

ESSAY
of an
ACT
to Incorporate the
Citizens
of
WILMINGTON

House of Representatives -
July 1. 1821 - reported read.
- 5 - postponed until next
session
McClayton Clk.

An Act to incorporate the City of Wilmington

PREAMBLE

Whereas the Corporate Officers and other Inhabitants of the Borough of Wilmington in the County of Newcastle have by their Memorial represented, that the Charter incorporating the said Borough and granted in the year of our Lord One thousand Eight hundred and Nine, hath from various causes been found incompetent to the good government and Wellbeing of the same, and by their Petition prayed for redress in the premises,

When the powers granted by the former Charter shall cease

Sec. 1. Be it therefore enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That from and after the Organization of the powers and authorities hereinafter specified, the powers rights and privileges granted by or arising from the said Charter otherwise than hereinafter reserved shall cease and determine, and the said Borough shall hereafter be called known and distinguished by the name of the City of Wilmington

Limits of the City.

Sec. 2. The said City shall be Bounded as follows to wit Beginning at the Mouth of Brandywine creek on the easterly side of the same thence along the eastern and northeastern side about two miles and a half to the old Ford above the head of the tide water; thence crossing the Brandywine westwardly and passing along the old King's road according to the several courses thereof to the present State Road leading from Wilmington to Lancaster thence in a direct line southeasterly passing over

the mouth of a rivulet called Stalcup's Gut, to the opposite side of Christiana river; thence down that side of the same until southwest of the lower point of the mouth of Brandywine thence northeast to the place of Beginning.

Who shall be Citizens thereof

Sec. 3. All free white male citizens of this State of the age of twenty one years and upwards residing within the said City assessed for and having paid a City tax shall be taken and deemed citizens thereof and shall enjoy all the rights and privileges arising under this Act

The Officers.

Sec. 4. The Officers of the City shall consist of a Mayor, Recorder, two Aldermen, six select Councilmen, ten Common Councilmen, One High Constable, One Treasurer, and One Assessor, and such other officers as may be deemed necessary by the Select and Common Council to carry into effect the powers hereby granted. Provided that no person shall be capable of serving as Mayor Recorder Alderman Select Council Man Common Councilman High Constable Treasurer or Assessor who shall not at the time of his election or appointment be a citizen of this State and a freeholder and resident in said City

Elections annually of the Councils Treasurer and Assessor.

Sec. 5. The Members of the Select and Common Council Treasurer and Assessor shall be elected annually on the first Tuesday in ~~May~~^{April} and the first Election under this Act shall take place on the first Tuesday of ~~May~~^{April} next ensuing the date hereof

Term of service.

Sec. 6. The Select Council shall serve for three

years and all the other Officers of the City for one year

Select Council divided into Classes

Sec 7. Immediately after the Select Council shall assemble in consequence of the first Election they shall be divided equally into three classes, the seats of the Select Councilmen of the first class shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, of the third class at the expiration of the third year.

Mayor Recorder, Aldermen & other officers how chosen.

Sec 8. The Select and Common Council shall convene together on the second Tuesday in ~~May~~^{April} in every year and by a joint ballot elect a Mayor Recorder two Aldermen High Constable and such other officers as may be necessary for the good government of the said City which election shall be determined by a majority of the votes of all the members

Incorporated.

Sec. 9. The said Mayor Recorder Aldermen and Councils of the said City and their successors forever hereafter shall be one Body Politic and Corporate in deed and in law by the name and stile of the "Mayor Recorder and Aldermen of the City of Wilmington" and by that name and stile shall be and are hereby made able and capable in law to have take purchase receive possess enjoy and retain to them and their successors Lands hereditaments tenements goods chattels and effects of what kind nature or quality soever, and the same to sell grant demise alien or dispose of, to sue and be sued plead and be impleaded answer and be answered defend and be defended in all Courts of Law and Equity or any other place whatsoever and also; to make have and use a Common

seal and the same to break alter and renew at their pleasure, And generally shall have all the privileges and franchises incident to a Corporation or Body politic.

Mayor's Court

Sec. 10. The Mayor Recorder and Aldermen of the City of Wilmington jointly - or the Mayor with the Recorder without the presence of any of ^{either} ~~any~~ of the Aldermen, or the Recorder and Aldermen of the said City shall have power to hold a Court of Common Pleas to be called the "Mayor's Court of the City of Wilmington" any Law Charter or usage to the contrary notwithstanding and in case of the death, sickness, or absence of the Mayor and Recorder of the said City, it shall be lawful for any two of the Aldermen aforesaid to hold the said Mayor's Court of the City of Wilmington

when to be holden &c

Sec. 11. The Mayor's Court aforesaid shall be held on the first Monday in every month and the terms thereof shall be and are hereby extended to three Days

Form of Process

Sec. 12. In the Records process and proceedings of the said Mayor's Court of the City of Wilmington the words "Judges of the said Court" shall be ^{instead} inserted of the words "Mayor Recorder and Aldermen of the said City" and all writs and process issuing out of or returnable into the said ^{listed in the name of the Mayor and} Court shall be directed to the ^{Constable} Judges of the Court of Common Pleas called the Mayor's Court of the City of Wilmington"

Powers.

Sec. 13. The said Mayor's Court of the City of

Wilmington shall be and ~~are~~ ^{is} hereby authorized and empowered to hear try and determine according to Law all actions real personal or mixed arising within the said City or within the Jurisdiction of the said Court and not elsewhere.

Penalty on those elected not serving

Sec. 14. Any person duly elected to the Office of a Select or Common Councilman who shall neglect or refuse to serve within the said City shall forfeit and pay any sum not exceeding fifteen Dollars, Provided that no person or persons shall be liable to a fine or fines for any two years in succession for neglect or refusal to serve in any of the offices aforesaid.

Majority of voices to determine all questions.

Sec. 15. A Majority ^{either} of ~~voices~~ in the Council shall determine and decide upon all cases that may come before ^{them} ~~it~~; and when it is required by two members the Question shall be taken by Ayes and Nays which shall be entered in the minutes. ~~and all elections for any officer or officers to be appointed by the same shall be by Ballot and by a Majority of all the votes of the members of the Council~~ ^{present}

Mayor Recorder and Aldermen, their powers.

Sec. 16. The Mayor Recorder and Aldermen of the said City shall constitute the executive power thereof and shall be and they are hereby constituted Conservators of the peace within the same and authorized empowered and required to do and execute all those matters and things in the said City of Wilmington which Justices of the peace for the said County of Newcastle may and lawfully can do; and shall further be invested with

authority in all lawful cases of Commitment to commit persons guilty of breach of the peace, to such place or places as may be provided by the ~~Peace~~ ^{City} until they can be conveniently removed to the common Jail of the County, and in like manner on complaint made by any two house-keepers they shall have power to disperse or commit as aforesaid ^{or other disorderly persons} any assemblage of minors who may be collected by night or by Day in any ~~within the precincts of said City~~ ^{of the streets lanes or alleys} unless they have ~~with them the written permission of their parents~~ ^{with them the written permission of their parents} ~~masters or guardians, but such permission shall~~ ^{in no wise protect them from commitment and} ~~prosecution for any overt Act charged on them.~~

And the said Mayor shall have the custody of the Seal of the said City and the right of affixing the same.

Powers of the Select and Common Councils.

Sec. 17. The Select and Common Councils constituted as aforesaid shall have power to enact Ordinances to preserve the Health of the City, and prevent the introduction of infectious or contagious Diseases; and for this purpose, their jurisdiction shall extend to any distance within one mile of the Boundaries of the same; and in such Ordinances may organize a "Board of Health" for the said City, which Board shall be vested with all the powers and authorities which the Councils might or could exercise relative to the object of their Institution. Of this Board or of the Select and Common Council when sitting as a Board of Health the Health Officer of Wilmington shall always be a member, but shall enjoy no other right in the decision of any case that may come before the said Board or Councils than any other member

thereof; any law usage or custom to the contrary notwithstanding. And the said Select and Common Councils may pass ordinances to define and remove nuisances whether in the public Streets lanes or alleys or elsewhere within the City to provide Night watches and erect Lamps, to ascertain the Boundaries of Streets Lanes or alleys and establish new ones or alter Streets lanes or alleys and repair and amend all Streets lanes and alleys within the said City, making adequate compensation to the party injured to be ascertained by three men or the majority of them to be appointed by the Court of Common-pleas of Newcastle County on the application of the said City Corporation or of the party complaining Provided, That nothing in this act shall be construed to extend to those who may conceive themselves injured by the completion of the Ground Plan of the Streets as already established by law or of any other Ground plan which may hereafter be legally established.

To provide for the regulation of Auctions and Auctioneers, for cleaning the Docks and regulating the Wharves to provide for the safe keeping of Standards of Weights and Measures and for fixing and inflicting the penalties on all those who shall hereafter use false weights or measures within the said City; to regulate public Amusements, to fix and declare the Weight of Bread and size of Brick, to regulate the Cordage of Wood and Bark and to determine what may be esteemed merchantable, to appoint Woodforders and to establish their fees, to regulate party walls, to erect Market houses and to regulate the markets, to regulate the sweeping of Chimnies and establish the rates; to erect pumps or any other apparatus for sup-

plying the citizens with good and wholesome water; to repair and amend the same and to assess and receive a Tax therefor; to appoint Gaugers Inspectors of Flour, Inspectors of Salted provisions Inspectors and Measurers of Lumber and to establish their Fees, to provide for the weighing of Hay, and for the measuring or weighing of Coal Lime, Grain or any other matter sold in the said City - to regulate the Storage of Gun powder or any other dangerously combustible matter. And the said Councils shall have the power of fining illegal venders of Spirituous Liquors within the said City; they shall have power to lay and collect fines on the owners or harborers of any Dog or hog that may be found at large in any of the streets lanes and alleys of the said City, ~~which fines when collected shall be paid and applied as by Laws of this State the like fines are now paid and applied.~~ They shall have the power to appoint and commission Constables who shall possess like powers within the said City, as are possessed by the Constables of the aforesaid County of New Castle and in general shall have power to do all those matters and things for the well being of the said City which shall not be in contravention of any existing laws of this State or the Constitution thereof.

Annual meetings of the Councils

Sec. 18. The said Select and Common Councils shall ~~assemble in joint meeting~~ ^{meet} on the first ~~Tuesday~~ ^{Monday} in ~~each~~ ^{May} year, or within ten days of the same and estimate and fix the sum and sums of money necessary to be raised on the persons and Estates in the said City for the public uses of the year ensuing, and thereupon the Mayor or in case of his absence the Recorder shall issue his precept countersigned by the Clerks of the Select

Assessment

and Common Councils directed to the Assessor of the said City, requiring him within sixty days from the date thereof to make out a true and impartial list of all the persons and Estates within the same together with the sum and sums of money in Dollars which it shall appear to him the said persons or ^{Rate thereof.} property ought to be rated at, Assessment on property shall be made according to the annual interest at six per centum the several properties would probably produce on the amounts or on the estimated value thereof, if sold for ready money, and the said list and assessment shall be laid before the Councils to be examined and being approved a fair copy or copies thereof shall be made out by the Clerk of the Common Council and published for the information of all concerned for at least two Weeks previous to the time then to be appointed for holding a Court of Appeals (of which notice shall be given as aforesaid) and the said Councils shall be ^{in joint meeting} and they are hereby constituted a Court of Appeals for the hearing and redressing of such as may appear to be aggrieved with power in concurrence with the Assessor to assess such as may have been left off the List. Provided notice thereof shall have given to the person or the Representative of an Estate so assessed, so that he she or they may have an opportunity of appearing before the Court of Appeals, and after the said Councils shall have held a Court of Appeals as aforesaid they shall estimate and fix how many Cents to the Dollar will be necessary to raise the sum or sums of money required as aforesaid and the Clerk of the Common Council shall thereupon make out or cause to be made out, a true list

Court of Appeals

agreeably to the proceedings aforesaid, certify the same under his hand and seal of the said City and deliver the same into the hands of the Collector within ten Days from the time the Dollarage was laid as aforesaid with an order under the hands of the Mayor or Recorder and at least one of the Aldermen (which they are hereby authorized to make) requiring the said Collector forthwith to collect and receive from the persons and Estates assessed, the several sums in the said List mentioned, and in case any person or persons so rated or assessed by virtue of this Act shall neglect or refuse to pay the sum or sums so assessed for the space of six days after demand made, the said Collector shall by a Warrant under the hand and seal of the Mayor or Recorder of the said City for that purpose (which they are hereby authorized to grant) levy the same by distress and sale of the delinquent's goods and Chattels rendering the overplus if any after reasonable charges deducted to the owner or owners thereof, but if no distress can be found by the collector and the party refuses or neglects to show him goods or chattels of his own forthwith to satisfy the money due with reasonable charges then the said collector shall make return on oath or affirmation of such want of goods to the person who may have issued such Warrant and the person to whom such return shall be made shall and may by Warrant under his hand and seal Commit the said delinquent to the Common Jail of the County there to remain until discharged by due course of Law; or the same may be

Order to the Collector.

How he shall proceed.

In default of goods he may commit the delinquent.

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Or he may levy on the Goods and Chattels of delinquent's tenants.

levied on the goods and Chattels of any of his tenants if such there be, and the delinquent shall be obliged to discount it out of the first rent that shall afterwards accrue from the Estate rented: and in case any grounds buildings or Estate belong to a minor or minors or absent person or persons then the same shall be recovered from the person or persons having the care of such grounds buildings or estate and the Receipt of said collector shall be a good voucher to all Executors administrators guardians trustees or attorneys against their principals: and when any owner or owners of any grounds buildings or estate or their Executors administrators guardians trustees or Attorneys cannot be found and they shall neglect to pay the assessment as aforesaid then it shall and may be lawful for the said Mayor or Recorder to issue his Warrant, authorizing the said collector to levy the same on the grounds buildings or estate of such absent owner or owners or minor or minors and the said collector is hereby authorized to sell the same at public Auction for the shortest space of time in which the rents and profits will satisfy the debt and costs, all which said several sums of money when collected the said collector shall pay over without delay to the City Treasurer.

Proceedings against minors and absent persons.

High Constable and other officers appointed by the Councils, duties.

Sec. 19. The High Constable and the Officers appointed by the Councils shall assist the Mayor Recorder and Aldermen in carrying into effect the Ordinances of the City, and shall perform such duties as are hereinafter mentioned or

may be prescribed by Ordinance.

Treasurer
to give bond.

Sec. 20. The Treasurer of the City shall give security in double the amount that may ^{possibly} come into his hands for the true and faithful performance of such duties as may be ordained. And all Constables and Collectors appointed under and by virtue of this Charter shall give Bond and security to be approved of by the Mayor and Recorder of the City for the faithful discharge of their duty.

Assessors
duties.

Sec. 21. The Assessor shall perform such duties other than those before mentioned as may be ordained for the better performance of the duties of his office.

Officers to be
qualified, and
how.

Sec. 22. Every officer elected or appointed under this Act of incorporation before he enters on the duties of his Office shall take an oath or affirmation to support the Constitution of the United States of America and the Constitution of the State of Delaware and that he will perform the duties of the Office unto which he hath been elected or appointed with fidelity.

Salaries &c. to
be established by
Ordinance.

Sec. 23. The Salaries Fees or Emoluments of the Officers of this Corporation shall be established by Ordinance: provided no salary fee or emolument of any Officer shall be reduced or augmented for and during the period of service for which he may have been elected or appointed: but ^{and} no ordinance establishing the Salaries Fees or emoluments of any ~~elective~~ officer shall at any time take

place ^{except} previous ^{by} to the Annual Election then next ensuing and unless it shall have been published with the eyes and nays thereon at least two weeks before the said Election. V³

Councils
Meetings

Sec. 24. The Councils shall meet at least once in every month at such time and place as may be from time to time agreed upon. Special Meetings may be called by the Mayor upon his own motion, or shall be called when five members may request or demand a meeting.

The manner
of supplying
vacancies or
currying by
death or other
wise.

Sec. 25. In case of the Death, absence, resignation or refusal to act of any member of the Councils, or of the Treasurer or Assessor, the members of the Select and Common Councils who meet, shall in joint meeting, elect a president pro tempore, who shall issue his Writ by order of said joint meeting of the Councils, directed to the High Constable, or in case of his death absence resignation or refusal to act, to a High Constable to be appointed by the Councils to act pro tempore, requiring him to hold an election on the day therein specified, to fill up the vacancy or vacancies occasioned by such absence death or deaths resignation or resignations refusal or refusals: and the said High Constable shall give public notice for at least two weeks previous to the time in the said Writ appointed, that an Election will be held at a certain time and place mentioned in the said Writ for the purpose of filling up the vacancy or vacancies occasioned as aforesaid, which Election the said High Constable shall conduct together with all

other Elections, and make returns thereof as may be established by Ordinance: provided that all Elections shall be opened between the hours of ten and twelve O'clock in the forenoon and closed at ~~ten~~ ^{two} O'clock in the afternoon of the same day.

Recorder to act in the place of the Mayor in case of his inability to attend.

Sec. 26. In all cases wherein the presence or act of the Mayor is demanded or required to any act or duty or duties or otherwise, when he shall neglect or refuse or be incapable to attend to the same, his place shall be supplied by the Recorder, or in case of his neglect refusal or incapacity by one of the members of the Select or Common Council selected by the joint vote of the said Councils for that purpose, to act pro tempore, who shall exercise all and every the duties and powers of the Mayor, until the said Mayor or Recorder shall be able and willing to act, or a new ^{appointment} ~~Election~~ can be ^{made} ~~held~~ as aforesaid.

Presidents of the Councils the members thereof and other officers how qualified.

Sec. 27. The Select and Common Councils shall on their first meeting choose each from their own Body a President who together with the other members of the Councils and all other Officers elected or appointed as aforesaid shall be qualified into Office by the Mayor of the City.

Mayor by whom Qualified into office.

Sec. 28. The Mayor of the City shall be qualified into Office by the President of the Select Council or by a Judge of the Court of General Sessions of the County of New Castle

Nuisances how removed.

Sec. 29. Whenever the City of Wilmington or any part thereof shall be annoyed or rendered foul by any manufactory Trade Work business or any other matter or thing producing noxious vapours or highly offensive smells or by any place where noxious or putrid substances shall be stored or collected within the said City it shall be the duty of the Common Council or a Majority of them if in their opinion the public health or that of individuals shall be endangered thereby, to proceed forthwith to such place or places and to make due enquiry and strict examination respecting the same, and that it shall and may be lawful for them whenever whenever it may be deemed necessary, to require the aid or assistance of One or more Constables of the City in making such inquiry, and examination, and he or they are hereby authorized and required to break open, whenever admittance cannot otherwise be obtained the Door or Doors ^{any unoccupied building} of such place or places producing or affording such noxious Vapour or highly offensive smell or where such offensive substances are deposited, and if the said Common Council or a majority of them shall judge any such manufactory Trade business or Repository to be carried on or kept in such a manner as to be a nuisance they shall declare it so in Writing to the Owner or occupier thereof or person having the care or charge of the same, and at the same time shall require the immediate removal abatement or discontinuance of the said nuisance as the case may require within the time belimited in the said Writing, and if on the expiration of the said time the said order shall

not have been complied with, it shall be the duty of the Mayor or Recorder of the said City upon representation thereof to either of them made by the president of the said Common Council immediately to issue a Warrant under the hand and seal of the said Mayor or Recorder directed to the High Constable of the said City commanding him forthwith without delay to cause to cause to be removed abated or discontinued such Nuisance, the costs of such removal or abatement together with all the legal costs and charges to be recovered from the owner or owners of such place or places as debts of the like amount are recoverable

Tavern and Oyster Cellar Licenses to whom granted.

Sec. 30. The Select and Common Councils in joint meeting shall have the sole and exclusive and exclusive power of granting Licenses to Tavern or Innkeepers, Keepers of Oyster houses or Cellars residing within the Jurisdiction of the said City, the proceeds arising from such Licenses, as also all fines and forfeitures that may be collected by process from the mayors Court shall be appropriated to the use and benefit of the said City

Recovery and Appropriation of Fines and Forfeitures.

Sec. 31. All Fines and Forfeitures accruing under this act or by any ordinance of the said City of Wilmington may be recovered before the Mayor Recorder or Aldermen in the name of the said City, as other Debts are recoverable in this State and when recovered shall be and remain for the use of the said City

Powers of the Corporation not to cease by omission to elect.

Sec. 32. In case it should so happen that the

Election day should pass over without an Election being held, or in case of omission of the execution of any authority delegated by this Act the powers of this Corporation shall not cease but the authority of each and every the Officers thereof shall continue until a new Election can be legally held by resolve of the Councils and notice as aforesaid, and the officers chosen thereat duly qualified; provided, at the first meeting of the Council a Writ shall be issued as in the case of vacancies as aforesaid but if it shall happen that the Mayor chosen as aforesaid shall fail to present himself to the proper Officer to be duly qualified into the said Office for a longer period of time than five Days after this Election as aforesaid, then the Councils shall proceed to elect another person in his room who shall be invested with all the power and authority which the said Mayor duly elected might or could have exercised

Proviso.

Governor to appoint the Mayor, in case the Mayor elect shall omit to be qualified, for a longer space than five days.

All debts and obligations due from or to the Borough of Wilmington under former Charter to remain in force.

Sec. 33. And be it enacted by the Authority aforesaid that all the privileges powers rights or jurisdictions granted to the Borough of Wilmington under its former Charter not hereby supplied shall be and remain in full force and virtue as they regard the said City of Wilmington; and also all debts and obligations binding on or due, or property or other things of value belonging to the said Borough under its former Charter shall be equally binding on, or due to and be the property and right of and be vested in the said City under its present Charter, and that all and every part of the

in Sec 30
The Select and common Councils in joint meeting shall have the sole and exclusive power of granting Licenses, within the jurisdiction of said City, to Tavern or Innkeepers, keepers of Oyster houses or Cellars, Cellars and vendors of Porter, Beer, Ale or Cider, keepers of Hackney coaches, Drays and Carts, for hire, and to enact ordinances for the regulation of the same, The proceeds arising from such Licenses