of what Hereditaments or Premises; and from and after the Date of such Publication such Rates with Interest thereon, at Ten per Centum per Annum, and the Expense of Proceedings to recover the same, shall constitute a Lien, and have Priority after Crown Debts to every Security or Claim of any Description against the Estate real and personal of the Debtors respectively.

Premises may be sold for arrears of Assessments remaining unpaid for 18 months.

XV. THAT if any Rate or Rates imposed under this Ordinance shall remain due and unpaid for the Term of Eighteen Months in respect of any Premises whatsoever, or if imposed or assessed by Virtue of the said recited Ordinance shall remain due and unpaid for the Term of Twelve Months after the passing of this Ordinance, whether the Owner thereof be resident in the Colony, or not, and if no sufficient Distress can be found in the Colony applicable thereto under the Tenth Section hereof, it shall be lawful for and incumbent upon the said City Council, to cause a Notice, in the Form of the Schedule B. hereunto annexed, to be signed by the Chairman thereof, and published in Three successive Numbers of the *Government Gazette*, or of Two local Newspapers, stating the Amount of Rates due upon the said Premises, and requiring Payment of the same, and notifying that in Default the said Premises or competent Part thereof will be sold by public Auction, freed and discharged from all Incumbrances or other Claims whatsoever, except Crown Debts, if any, at a Time and Place to be specified in the Notice, such Time not being less than One Calendar Month after the last Publication of the Notice; and if the Amount be not paid on or before the Expiration of the Time so Specified, then it shall be lawful for the said City Council, and it is hereby required to cause the said Premises to be sold according to the Terms of the said Notice, and out of the Proceeds of such Sale to pay all the Rates chargeable on such Premises, and all Costs and Expenses connected with the Sale, and to pay the Overplus, if any, into the Hands of the Owner of the Premises, or of any Agent within this Colony holding any general Authority in Writing to receive Monies on account of such Owner; but if there be no such Agent, or if any Person shall serve upon the said City Council a written Notice stating that he claims a Lien thereon by Virtue of a Charge which affected the Premises, or of an Interest therein, then the said City Council shall forthwith pay such Overplus into the Hands of the Registrar Clerk of the Civil Court, who shall make an Entry thereof in his Ordinary Book of Account, specifying the Date of Payment, and in respect of what Land and Reputed Owner

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and Claimant, if any, it has been made, according to such particulars is shall be furnished to him by the City Council.

XVI. THAT it shall be lawful for the Commissioner of the Civil Court in a summary Way, on Petition presented to him by or on behalf of any Person claiming the Amount so deposited as last aforesaid, or any Part thereof, either as Owner, Agent, Incumbrancer, or other Claimant, and of which such Petition Notice shall be given to the said City Council, to make an Order for the Payment thereof to the Party or Parties appearing to be entitled to receive the same, or such Order or Orders in the Matter as he shall consider right.

Commissioner of Civil Court may make an order for payment of overplus.

XVII. THAT a Certificate of the Sale of any such Premises as aforesaid, according to the Form in the Schedule C. hereunto annexed, shall be given by the Chairman of the said City Council to the Purchaser thereof, and a Memorial of such Certificate shall be registered in the usual Manner in the Deeds Registry Office of this Colony at the Expense of such Purchaser, and when so registered the Certificate shall have the effect of a valid Conveyance in Fee Simple, or of other the Owner's Interest, by all necessary Parties, of and in such Premises, freed and discharged from all Claims and Incumbrances whatsoever as against the Purchaser; and Nothing contained in any existing Ordinance relative to Auctioneers and Auction Duties shall be held to apply to Sales under the Provisions of this Ordinance.

Certificate of Sale when registered to have the effect of a conveyance..

XVIII. THAT it shall not be lawful to levy any Rate whatever under this Ordinance, on any Premises the Property of Her Majesty within the said City of Certh, not being let or hired to any private Individual, nor on any Premises vested by Her Majesty, or by any Ordinance, in any Trustee or Trustees constituted for any religious or other public Purposes, or permanently appropriated for the Purposes of public Recreation, nor on any Allotment, or part of Allotment containing any Hospital, Benevolent Asylum, Building used exclusively for charitable Purposes, Church, Chapel, or other Erection used for public Worship, nor on any Convent or Nunnery, Monastery or Edifice of a Religious Brotherhood, Public School, Public Library, Museum or Mechanics' Institute.

Exemption from Rates.

XIX. THAT it shall be lawful for and incumbent upon the said City Council, upon the passing of this Ordinance, by Notice served upon the Occupier, or posted upon some Part of the Premises, to require all Persons whom it may concern to erect within Six Months from the Date of the Notice, a good and suitable Line of Paling or Wall along the Frontage of any Allotment, Garden, or Piece of Ground abutting or opening upon any paved, macadamized or otherwise artificially formed public Street, Path, or Thoroughfare within the Limits of the said City, and which shall not be then so enclosed, and apprising them that if such Requirement be not complied with, a Penalty of Five Pounds shall be thereupon incurred under this Ordinance by the Occupier, or if there be no Occupier, then by the Owner, or if he be absent from the Colony or cannot be reached then by the Agent of such Pre-

Council may require erection of paling &c., or erect the same and recover expenses thereof.

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mises, and informing them that the said City Council will if they see fit proceed, after the Expiration of such Period, to erect such Paling or Wall, and to recover the amount of all Costs and Expenses in doing so with Interest thereon at Ten per Centum per Annum as provided by this Ordinance, and it is accordingly declared hereby that it shall be lawful for such City Council so to do, and to distrain, sue, and sell for the Repayment of those Costs and Expenses in like Manner as directed by or as nearly as may be in accordance with the Provisions hereinbefore contained for the Regulation of Distresses, Actions, and Sales on the Non-Payment of Rates: but if the Occupier of such Premises shall comply with the Terms of such Notice, it shall be lawful for him to deduct and set off the entire Amount of his Costs, Charges, and Expenses from and against the Rent payable by him out of, or in respect of such Premises until the same shall be discharged in full, and the Parties affected thereby shall have a like Privilege of Appeal against such a Distress leviable under this Section, as is given by the Tenth Section hereof to an owner of Premises under the Circumstances therein mentioned.

Penalty for damage to property.

XX. THAT any Person who shall wilfully injure, damage, or destroy any Street, Pathway, or other Thoroughfare, Ferry, Bridge, Ferry-boat, Jetty, Quay, Well, Spring, Gate, Fence, Post, Rail, or Paling, Wall, Trees, Wood, or any Article, or Material, Matter or Thing employed for the Purposes of this Ordinance, or the Property of the said City under this Ordinance, or shall, upon any Way used or appropriated to be used as a public Footpath, drive a Cart or Carriage, except directly across on necessary Occasions, or shall lead, ride, or drive any Horse or other Beast on any such Footpath, except as aforesaid, or shall suffer to stand, or shall tie or fasten any Horse or other beast on or across the same, or shall do or commit any Act, or shall leave or place, or put any Material or Thing whatsoever, which shall cause or create, or be liable to cause or create any Impediment, Obstruction, Nuisance, Damage, or Annoyance, in or to the free Passage of any such Lines of Communication, as aforesaid, or shall cast or place any Nuisance or other Refuse thereon, or being an Occupier, Owner, or Agent of any such Premises as are described or referred to in the Nineteenth Section of this Ordinance, shall refuse or neglect to comply with the Terms of the Notice specified therein, shall forfeit and pay a Sum not exceeding Five Pounds, over and above the Amount of any Damages occasioned by the Act or Default of such Person, and the Amount of such Penalty and Damages shall be paid and handed over to the City Council, to be applied as Part of the "City Fund": Provided that if the Property destroyed or damaged or the Wrong done by the Act complained of be that of or have been sustained by a private Individual, the Amount of such Damage shall be paid to such Individual, although he may have been examined as a Witness, or been Prosecutor upon the Occasion, and all Fines, Penalties, and Forfeitures imposed by this Ordinance, and also all such Damages as last aforesaid, where the Sum claimed does not exceed Five Pounds, shall be recoverable in a

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summary Manner upon Conviction before One or more Justice or Justices of the Peace in Petty Sessions; and where the Claim for such Damages exceeds Five Pounds, the Amount shall then be recoverable before the said Civil Court.

XXI. THAT the "City Council" shall consist of Seven Persons; and those who shall compose the Council to be First chosen for the Purposes of this Ordinance shall be elected by a Majority in Number of the Parties who at the Time of the passing of this Ordinance were Ratepayers of the said City of Perth or liable to be assessed as such under the said *Ordinance to provide for the Improvement of Towns in Western Australia*, such Electors to be present and voting in Person, or by their Agents if absent from the Colony, or, if they be then more than Twenty Miles distant from the said City of Perth, by their Nominees in Writing on the First Monday in the Month of December One Thousand Eight Hundred and Fifty Eight at a General Meeting of such Parties to be holden for that Purpose at the Hour of Noon in the Hall of the Mechanics' Institute at Perth, and the Persons who shall constitute the City Council to be chosen on all future or subsequent Occasions shall be elected by a Majority in Number of the Ratepayers under this Ordinance present and voting in like manner in all Respects as hereinbefore prescribed for the Election of the First Council on the First Monday of the Month of December in each Year, at a General Meeting of such Ratepayers to be holden in Perth for that Purpose at an Hour and Place to be fixed by the then City Council from Time to Time: Provided always that if either from the Non-attendance of any such Voters as aforesaid at any such General Meeting, or from any other unforeseen Cause such Election should not take place it shall be lawful for any such Electors or Voters on any subsequent Day to be selected by them and to be notified in the *Government Gazette*, or in Two of the local Newspapers for One clear Week previously to summon and hold a General Meeting for the Purpose of electing such City Council and to elect the same accordingly, and the Council so elected shall take Office as from the First Day of January nearest to the Date of such Election, and continue in Office until the Thirty-First Day of December then next, and if at any Time any Vacancy by Death, Resignation, or otherwise shall occur in such Council, the continuing Members of such Council shall summon a Special Meeting of the Ratepayers for the Purpose of electing a Person or Persons to fill such Vacancy.

Council to consist of Seven Persons elected by the Ratepayers.

Mode of election and term of office of first and subsequently elected Councils.

XXII. THAT immediately after such General Meeting, the Councillors elected thereat shall appoint One of their Number to be their Chairman; and in case of the Death, Absence from the Colony, Inability, or Unwillingness to act of the Chairman, the Councillors for the Time being shall from Time to Time appoint One of their Number to be such Chairman; and Three Members of the Council of whom the Chairman shall be One shall be requisite to constitute a Quorum.

Council to appoint their chairman.

Quorum to consist of Three Members.

XXIII. THAT the Election and Appointment of such Council and Chairman

Election and Appointment of Council and Chairman to be published.

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Chairman shall be, immediately after the same shall have been made, respectively published in the *Government Gazette* or in Two of the local Newspapers.

Ratepayers not entitled to vote unless after payment of all rates.

XXIV. THAT no Ratepayer shall vote either by Proxy or otherwise at any General or Special Meeting of Ratepayers unless all Rates assessed upon all Tenements and Hereditaments in respect of which such Ratepayer shall claim to be entitled to vote shall be fully paid up; of which Payment the receipt of the Chairman of the Council or the Person or Persons appointed to collect the same shall be the sole and conclusive Evidence.

General and Special Meetings of Ratepayers.

XXV. THAT the said Council shall hold Two General Meetings of Ratepayers within each Year, namely, on the First Monday in the Months of June and December, and also Special Meetings upon the Requisition of any Three or more Members of their Body: Provided that due Notice of each such General or Special Meeting shall previously have been given either by Publication in the *Government Gazette*, or in Two of the Local Newspapers.

Quorum of Council to consist of Three Members.

XXVI. THAT the said Council shall meet in the City of Perth at whatever Place they may decide upon for the Transaction of their ordinary Business as often as need shall be, but no Business shall be transacted at any such Meeting unless the Chairman and Two other Members of the Council shall be present; each Member, including the Chairman, shall have One Vote, and such Chairman shall have a casting Vote in addition to his ordinary Vote, and all Questions at such Meetings shall be decided by a Majority of the Votes of the Members present.

Chairman to have a casting vote.

Council to keep Minutes of Proceedings.

XXVII. THAT the said Council shall keep a Book or Books in which shall be entered Minutes of all Proceedings and Transactions; and the Chairman of every Meeting shall see that such Proceedings are duly entered, and shall subscribe the same with his own Hand, and the Names of the Councillors present at every Meeting shall be entered in such Minutes.

Limitation of action &c. against office.

XXVIII. THAT all Actions and Prosecutions to be commenced against any person for Anything done or not done in pursuance of this Ordinance, shall be commenced within Three Calendar Months after the Fact committed, and not otherwise, and Notice in Writing of such Action and of the Cause thereof shall be given to the Defendant One Calendar Month at least before the Commencement of the Action; and in any such Action the Defendant may plead the General Issue, and give this Ordinance and the special Matter in Evidence at any Trial to be had thereupon, and no Plaintiff shall recover in any such Action if Tender of sufficient Amends shall have been made before such Action brought, or if a sufficient Sum of Money shall have been paid into Court, after such Action brought, by or on behalf of the Defendant; and if a Verdict shall pass for the Defendant, or the Plaintiff shall become nonsuit or discontinue any such Action after Issue joined, or if upon Demurrer or otherwise Judgment shall be given against the

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Plaintiff, the Defendant shall recover his full Costs as between Attorney and Client, and have the like Remedy for the same as any Defendant hath by Law in other Cases; and though a Verdict shall be given for the Plaintiff in any such Action, such Plaintiff shall not have Costs against the Defendant unless the Judge before whom the Trial shall be, shall certify his Approbation of the Action and of the Verdict obtained thereon.

XXIX. THAT in Case the Lands, Tenements, or Hereditaments of any mercantile Firm, Joint Tenant, or Body Corporate shall be assessed for the Payment of Rates under this Ordinance, One Person only shall be allowed to exercise the Rights and Privileges of a Ratepayer under this Ordinance, and, in case any Dispute shall at any Time arise as to who that Person shall be, it shall be lawful for the Chairman of the City Council for the Time being, by Writing under his Hand, to appoint any One Person being a Member, Agent, or Servant of any such Company, mercantile Firm, Joint Tenants, or Body Corporate, to exercise such Rights; and such Appointment shall be final and conclusive until the Expiration of the current Year of Office of the said City Council.

Exercise of rights of rate-payers by mercantile Firms, Joint Tenants, and Bodies Corporate.

XXX. THAT no Order, Judgment, Warrant, or other Proceeding made or purporting to be made, under or concerning the Conviction of any Offender against this Ordinance shall be quashed or vacated for want of form only or be removed or removeable by Certiorari, or by any Writ or Process whatsoever into a Superior Court of this Colony.

Convict &c. not to be quashed for want of Form or removable by Certiorari.

XXXI. THAT the Schedule hereunto annexed shall form and be a Part of this Ordinance.

Schedule to form Part of Ordinance.

XXXII. THAT this Ordinance may be cited as "The City of Perth Improvement Ordinance, 1858."

Short Title.

A. E. KENNEDY,

GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council,
this 22nd day of October, 1858.*

HENRY WAKEFORD,
Clerk of the Council.

L. S.

SCHEDULE

(A)

Form of Mortgage of City Rates.

IN pursuance of "The City of Perth Improvement Ordinance, 1858," I
 the Chairman of the Perth City Council, in consideration of the sum of
 £ advanced and paid to the Perth City Council for the
 purposes of the said advance do hereby grant and assign unto his
 executors and administrators (here particularize the property mortgaged) to be held from
 this until the said sum of with interest at the rate of
 per centum per annum shall be paid and discharged, the period for which is hereby fixed at
 or for the day of 18 and in the meantime interest at the rate agreed is to be
 paid upon the said principal money out of the said and the proceeds
 thereof on every 1st day of May and November in each year. Dated this day of
 18 .

Witnessed by (Seal.) (Signed) Chairman.

(B.)

Form of Notice.

BY Virtue of the Provisions of "The City of Perth Improvement Ordinance, 1858,"
 notice is hereby given to all parties interested therein that the sum of £ is now due and
 owing for assessments chargeable upon (here describe the building or other property) in
 the said City, and payment of such amount is now required, and in default thereof the said
 premises will be sold by Public Auction at at o'clock on the
 Dated this day of 18 .

Chairman of the Perth City Council.

(C.)

Form of Certificate of Sale.

I, the undersigned, Chairman of the Perth City Council do hereby certify in pursuance
 of the provisions of "The City of Perth Improvement Ordinance, 1858," that the (here
 describe the premises and boundaries thereof accurately) was put up to Sale by Public
 Auction on the day of and that of became the pur-
 chaser and is hereby declared the owner thereof for the sum of £ the receipt
 whereof is hereby acknowledged and the said is entitled to hold the
 said premises freed and discharged from all incumbrances and claims whatsoever affecting
 the same at the time of such sale. In Witness, &c.

(Seal) (Signed) Chairman.