

REGULAR MEETING.

COUNCIL CHAMBER, CITY OF INDIANAPOLIS, }
 March 21, 1892. }

The Common Council of the City of Indianapolis met in the Council Chamber, Monday evening, March 21, at 8 o'clock P. M., in regular meeting.

Present, Hon. Emil C. Rassmann, President *pro tem.* of the Common Council, in the Chair, and 18 members, viz: Messrs. Allen, Colter, Cooper, Costello, Gasper, Holloran, Laut, Linn, McGuffin, Olsen, Puryear, Rassmann, Ryan, Schmidt, Schrader, Sherer, White and Young.

Absent, three, viz: Messrs. Gauss, McGill, and President Murphy.

The Proceedings of the Common Council for the adjourned meeting, held Monday, March 14, 1892, having been printed and placed upon the desks of the Councilmen, said Journal was approved as published.

The Clerk proceeded to read the Journal, whereupon Councilman Colter moved that the further reading of the Journal be dispensed with.

Which motion prevailed.

REPORTS, ETC., FROM CITY OFFICERS.

The City Attorney made the following report:

INDIANAPOLIS, IND., March 21, 1892.

To the Hon. President and Members of the Common Council of the City of Indianapolis, Indiana:

GENTLEMEN: By resolution you make request for my opinion touching the liability of contractors who have given bond to keep streets improved by them in repair for five years, where the city, by subsequent ordinance authorizes hacks, express wagons and other vehicles used for hire to occupy portions of such improved streets as "stands."

It is a well-established principle of law that a surety will be discharged from his obligation by any variation of the contract to which he does not consent. This is probably true even though the change be slight and made to his own advantage.

It is quite as firmly settled that the State has the inherent power to take such steps as may be deemed wise and equitable for the preservation of public health, safety and comfort, and that such power may be exercised by its municipalities when properly delegated to them. It is subject to this broad fundamental doctrine that all corporations enter into the possession and enjoyment of their franchise and contractual rights.

The city of Indianapolis now, as under the law of its organization, is clothed with all necessary power to license, tax and regulate public vehicles, including the designation of the streets and alleys which they shall use and upon which they may stand. This authority, based upon the police power, and incapable of surrender, may be exercised at the city's will. Such are the demands of public health cleanliness and comfort.

It was in the light of these conditions and subject to this law that all street improvement contracts and bonds have been made. I am, indeed, at a loss for any legal authority which would justify me in the conclusion that the city of Indianapolis has, or had the power to barter away its time-honored right of regulating public vehicles; or that any new exercise of that right would be such an "unusual use of the streets" as to release those who have improved and agreed to keep them in repair from all the duties imposed upon them.

To concede such a principle would result in vexatious complications. It is a matter of general knowledge that Washington and other prominent streets of our city are in constant use by wagons of all kinds. Many of them are heavily loaded and propelled on wheels with narrow tires, which greatly tend to cut and destroy the pavement. The Common Council may "regulate the use of streets and alleys by vehicles and designate the kind of conveyances and vehicles which may not use designated streets that have been improved, together with hours for the use of such streets, by certain specified classes of vehicles." Will it be contended that such a regulation, while it may modify the conditions existing at the time a street improvement contract was made, would release the sureties thereon? Yet a fatal variation, though favorable to the surety, would operate to release him the same as if it were adverse to his interests. Private and public carriages stand in front of stores for hours at a time—in some instances during the entire day. May this fact be set up as such an "unusual use of the streets" as to release the contractor from his bond to keep the same in repair? What must be considered as the proper point within which the public may use the streets in such cases? May a vehicle stand one hour and not two, or five hours and not ten? Manifestly any regulation of the streets and alleys, authorized by law as defined by an ordinance of the city, must form the only rule governing this question.

Relative to the propriety of amending or declining to amend the present ordinance governing hack stands I am not called upon to discuss. That is for the Council to determine, but it may be proper for me to state that any change made should be effected with due regard for the legal rights of property owners. Chief Justice Elliott, in discussing this question says:

"Cities usually have authority over the use of vehicles and may, therefore, prescribe the routes to be followed by omnibuses, and the stands to be occupied by hacks, express wagons, or other vehicles used for hire. But a city can not authorize such stands where they will interfere with the access to the premises of an abutting owner or otherwise deprive him of his rights as owner of the fee."

Owing to this principle of law, which obtains quite generally throughout the country, it has been customary in most cities to locate "stands" to be occupied by wagons used for hire on such parts of streets as border upon public buildings, parks or unoccupied grounds. The difficulty above indicated, however, might be obviated if the consent of the abutting owners adversely affected could be obtained to the location of a stand in front of their premises.

Very respectfully submitted,

LEON O. BAILEY,
City Attorney.

Which was read and referred to Committee on Sewers, Streets and Alleys.

REPORTS, ETC., FROM STANDING COMMITTEES.

Mr. Laut, on behalf of the Committee on Public Health, asked for further time to report G. O. No. 6, 1892.

Which was granted.

Mr. Holloran, on behalf of the Committee on Fees and Salaries, to whom was referred G. O. No. 12, 1892, an ordinance fixing the pay of the Police Matron, asked for further time to report.

Which was granted.

Mr. Sherer, on behalf of the Committee on Public Safety and Comfort, asked for further time to report on G. O. No. 8, 1892.

Which was granted.

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

Under this order of business the following entitled ordinance was introduced:

By Mr. Holloran:

G. O. No. 15, 1892. An ordinance regarding public comfort and health, prohibiting the building of slaughter houses in any part of the city of Indianapolis.

Read first time and referred to Committee on Public Health.

MISCELLANEOUS BUSINESS.

Mr. Young offered the following petition:

To the Common Council of the City of Indianapolis:

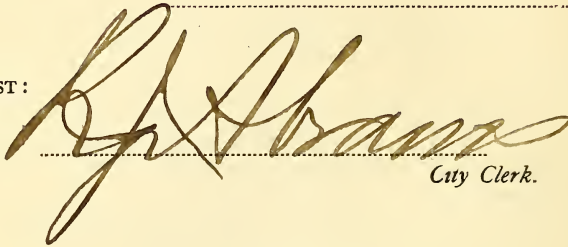
GENTLEMEN—The undersigned, owners of real estate fronting on the street known as Sheppard Avenue, also as "Highland Place," between Ninth and Twelfth streets, respectfully petition for the passage of a resolution providing for the permanent naming of the street above mentioned, the same to be known as "Highland Place."

The above was signed by all the real estate owners fronting on said street.

Which was referred to the Committee on Sewers, Streets and Alleys.

On motion of Mr. Schrader the Common Council, at 8:30 o'clock P. M.,
adjourned.

ATTEST:

A large, stylized handwritten signature in dark ink, appearing to read "R. H. Adams". The signature is written over a horizontal dotted line. The letters are cursive and somewhat slanted to the right.

President.

City Clerk.