A BILL

To Incorporate the Town of Nanaimo.

WHEREAS, it is expedient to erect the village of Nanaimo into a town and to establish a Municipal Council therein;

BE IT THEREFORE ENACTED by the Governor, on Her Majesty's behalf, by and with the advice and consent of the Legislative Council and Assembly, as follows:

I. That from and after the date of this Act all that tract of land lying north of the river Chase, and heretofore constituting a part of the District of Nanamio, shall be deemed for the purposes of this Act the town of Nanaimo.

II. The inhabitants of the said town shall be and are hereby created a body corporate, and shall have a corporate seal.

III. The name of the said body corporate shall be "The corporation of the town of Nanamio," and the said body may sue and be sued in such name.

IV. The powers of the said body corporate shall be exercised by the Council thereof.

OF WHOM COUNCIL COMPOSED.

V. The said Council shall consist of seven Councillors, possessed of the qualifications and subject to none of the disqualifications hereinafter specified.

QUALIFICATION OF COUNCILLORS.

VI. No person shall be qualified to be elected a member of the said Council unless he be a male British subject of full age, and have resided in the town of Nanaimo for a space of three calendar months previous to election, and be seized or possessed in his own right in fee simple of a town lot or part of a town lot in the town of Nanaimo of the market value of not less than two hundred and fifty dollars, or be a tenant of leasehold property to the value of one hundred and eighty dollars per annum.

VII. No Sheriff or Sheriff's Officer, or Returning Officer under this Act, no bankrupt, insolvent debtor, or outlaw, or person who shall have been convicted of any felony; no person having taken the oath of allegiance to or become the subject or citizen of any foreign state or nation, or having forsworn or having declared his intention of forswearing his allegiance to Her Majesty or Her successors, unless he shall have taken the oath of allegiance to Her Majesty and Her successors before the Chief Judge of the Supreme Court of Civil Justice in the Colony three months at least before the time of election, and no person having directly or indirectly any contract with the said corporation shall be qualified to be a member of the Council of the said corporation.

VIII. At the first meeting of such Council, after any and every election of Councillors under the provisions of this Act, one of the members thereof shall be elected, by a majority of the said Council; to fill the position of Mayor of the said town, and the person so elected shall preside at each meeting of the Council, and in case of the death, bankruptcy, insolvency, resignation or permanent absence of such Mayor, another Councillor shall be elected Mayor.

QUALIFICATION OF VOTERS.

IX. No person shall be qualified to vote at any election of Councillors under this Act (save as hereinafter excepted) unless he be a male of full age, and his name shall appear on the Assessment Roll for the said town.

X No person shall be qualified to vote at the election of any Councillor for the said town unless he be a male of full age, and shall have resided in the said town for a space of three calendar months previous to such election, and be seized or possessed in his own right in fee simple of real estate in the town of Nanaimo of the market value of not less than fifty dollars, or be a tenant of leasehold property to the value of thirty dollars per annum; no Sheriff, Sheriff's Officer or Returning Officer, no bankrupt, insolvent debtor, or outlaw, and no person who shall have been convicted of felony shall be qualified to vote at any such election of Councillors for the said town.

XI. At the first election of Councillors to be holden under this Act every male resident in the said town, though not named in the voters' list, shall be entitled to vote—if he possess the other qualifications above mentioned, and have at the time of the election sufficient property to have entitled him to vote if he had been rated for such property; and every person so claiming to vote shall name the property on which he votes, and the Returning Officer at the request of any candidate or voter shall note the property in his poll book opposite the voter's name.

XII. Every person tendering his vote at any election of a Councillor under this Act shall, if so required by some other duly qualified elector, take before voting the following oaths, or either of them as may be required, that is to say:

1. I, A B, do hereby swear that I am the same A B who is mentioned in the list of voters, and that I am now in my own right possessed of or tenant of (here state the qualification) in respect of which I have been entered on the list of voters.

2. I, A B, do hereby solemnly swear that I have not received or been promised, or to my knowledge has any other person on my behalf, or for my benefit, received or been promised any money, gift, advantage, place or consideration for, or for influencing the vote which I now tender.

XIII. The Returning Officer shall have full power to administer such oaths, and any person who shall take the said oaths, or either of them, knowing the same to be false shall be liable to the penalties and consequences of wilful and corrupt perjury.

FIRST ELECTION.

XIV. The first election of Councillors under this Act shall take place within thirty days from the passing thereof.

XV. The Sheriff of Vancouver Island shall within thirty days from the passing of this Act appoint a day and place for holding such elections, of which he shall give at least seven days notice in some local newspaper, or if there be none then by at least three notices in writing posted up in conspicuous places in the said town; and the said Sheriff or such other person as he shall by writing under his hand appoint shall be Returning Officer; and the said Sheriff or the person by him appointed as aforesaid shall on the day and at the time fixed proceed to hold the said first election in the manner hereinafter appointed.

SUBSEQUENT ELECTIONS.

XVI. The electors of the said town shall elect annually on the first Monday in January the members of the Council, and the persons so elected, or the persons who may be first elected under this Act, shall hold office until their successors are elected or appointed and sworn into office and the new Council is organized.

XVII. The Council of the said town shall from time to time by by-law appoint a Returning Officer to hold the next ensuing elections.

IF RETURNING OFFICER ABSENT.

XVIII. In case the Returning Officer so appointed by the said Council does not attend to hold the election within one hour after the time so appointed, or in case no Returning Officer has been appointed, the electors present at the place for holding the election may choose from among themselves a Returning Officer, and such Returning Officer shall have all the powers and shall forthwith proceed to hold the election and perform all the other duties of a Returning Officer.

PROCEEDINGS AT ELECTIONS.

XIX. The proceedings at elections shall be as follows:

1. Every Returning Officer appointed by the said Council shall, unless otherwise provided by law, give at least seven day's notice of the election to be held by him, by advertising the same in a local newspaper, or if there be none by posting such notice in at least three public places in the said town.

2. The Clerk of the Council shall prior to every election deliver to the Returning Officer who is to preside a correct copy of the last revised Assessment Roll for the said town, with a declaration that the same is a true copy.

3. The Returning Officer shall provide a poll-book and at every election at which a poll is demanded he, or his sworn poll-clerk, shall enter in such book, in separate columns, the names of the candidates proposed and seconded by any electors present at the election, and shall opposite to such columns write the names of the electors offering to vote at the election, and shall in each column in which is entered the name of a candidate voted for by a vote set the figure "1" opposite the voter's name.

XX. The Returning Officer shall on the day of nomination nominate such persons as shall present themselves before him, or who shall be proposed and seconded by some duly qualified electors, as candidates for the office of Councillor; a show of hands shall then be called for and the Returning Officer shall thereupon declare which of the candidates has been elected by the show of hands.

XXI. Any candidate may demand a poll, which shall be taken on the day of election, and the Returning Officer shall on the day of election, immediately after the close of the poll, declare who has or have been elected by the greatest number of votes.

XXII. The poll shall be kept open between the hours of eleven o'clock, A. M., and four o'clock, P. M.

VACANCIES IN THE COUNCIL.

XXIII. In case of the death, bankruptcy, insolvency, resignation or permanent absence from the town of Nanaimo of any such Councillor, or in case of a member being convicted of felony or infamous crime, the seat of such person at the Council Board shall be deemed to be vacant; and the Mayor shall by writing call upon the Returning Officer to cause some duly qualified person to be elected to fill such vacancy by some day not sooner than twenty-one days from the date of the said notice; and such election shall take place accordingly, and shall be conducted in the manner hereinbefore prescribed for annual elections, and the person so elected shall hold office for the residue of the term for which his predecessor was elected.

CONTESTED ELECTIONS.

XXIV. In case the validity of the election of any Councillor is contested, the same may be tried in Term or Vacation by a Judge of the Supreme Court of Civil Justice of the Colony, and any candidate at the election, or any elector who gave or tendered his vote thereto, may be the Relator for the purposes.

PROCEEDINGS FOR THE TRIAL THEREOF.

The proceedings for the trial shall be as follows:

1. If within one month after acceptance of office by the person elected the Relator shows by affidavit, to a Judge of the said Court, reasonable grounds for believing that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected, and if the Relator enters into a recognizance before the Judge in the sum of two hundred dollars, with two sureties (to be allowed as sufficient by the Judge on affidavit of justification) in the sum of one hundred dollars each, conditioned to prosecute the writ with effect, and to pay the party against whom the same is brought any costs which may be adjudged to him against the Relator, the Judge shall direct a writ of Summons in the nature of a *quo warranto* to be issued to try the matters contested.

2. In case the Relator alleges that he himself or some other person has been duly elected, the writ shall be to try the validity both of the election complained of and the alleged election of the Relator or other person.

3. In case the grounds of objection apply equally to two or more persons elected the Relator may proceed by one writ against such persons.

4. The writ shall be issued by the Registrar of the Supreme Court, and shall be returnable before the Judge in Chambers, at such place as he may appoint, upon the tenth day after service thereof, exclusively of the day of service, or upon any later day mentioned in the writ.

5. The Judge before whom the writ is returnable may allow any person entitled to be a Relator to intervene and defend, and may grant a reasonable time for the purpose; and any intervening party shall be liable or entitled to costs like any other party to the proceedings.

6. The Judge shall, in a summary manner, upon statement and answer, without formal pleadings, hear and determine the validity of the election, and may by order cause the Assessment Rolls, poll-books, and any other records of the election to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him and sent to be tried by a jury, as he shall deem expedient, and shall make such order confirming the election or removing any Councillor or Councillors, or for the admission of any other or others adjudged legally elected, as he may think just.

7. Such judgment or order shall be final and the same may be enforced by a writ in the nature of a peremptory writ of *Mandamus* and by writs of execution for the costs awarded.

8. Any person whose election is complained of may within one week after service on him of the writ, by notice in writing, addressed to the Clerk of Judges' Chambers at Victoria, disclaim all right to the office of Councillor, and in that event no costs shall be awarded against him.

9. In all cases not otherwise provided for costs shall be in the discretion of the Judge.

MEETINGS OF THE COUNCIL.

XXV. The members of the Council shall hold their first meeting in the Court House, at noon on the third Monday of the same January in which they are elected, and shall organize themselves as a Council by electing by the votes of the majority one of themselves to be Mayor of the said town, and such person shall be the head of the Council.

XXVI. The Clerk of the Council shall preside at every such election, but if there be no Clerk the members present shall select one of themselves to preside, and the person so elected may vote as a member.

The Mayor of the said town shall be *ex officio* a Justice of the Peace for Vancouver Island.

SUBSEQUENT MEETINGS.

XXVII. The subsequent meetings of the Council shall be held at such place and time as the Council from time to time by resolution or by-law appoint; such meetings shall be held openly and no one shall be excluded except for improper conduct.

XXVIII. Four members of the said Council shall form a quorum.

XXIX. The Council may adjourn its meetings from time to time.

WHO TO PRESIDE IN COUNCIL.

XXX. The Mayor shall preside at the meetings of the Council, and may at any time summon a special meeting thereof; and it shall be his duty to summon a special meeting thereof whenever requested in writing by a majority of the Council.

XXXI. In the absence of the Mayor the Council may from the members thereof appoint a presiding officer, who during such absence shall have all the powers of the head of the Council.

XXXII. If the person who ought to preside at any meeting do not attend within a reasonable time after the hour appointed, the members present may appoint a Chairman from amongst themselves, who shall have the same authority at such meeting as the absent person would have if present.

XXXIII. The Head of the Council, Presiding Officer, or Chairman, may vote with the other members on all questions, and any question on which there is an equality of votes shall be deemed to be negatived.

OFFICERS OF THE COUNCIL—THE CLERK AND HIS DUTIES.

XXXIV. The members of the Council shall at their first meeting appoint a Clerk, who shall truly record in a book all resolutions, decisions and other proceedings of the Council, and shall keep the books, records and accounts of the Council, and shall preserve and file all accounts acted upon by the Council, and also the original or certified copies of all by-laws, and of all minutes of proceedings of the Council, and the same shall be open to the inspection of any person who may also make copies thereof on payment of a fee of one shilling.

XXXV. The said Clerk shall hold office until the next Council is organized.

ASSESSORS AND COLLECTORS.

XXXVI. The Council shall within one month after the first election under this Act, and afterwards within one month after the annual election appoint an Assessor and Collector for the town, and shall fill up any vacancy that may occur in the said offices as soon after the same happens as may be convenient.

XXXVII. The Assessor shall for and on behalf of the Council prepare an Assessment Roll on such day in each year as the Council shall appoint, and the freehold and leasehold property situate within the said town, together with the names of the persons occupying and owning the same, shall be therein specified; and the said Roll shall be deposited with the Clerk of the Council within fourteen days from the day of Assessment.

XXXVIII. The Assessor shall make such assessment according to the actual value of the property at the time of such assessment, and declare the same on the leasehold interest of every lessee of any portion of a lot, as well as upon the freehold interest in the said lot; such assessment however to be subject to the approval of the Council.

XXXIX. Any person whose property may be so assessed may appeal to the Council in such manner as they by resolution or by-law may prescribe, and the decision of the said Council shall be final.

XL. The Collector shall ask and receive, or if need be collect in the manner hereinafter mentioned, all taxes and rates that the Council may by by-law direct to be levied on property of any kind situate in the said town, or on persons residing therein, and shall pay all such moneys into the hands of the Council, and the money so collected shall be deemed to be the money of the corporation.

XLI The Council shall have the regulation and auditing of moneys to be paid out of funds in the hands of the Clerk of the said Council.

SALARIES AND CONTINUANCE IN OFFICE.

XLII. All officers appointed from time to time by the said Council shall hold office until removed by the Council, and shall in addition to the duties assigned to them by this Act, perform all other duties that may be required of them by the by-laws of the said Council; and the Council shall settle and provide for the remuneration of such officers.

OFFICIAL DECLARATIONS.

XLI. Every person elected or appointed under this Act to any office requiring a qualification of property, shall before he takes the declaration of office, or enters on his duties, make and subscribe a solemn declaration to the effect following:

I, A B, do solemnly declare that I am a natural born British subject of Her Majesty (or naturalized, as the case may be), that I am truly and *bona fide* seized or possessed to my own use and benefit of such an estate (specifying the nature of such estate, and if land describing same) as doth qualify me to act in the office of ———— according to the true intent and meaning of the "Nanaimo Incorporation Act," and that I am not interested either directly or indirectly in any contract with or on behalf of the Corporation of Nanaimo aforesaid.

XLIV. Every Returning Officer shall before entering on the duties of his office make and subscribe a solemn declaration to the effect following:

I, A B, do solemnly promise and declare that I will truly, faithfully and impartially to the best of my knowledge and ability execute the office of Returning Officer to which I have been appointed, and that I have not received and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation, or other undue execution of the said office.

XLV. The said declarations shall be made and subscribed in the presence of a Justice of the Peace for the said town of Nanaimo.

POWERS OF THE COUNCIL, HOW EXERCISED.

XLVI. The powers of the Council shall be exercised by by-law or resolution, and the said Council may make regulations in matters not specifically provided for by this Act, and not contrary to law, for governing the proceedings of the Council, the conduct of its members, and the appointing or calling of special meetings of the Council, and generally such other regulations as the good of the inhabitants of the town may require, and may repeal, alter and amend its by-laws and rescind its resolutions.

BY-LAWS OF COUNCIL, HOW AUTHENTICATED.

XLVII. Every by-law shall be under the seal of the Corporation, and shall be signed by the Head of the Corporation, or by the person presiding at the meeting at which such by-law was passed, and by the Clerk of the Corporation.

XLVII. A copy of any such by-law, certified by the Clerk of the Council to be true, and under the seal of the Corporation, shall be received in evidence in any Court of Justice, without proof of the signatures, unless it is specially pleaded or alleged that the seal or signature has been forged.

WHEN AND HOW QUASHED.

XLIX In case any person interested in a by-law, order or resolution of the Council applies to the Supreme Court of Civil Justice of Vancouver Island, and produces to the Court a copy of the by-law, order or resolution, certified under the hand of the Clerk and under the Corporate seal, and shows by affidavit that the same was received from the Clerk, and that the applicant is interested as aforesaid, the Court after at least eight days service on the Corporation of a Rule to show cause in this behalf, may quash the by-law, order or resolution in whole or in part for illegality, and according to the result of the application award costs for or against the Corporation.

L. Such application to quash any by-law, order or resolution must be made in six months after the passing of the same and not afterwards.

LI. In case a by-law, order or resolution be illegal in whole or in part, and in case anything has been done under it which by reason of such illegality gives any person a right of action, no such action shall be brought until one month has elapsed after the by-law, order or resolution has been quashed or repealed, nor until one month's notice in writing of the intention to bring such action has been given to the Corporation; and every such action shall be brought against the Corporation alone and not against any person acting under the by-law, order or resolution.

POWERS OF THE COUNCIL.

LII. The Council shall have power to pass by-laws for any of the following purposes;

1. To regulate the sanitary condition of the town;
2. To regulate the markets situate within the said town;
3. To provide means for the preservation of the said town from fire, and to regulate all matters affecting the liability of the said town to fire.
4. To provide for the prevention and removal of nuisances;
5. To prevent the introduction of diseased and unhealthy meat;
6. For granting tavern licenses (that is, licenses for the retail of spiritous, fermented or other manufactured liquors to be drunk in the inn, ale-house, beer-house or other house or place of public entertainment in which the same is sold, and for granting shop licenses, that is licenses for the retail of such liquors in shops, stores or places other than inns ale-houses, beer-houses or places of public entertainm ent.
7. For limiting the number of shop and tavern licenses respectively.

8. For licensing, regulating and governing all persons who for hire or gain, directly or indirectly, keep or have in their possession, or on their premises, any billiard table, or who keep or have a billiard table in a house or place of public entertainment or resort;

9. For declaring the terms, conditions, security and rates for any of the before mentioned licenses.

10. For appointing Inspectors to regulate weights and measures according to the lawful standard; for visiting all places wherein weights and measures, steelyards or weighing machines of any description are used, and for seizing and destroying such as are not according to the lawful standard;

11. For promoting public morality;

12. For raising, levying and collecting upon real estate in the said town a tax of not more than one per cent. per annum upon the value thereof, as certified in thd Assessment Roll; provided always that scuh tax shall not extend over or be levied for a longer time than the financial year in which the same is authorized to be levied by any by-law aforesaid.

LIII. The Council shall also have power by by-law or resolution to devote any portion of the moneys raised by assessment or otherwise to any of the following purposes:

1. The construction, erection, maintenance and repair of the streets, ways, footpaths and bridges situate within the said town.

2. The drainage and sewerage of said town.

3. The improve ment of the sanitary condition of the said town.

4. The clearing of the lots within the said town.

5. For sending or conveying sick or destitute persons to the Royal Hospital at Victoria.

6. For the maintenance, care and support of the poor, and of orphan children in the said town.

7. For establishing, regulating and maintaining a police.

8. For requiring and enforcing the performance by every male inhabitant of the said town, not less than eighteen years old and more than fifty years of age, to perform two days' labor on the public roads, or to compound for such labor by paying three dollars into the hands of the Clerk of the Council.

9. For regulating the manner and the divisions in which such labor or commutation money shall be performed or expended.

LIV. The Council may issue its Debentures or other obligations for any sum not exceeding one-half of the revenue of the Corporation for the then current year, and payable at any time within five years.

LV. Such Debentures shall be made payable to bearer and may be transferred by delivery, and such transfer shall vest the property of such Debenture in the holder and enable him to maintain an action thereupon in his own name.

LVI. Such Debentures shall be sealed with the seal of the Corporation, and be signed by the head of the Council or by some person authorized by by-law to sign the same, otherwise the same shall not be valid.

XVII. In a suit or action upon any such Debenture it shall not be necessary for the plaintiff to set forth in the declaration or other pleading, or to prove the mode by which he became the holder of the Debenture, or to set forth or prove the notices, by-laws or other proceedings under and by virtue of which the Debenture was issued, but it shall be sufficient in such pleading to describe the plaintiff as the holder of the Debenture and shortly to state its legal effect and purport and to make proof accordingly.

LVIII. The holder may recover the full value thereof.

LIX. Every by-law shall be passed by the vote of at least four members of the Council, and at a meeting where at least five members thereof shall be present, and such by-law when passed shall have the force of law in Vancouver Island.

LX. The penalty by which any by-law may be sought to be enforced may be stated in the by-law, and if no penalty is therein mentioned the breach thereof shall be punished in a summary way by any Justice of the Peace in the said town by the imposition of a fine not exceeding £10; or by imprisonment for any time not exceeding three months, at the discresion of the Justice of Peace before whom the offender may be brought.

LXI. The Justice of the Peace before whom any offender may be brought may in case of a fine adjudge that such offender shall pay the same either immediately or within such time or by such instalments as the said Justice of the Peace shall think fit, and in case such sum of money shall not be paid at the time so appointed, the same shall be levied by distress or sale of the goods and chattels of the offender, and for want of a sufficient distress, such offender may be imprisoned with or without hard labor in the common gaol of the said town for any term not exceeding three months, or for the period mentioned in the by-law; the imprisonment to cease upon payment of the fine and costs.

The Council shall have power by a resolution, passed in manner provided for the passage of a by-law, to devote any portion of the Corporation funds not exceeding in the whole for any one year one-third of the revenue towards defraying the ordinary expenditure of the Council in the conduct of its general business.

No member of the Council shall be held personally liable for or in respect of any Act, by-law, order or resolution of the Council, except the misapplication of the Corporation funds.

The Council shall have no power to charge the Corporation or the Corporation revenue for any sum exceeding in amount the revenue of the then current year.

In the event of non-payment by any person of any rate or tax duly imposed by the Council, the same may be levied by a distress on the goods and chattels of the person liable to pay the same, under a warrant directed to the Collector to be issued by the Head of the Council for that purpose, and in default of a sufficient distress the said Head of the Council on being satisfied that there is no sufficient distress may issue a warrant under his hand and seal directed to the Sheriff of Vancouver Island commanding him to sell the lot or lots in respect of which such taxes may be due, or a sufficient portion, and the Sheriff shall immediately upon receipt of such warrant proceed to sell such lot or lots by public auction, or so much thereof as may be sufficient to discharge the taxes and all lawful charges incurred in and about the sale and the collection of the taxes.

The Sheriff after selling any such land shall give a certificate under his hand to the purchaser, stating distinctly what part of the land and what interest therein have been so sold, or stating that the whole lot and estate have been sold, also stating the quantity of the land, the sum for which it has been sold and the expenses of sale; and further stating that a deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold, will be executed by the Sheriff on his or their demand at any time after the expiration of six months from the date of the certificate, if the land be not previously redeemed.

The owner of any land in the said town which may be hereafter sold for non-payment of taxes, or his heirs, executors, administrators or assigns, may at any time within six months from the day of sale, exclusive of that day, redeem the estate sold by paying or tendering to the Clerk of the Council for the use and benefit of the purchaser or his legal representatives, the sum paid to him together with eighteen per cent therein, and the Clerk's receipt therefor shall be evidence of the redemption of such land.

If the land be not redeemed within the period so allowed for its redemption, then on the demand of the purchaser or his assigns or other legal representative, and on payment of five dollars the Sheriff shall execute and deliver to him or them a deed of sale of the land which shall have the effect of vesting the land in the purchaser, his heirs or assigns, in fee simple or otherwise according to the nature of the estate or interest sold, and free and clear of all charges and encumbrances thereon.

PENAL CLAUSES.

All books, papers, accounts, documents, moneys and valuable securities respecrively, by any person or officer appointed or employed by or on behalf of the Council, kept or received by virtue of his office or employment, shall be the property of the Corporation; and in case any such person or officer refuses or fails to deliver up or pay over the same respectlvely to the Corporation or by any persoe authorized by the Council to demand them, he shall be deemed guilty of fraudulent embezzlement thereof, and may be prosecuted and punished by imprisonment with or without hard labor for any term not exceeding two years; but nothing herein shall affect any remedy of the Corporation, or of any other person against the offender or his sureties or any other party, nor shall the conviction of such offender be receivable in evidence in any suit at law or in equity against him.

This Act may be cited as the "Nanaimo Incorporation Act, 1866."