

SEC. 63. This act shall take effect and be in force from and after its passage.

Approved February 26th, 1887.

CHAPTER 7.

(S. F. 423.)

AN ACT TO AMEND CHAPTERS SIX (6) AND SEVEN (7) OF AN ACT ENTITLED "AN ACT TO REDUCE THE LAW INCORPORATING THE CITY OF SAINT PAUL IN THE COUNTY OF RAMSEY AND STATE OF MINNESOTA, AND THE SEVERAL ACTS AMENDATORY THEREOF, AND CERTAIN OTHER ACTS RELATING TO SAID CITY, INTO ONE ACT," APPROVED MARCH THE FIFTH (5th), ONE THOUSAND EIGHT HUNDRED AND SEVENTY-FOUR (1874), AND THE SEVERAL ACTS AMENDATORY THEREOF.

Be it enacted by the Legislature of the State of Minnesota:

CHAPTER VI.

BOARD OF PUBLIC WORKS.

SECTION 1. There is hereby established an executive department of the municipal government of the city of Saint Paul, to be known as "the board of public works of the city of Saint Paul," to be constituted and organized as hereinafter provided.

SEC. 2. The board of public works of the city of Saint Paul shall consist of four reputable freeholders and qualified electors of said city, no two (2) of whom shall be residents of the same ward, and none of whom shall hold any office under the charter and ordinances of the city. They shall be appointed by the mayor as soon as practicable after the passage of this act, and they shall hold office as follows: two (2) members of said board for the term of one (1) year, and two (2) for the term of two (2) years, and until their successors are appointed and qualified, and the mayor shall designate in his appointments the term for which each member shall serve. The mayor shall on the second (2d) Monday in March, one thousand eight hundred and eighty-eight (1888), and annually thereafter, appoint two (2) members of said board, whose term of office shall be for two (2) years and until their successors are appointed and qualified.

The terms of office of the present board of public works shall terminate as soon as their successors, under this act, are appointed and qualified. In case the office of any member shall become vacant during his term, the said mayor shall, in like manner, as soon as practicable thereafter, appoint a person of like qualifications aforesaid, to fill said vacancy during said unexpired term and until a successor shall be appointed and qualified.

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(Sub. 45-56)
105-M - 19

The members of the board of public works shall be required to give their whole time and attention to the proper and efficient discharge of the duties imposed upon them by the provisions of this act. The president of said board shall receive a salary of three thousand (3,000) dollars per annum, and each of the other members shall receive a salary of three thousand (3,000) dollars per annum.

SEC. 3. The said mayor shall deliver to each person appointed by him as aforesaid, *pro tempore* or otherwise, a certificate of his appointment, and each of said persons shall, before entering upon the discharge of his duties, take and subscribe an oath, to be endorsed upon said certificate, to the effect that he will faithfully and impartially execute his duties to the best of his abilities, and cause such certificate and oath within ten (10) days after said appointment, to be deposited with the register of deeds of the county of Ramsey, whose duty it shall be to file and record the same at the expense of said city.

SEC. 4. In case of any person so appointed by said mayor fail for the space of ten (10) days after receiving his certificate of appointment to deposit the same, with his oath aforesaid, in the office of said register of deeds as aforesaid, or in case any member of said board shall remove into or become a resident of a ward wherein another member resides, the said office shall be declared vacant by the said mayor upon the fact being made known to him. Any member wishing to resign his office shall tender his resignation in writing to said mayor, who shall be at liberty to accept or reject the same.

SEC. 5. No member of the board of public works, nor officer or clerk in their employ, shall be interested, either directly or indirectly, in any contract made and entered into by said board of public works, for any work or for any materials to be furnished therefor; and all contracts made with said board, in which any member or officer [of said board] shall be so interested, shall, at the option of the city, be declared utterly void and of no binding effect whatever; and any member or officer of said board interested in any contract shall thereby forfeit his office and be removed therefrom on proof of such delinquency; and it is hereby made the duty of each member of said board of public works, and of the mayor and every officer of said city to report to the common council any such delinquency when discovered. Any member, officer or clerk of said board, who shall be interested, directly or indirectly, in any such contract or contracts aforesaid, and any contractor or other person who shall take any such contract or contracts with knowledge of such interest of such member, officer or clerk of said board in said contract or contracts, or who shall corruptly influence or attempt to influence the action of any member, officer or clerk of said board, in the letting or making or entering into any contract, or in the performance of any official duty of such member, officer or clerk, shall be guilty of a misdemeanor, and liable on indictment and conviction thereof to be punished by imprisonment for a period not exceeding six (6) months, or a fine

not exceeding one thousand (1,000) dollars or by both such imprisonment and fine in the discretion of the court.

SEC. 6. Any member of said board may be removed for cause by a two-thirds ($\frac{2}{3}$) vote of all the aldermen authorized to be elected, and under the same regulations as provided by this act in relation to elective officers of said city, and not otherwise.

SEC. 7. Said board shall annually elect one of their number president; and they shall have the power to establish by-laws, rules and regulations for their government and the officers and employees thereof.

SEC. 8. They shall appoint a clerk of said board, whose term of office shall be three years, and whose duty it shall be to keep the records and papers thereof, and he shall record their proceedings and perform such other duties as may be assigned to him by said board. Before entering upon the discharge of his duties he shall take and subscribe an oath that he will faithfully execute his duties to the best of his ability; he shall also execute a bond to the city of St. Paul, with sureties in such sum and upon such conditions as may be approved by said board, which bond shall be filed with the city clerk. Such clerk shall be removable at any time for cause, the same as other city officers. He shall receive such a salary as the board of public works shall determine and approved by the common council.

SEC. 9. The board of public works shall on the second Tuesday of March, 1887, or as soon thereafter as practicable, elect a competent and scientific person as civil engineer of said board, said person to be *ex-officio* city engineer, and shall have general charge of all the engineering work required by the city. Said engineer shall also keep a record of all work done by himself or his assistants for any other department of the city government and return the same to the city comptroller and the cost thereof shall be charged to the several departments for which the work was done and credited to the general fund of the city. Such engineer shall be elected by a *viva voce* vote of a majority of all the members of such board and his term of office shall be for three years. Said engineer shall perform all the civil engineering officially required by said board and neither said engineer nor his deputies or clerks shall perform any other service except that connected with their official duties. Said board shall, whenever the office of said engineer becomes vacant, meet and elect such engineer for the unexpired term. Said engineer shall be removable at any time for cause, the same as other city officers. Said engineer shall, within ten (10) days after his appointment, take and subscribe an oath to the effect that he will faithfully execute his duties to the best of his ability, and he shall also execute a bond to the city of Saint Paul, with sureties, in such sum and upon such conditions as shall be approved by said board. He shall receive a salary of five thousand (5,000) dollars per annum. Said engineer shall appoint a first assistant engineer, who shall hold his office for a like term, and shall receive a salary of two thousand five hundred (2,500) dollars per annum. Said engineer may appoint such further assistant engineers as the public service may require, and said assistant engineer and other em-

ployees in his department, shall receive such compensation as the board of public works, with the concurrence of the common council may determine.

SEC. 10. Meetings of said board shall be called by the president or a majority of said board, and they may meet at such stated times, and in such manner as may be established by their rules, by-laws or regulations.

SEC. 11. The duties of the president shall be prescribed by the by-laws of said board, and in his absence the board may appoint a president *pro tempore*, with like power and duties. Any member failing to attend a regular or special meeting of said board, except in case of sickness, or absence from the city with leave of the board, shall pay a fine of ten (10) dollars for each failure, to be entered upon the minutes of said board, and reported to the controller and deducted from his monthly pay. A majority of the board shall constitute a quorum for the transaction of business, and they shall cause to be kept a record of their proceedings, which shall at all times be open to public inspection. The said board shall furnish the common council of said city, whenever required, with any information needed in relation to their proceedings.

SEC. 12. The engineer of said board shall be charged with the erection, control and supervision of all the sidewalks, streets, lanes, bridges, alleys and public levees; and it is hereby made his duty at all times, to have and keep all the sidewalks, streets, lanes, bridges, alleys and public levees in a cleanly condition, passable and safe for public use and travel; and to enable said engineer to satisfactorily discharge the duties created by this section, he is authorized to appoint five (5) persons, who, under his direction shall perform such duties as said engineer shall prescribe. And the persons so appointed shall receive such compensation as the board of public works with the consent of the common council may determine.

SEC. 13. The board of public works may adopt and use a common seal and alter the same at pleasure.

SEC. 14. A majority of said board shall be a quorum, in all cases where a full vote of all the members may not be expressly required, and said board may adjourn from time to time. In case a quorum is not present at any meeting, the member or members present may adjourn said board to another day, and in case none of the members are present at any time appointed for a meeting of said board, the clerk of said board may adjourn the same to another time.

CHAPTER VII.

Local Improvement and Special Assessments Therefor.

Sub. 7

TITLE I.

STREETS AND SIDEWALKS, ETC.

SECTION 1. The municipal corporation of the city of Saint Paul is hereby authorized and empowered to condemn land for public parks, public markets, for the opening, widening and extending, al-

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tering and straightening of any street, levee, lane, alley or highway, and to condemn an easement in land for the construction of slopes for cuts and fills upon real property abutting upon any street, lane, alley or highway now ordered to be or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, and for changes of grade in any street, levee, lane, alley or highway in said city, and to levy assessments for the same, and for such other local improvements as may be ordered by said municipal corporation, upon the property fronting upon such improvements or upon the property to be benefited by such improvements without regard to the cash valuation. The provisions of this section shall apply to any and all improvements heretofore ordered as well as to those that shall be hereafter ordered.

SEC. 2. Such assessment may be made by the said city of St. Paul for grading, filling, leveling, paving, curbing, walling, bridging, graveling, macadamizing, planking, opening, extending, widening, contracting, altering and straightening any street, levee, lane or highway, and for a change of grade in any of the same, and also for the condemnation of land for public parks, public markets, and for an easement in land for the construction of slopes for cuts and fills in any street, levee, lane or highway, which has heretofore been or shall hereafter be ordered to be opened, extended, widened, altered or straightened, and for a change of grade in any of the same, and also for keeping the same in repair, also for filling, grading, protecting, improving, and ornamenting any public park, square or grounds, now or hereafter laid out; also for planting or protecting shade and ornamental trees; also for constructing, laying, relaying and repairing cross and sidewalks, area, walls, gutters, sewers and private drains, also street sprinkling, and also for the abatement of any and all public nuisances within the limits of said city.

SEC. 3. The expenses of any improvements mentioned in the foregoing section shall be defrayed save as herein otherwise provided, by an assessment upon the real estate benefited thereby, or by an assessment upon the real estate fronting thereon, to be levied in the manner hereinafter prescribed; *Provided*, That cross footwalks over public streets, lanes, or alleys, and sidewalks adjacent to public squares, public grounds and public parks, shall be paid out of the general fund of said city; and that all or any part of the expense of improving or ornamenting public grounds, squares and parks, may, if the common council of said city deem it expedient, be paid out of the general fund of said city.

SEC. 4. All assessments for local improvements aforesaid, as provided in this chapter, shall be made by the board of public works of the city of St. Paul, except as may be herein otherwise provided.

SEC. 5. All applications or propositions for any improvement mentioned in section two (2) of this chapter, shall be made to, or emanate from, the common council of said city, and shall, except in the case of sidewalks and street sprinkling, be first referred to the board of public works by the said common council; *Provided*, That any such application made to the said council shall be in writing and

that said council shall not be required to proceed further with any such application by a reference to the board of public works, or otherwise, unless said council is satisfied that a majority of the property owners, who would probably be assessed for the expense of any such improvement, have subscribed to such application. Upon such reference said board shall then proceed to investigate the same; and if they shall determine that such improvement is necessary and proper, they shall report the same to the common council, accompanied with an estimate of the expense thereof, and a proper order directing the work. *Provided, further,* That it shall not be competent for said common council to order any improvement made against the unanimous report of all the members of said board when the board have assigned as a reason for their adverse report that property cannot be found benefited to the extent of damages, costs and expenses necessary to be incurred thereby. In case the said board shall report in favor of said improvement, or some part thereof, or a modification of said improvement, the common council may, in their discretion, (unless otherwise provided for in this chapter), order the doing of such work or the making of said public improvement; and, in all cases, the common council, after having obtained from said board of public works an estimate of the expense, may make such modification of the proposed plan as may be petitioned for by any of the owners of the property to be assessed, or as the council may think proper. *Provided further,* That such modifications shall not materially change the character and object of the improvement as reported by said board, or materially increase the expenses thereof. *And provided further,* That the council shall, in no case, order the doing of any such work, or the making of any such improvement unless in their opinion real estate to be assessed for such work or improvement, can be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby. Two or more improvements, upon one or more streets, either grading, sewerage or paving, or either or any of them, may be done at the same time under one order, and may be included in one contract.

SEC. 6. In case such improvement referred to in the preceding section shall relate to the opening, straightening, widening, contracting, altering, extending or grading, paving, or sewerage, any street, lane, alley, highway, levee or public grounds in said city, and said board shall report in favor of the same, they shall furnish the said common council, as part of their said report, with a plan or profile of the contemplated improvement, and shall also report whether, in their opinion, real estate to be assessed for said improvement can be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby, and whether the said improvement is asked for upon a petition or application of the owners of a majority of the property to be assessed for such improvement, and if it appear by such report that the owners of a majority of the property so to be assessed have not petitioned therefor, the same shall be ordered only by the votes of at least two-thirds ($\frac{2}{3}$) of all the members elect of said council. *Provided, however,* That such report or reports of the

board of public works shall be construed as advisory to the council, and shall not be deemed in law jurisdictional, and not essential to give the common council authority to order any improvements local to the city of St. Paul.

SEC. 7. Whenever any order is passed by the common council by virtue hereof, for the making of any public improvement (mentioned in section two (2) of this chapter, save as herein otherwise provided), which shall require the appropriation or condemnation of any land or real estate, the said board of public works shall, as soon as practicable, proceed to ascertain and assess the damages and recompense due the owners of such land respectively, and at the same time to determine what real estate will be benefited by such improvement and assess the damages, together with the costs of the proceedings, on the real estate by them deemed benefited, in proportion, as nearly as may be, to the benefit resulting to each separate lot or parcel thereof.

SEC. 8. The said board of public works shall then give fifteen (15) days notice by one (1) publication, in the official newspaper of the city, of the time and place of their meeting, for the purpose of making said assessment, in which notice they shall specify what such assessment is to be for, and they shall describe the land to be condemned as near as may be done by general description, and all persons interested in any such improvement shall have the right to be present and be heard, either in person or by counsel, and the city attorney as counsel for the city of St. Paul, shall be permitted to appear before them at such hearing to represent the interests of said city. The said board shall view the premises to be condemned, and receive any legal evidence that may be offered for the purpose of proving the true value thereof, or the damages that will be sustained, or benefits conferred by reason of the contemplated improvement; and the said board for this purpose are hereby authorized to administer oaths to all witnesses produced before them, and they may adjourn from time to time, and place to place, until such assessment is completed, and said board shall have authority to send for persons and papers and to compel the attendance of witnesses, and shall have authority to issue subpoenas under the seal of the board.

SEC. 9. The said board of public works, in making said assessment, shall determine and appraise to the owner or owners the value of the real estate appropriated for the improvements, and the damages arising to them respectively from the condemnation thereof, which shall be awarded to such owners respectively, as damages, after making due allowances therefrom for any benefit which such owners may respectively derive from such improvements.

And said sum, so awarded as damages, shall bear interest at the rate of seven (7) per cent per annum from and after the date of the confirmation of the assessment therefor as hereinafter provided for until paid. The condemnation, taking and appropriation of any real property or of an easement therein for any improvement mentioned in section one (1) of this chapter shall be deemed (in law) to be done and fully consummated upon the confirmation by said board of the assessment of damages and benefits therefor.

SEC. 10. If the damage to any person be greater than the benefit received, or if the benefit be greater than the damage, in either case the said board of public works shall strike a balance and carry the difference forward to another column, so that the assessment may show what amount is to be received or paid by such owners respectively, and the difference only shall in any case be collectable of them or paid to them.

SEC. 11. In the assessment of damages and benefits for the opening of any street, levee, lane, highway, or alley, it shall be lawful for the said board of public works, in their discretion, in making such assessment, where part of the land to be laid out into such street, levee, lane, highway, or alley, has been theretofore donated by any person or persons for such street, levee, lane, highway, or alley, to appraise the value of the land so donated, and to apply the value thereof as far as the amount so appraised shall go, as an offset to the benefits assessed against the person or persons making such donation, or those claiming under them; but nothing herein contained shall authorize any person or persons by whom such donation is made, to claim from the city the amount of such appraisal, except as an offset as herein provided. And where the assessment is one for the widening of any street which may have been theretofore, either in whole or in part, donated to the public by the proprietors of the adjoining land, it shall also be lawful for said board of public works, in their discretion, to make such allowance therefor, in their assessment of benefits, as shall in their opinion be equitable and just.

SEC. 12. If there should be any building standing, in whole or in part, upon the land to be taken, the said board of public works shall add to their estimate of damages for the land, the damages also for the building or part of building necessary to be taken, if it be the property of the owner of the land. When owned by any other person, the damages for the building shall be assessed separately. The value of such building to the owner to remove, or of the part thereof necessary to be taken, shall also be determined by the said board of public works, and notice of such determination shall be given by them to the owner when known, if a resident of the city, or left at his usual place of residence or abode. If the owner is not known, or is a non-resident, ten (10) days notice by one (1) publication to all persons interested, shall be given in the official paper of the city. Such owner may, at any time, within ten (10) days after such notice, notify the board of public works, in writing, his election to take such building, or part of building, at their appraisal; and in such case the amount of such appraisal shall be deducted by the board of public works, from the estimated damages for the land and building, where they belong to the same owner, and from the estimated damages for the building where they belong to different owners; and the owner shall have such time for the removal of such building after the confirmation of the assessment, as the board of public works may allow. If the owner shall refuse to take the building at the appraisal, or fail to give notice of his election as aforesaid, within the time prescribed, then no deduction shall be made from the estimated damages aforesaid, and the

said board of public works shall, after the confirmation of the assessment, and after the money is collected or otherwise provided and ready in the hands of the treasurer, to be paid over to the owner for his damages, proceed to sell such building or part of building at public auction, for cash, giving ten (10) days public notice of the sale by one (1) publication in the official paper of the city, and cause such building to be then forthwith removed. The proceeds of such sale shall be paid into the city treasury, to the credit of the local improvement fund.

SEC. 13. If the lands and buildings belong to different persons, or if the land be subject to lease, the damages done to such persons, respectively, may be awarded to them by the board of public works, less the benefits resulting to them, respectively, from the improvement.

SEC. 14. Having ascertained the damages and expenses of such improvement, as aforesaid, the said board of public works shall thereupon apportion and assess the same, together with the costs of the proceedings, upon the real estate by them deemed benefited, in proportion to the benefits resulting thereto from the improvement, as nearly as may be, and shall briefly describe the real estate upon which their assessment may be made; and it shall constitute no legal objection to such assessment, that the amount thereof either exceeds or falls short of the original estimate of the cost of the improvement submitted to the common council by the board of public works.

SEC. 15. When completed, said board of public works shall cause to be given ten (10) days notice, by two (2) publications in the official paper of the city, to the effect that such assessment has been completed, and that at a time and place therein specified the said board will meet for the purpose of hearing objections, and that all such objections must be filed in writing with the clerk of said board at least one (1) day prior to said meeting, and that unless sufficient cause is shown to the contrary, the same will be confirmed, and when so confirmed shall be entered in a book kept for that purpose. All objections to said assessment shall be in writing and filed with the clerk of said board at least one (1) day prior to the said meeting of said board last mentioned. *Provided, however,* That the said board may, in its discretion, allow any party interested, who has accidentally or inadvertently omitted to file his objections aforesaid, to do so at the time of meeting of said board aforesaid. Should no quorum be present at the said appointed meeting of said board, the said meeting may be adjourned by the member or members of said board present, or if none of the members are present, by the clerk of said board, to such other convenient time and place as may be deemed expedient. *Provided further,* That nothing herein contained shall preclude the said board from causing a new notice aforesaid to be given of a meeting of the said board for the purpose of hearing objections to said assessment, and for the confirmation thereof in manner as before required, in case the previous notice shall be found imperfect or in case of a defect in the attendance of the members of said board, or for any other reason which shall be satisfactory to said board for so

doing. The said board shall have the power to adjourn such hearing from time to time and shall have power, in their discretion, to revise and correct the said assessment, and to confirm or set aside the said assessment and proceed to make an assessment de novo, without any further order from the council. Said assessment, when confirmed, shall be final and conclusive upon all parties interested therein, except as hereinafter provided. When said assessment is confirmed, a warrant under the seal of said board, shall issue to the treasurer of said city for the collection of the same, from the property on which the same has been assessed, signed by the mayor, clerk of said board, and the city controller. If said assessment shall be set aside by the said board aforesaid, or by the court, the said board of public works shall proceed de novo, without any further order from the council, to make another or new assessment, and they shall proceed in like manner and give the like notice as herein required in relation to the first, and all parties in interest shall have the like rights, and the said board shall perform like duties, and have like powers in relation to any subsequent determination, as are hereby given in relation to the first. As soon as practicable after the said assessment has been confirmed and entered, the clerk of said board shall cause a brief notice by one publication of the fact of such confirmation and entry to be published in the official paper of said city.

SEC. 16. Any person whose property has been appropriated and who has filed objections to such assessment as hereinbefore provided, shall have the right at any time within ten (10) days after the publication of said notice provided for in the next preceding section, to appeal to the district court of the county of Ramsey of this state, at the next general term of such court then ensuing from the order confirming said assessment. Said appeal shall be made by filing a written notice with the clerk of the board of public works, specifying the name of the court in which the appeal is taken and a description of the property of said appellant so appropriated and the objections of said appellant to such assessment and by filing with the clerk of said court within ten (10) days thereafter, a copy of said notice of appeal and objections together with a bond to the city of St. Paul, conditioned to pay all costs which may be awarded against the appellant, in such sum and with such surety as shall be approved by the judge of said court, or in case of his absence or inability to act, by the judge of any court of record in this state, together with a copy of such notice with the date of filing thereon certified by the clerk of the board of public works. In case of an appeal, a copy of the assessment roll as confirmed aforesaid, and of the objections as aforesaid made to the confirmation thereof certified by the clerk of said board, at the expense of the appellant, shall be filed in the office of the clerk of the court to which such appeal shall be taken, and the cause shall be docketed by such clerk, in the name of the person taking such appeal against the city of St. Paul as an "Appeal from assessments." The said cause shall then be at issue, and shall have the preference in order of trial over all civil causes pending in said court. Such appeal shall be tried in said court as in the case of other civil causes, except

that no pleading shall be necessary, and on such trial the only question to be passed upon shall be, whether the said board of public works had jurisdiction in the case, and whether the valuation of the property specified in the objections is a fair valuation, and the assessment, so far as it affects such property, is a fair and impartial assessment. The judgment of the court shall be to confirm the assessment if it shall have been found that said board had jurisdiction, and that said valuation and assessment, in so far as the same shall effect the property of said appellant are fair and impartial. If the court shall find that the board of public works had no jurisdiction in the matter appealed from, then and in such case the judgment of the court shall be to annul said assessment. If the court shall find that said board had jurisdiction, and shall also find that said valuation is unfair and that the damages awarded by said board to said appellant are insufficient and inadequate for the property so appropriated, then, and in such case, the court shall determine and find the amount of damages which said appellant is entitled to receive, and shall order judgment therefor. On motion of the corporation attorney the court shall order a stay of judgment for four (4) months, and the board of public works shall without unnecessary delay after notice of the rendition of such judgment, proceed to make a new assessment, or re-assessment for the purpose of raising the difference between the amount originally awarded by said board to said appellant or appellants, and the amount which the court has adjudged said appellant is entitled to receive; and said board shall proceed in making such new assessment or re-assessment, in the same manner and shall have and take like proceedings as are provided for in section fifteen (15) of this chapter, where an assessment has been set aside or annulled by said board, or by the order and judgment of said court.

SEC. 17. When such assessment shall have been confirmed, and no appeal shall have been taken therefrom, or if an appeal shall have been taken, when judgment shall have been rendered thereon, the same shall be a lawful and sufficient condemnation of the land or property ordered to be appropriated. The common council shall thereupon cause to be paid to the owner of such property, or to his agent, the amount of damages over and above all benefits which may have been awarded therefor, as soon as a sufficient amount of the assessment shall have been collected for that purpose; but the claimant shall in all cases furnish an abstract of title, showing himself entitled to such damages, before the same shall be paid. If in any case there shall be any doubt as to who is entitled to the damages for land taken, the city may require of the claimant a bond with good and sufficient sureties to hold the city harmless from all loss, costs and expenses, in case any person should claim such damages. In all cases the title to the land taken and condemned in the manner aforesaid, shall be vested absolutely in the city of St. Paul, in fee simple. *Provided, however,* That whenever it may be necessary to condemn any land for the opening, extension, or the widening of any street over which any stream of water runs, and which the owner thereof may desire to utilize as a water power, the common council,

upon being advised of such fact, may order the taking and the condemnation of the necessary land for such street, with the reservation that the owner of such land shall have the right to construct flumes or mill races across, through or under said street, and construct dams above and below said street, and flow said land. *Provided, further,* Said flumes, races, dams or flowing shall be so constructed and used as not to obstruct public travel on said street. It shall be the duty of the clerk of the board to cause all deeds taken by the city for land acquired by condemnation to be recorded without delay, and the said clerk shall be the custodian thereof. In case no deed is given, it shall be the duty of said clerk to cause the county auditor and city treasurer to be notified of the title so acquired by the city, giving to each of them a description of the land so acquired. And it shall be the duty of the register of deeds of the county of Ramsey to record all such deeds without requiring the certificate of the county auditor, county treasurer or city treasurer, that the taxes and assessments thereon have been paid.

SEC. 18. As soon as the money is collected and ready in the hands of the treasurer to be paid over to the parties entitled to damages for property condemned, ten (10) days notice thereof by two (2) publications shall be given by the city treasurer in the official paper of the city, and the city may then, and not before, except as hereinafter provided, enter upon, take possession of and appropriate the property condemned; and whenever the damages awarded to the owner of any property condemned by the city for public use, shall have been paid to such owner or his agent, or when sufficient money for that purpose shall be in the hands of the city treasurer, ready to be paid over to such owners, and said ten (10) days notice thereof shall have been given in the official paper of the city, the city may enter upon and appropriate such property to the use for which the same was condemned. *Provided, however,* That the city shall not be hindered, delayed or prevented by the prosecution of an appeal by any person, as hereinbefore provided for in section sixteen (16) of this title from entering upon and appropriating such property to the use for which the same was condemned, if the city shall, after such an appeal has been taken, by its mayor execute and file with the clerk of the district court of Ramsey county, a bond to be approved by said clerk, payable to the appellant, conditioned that the city shall in case the assessment against the property appealed from be annulled and set aside by said court, pay whatever sum shall finally be awarded by the board of public works, as damages for such property so condemned and appropriated, less such sum as shall be assessed thereon as benefits. This provision shall apply as well to all proceedings for condemnation now pending, in whatever stage such proceedings may now be, as to those hereafter to be initiated. The mayor of the city is hereby authorized and empowered to execute the bond herein provided.

SEC. 19. When the whole of any lot or parcel of land or other premises under lease or other contract, shall be taken for the purposes aforesaid by virtue of this act, all the covenants, contracts and en-

agements between landlords and tenants, or any other contracting parties, touching the same or any part thereof, shall, upon publication of the notice required in the preceding section, respectively cease and be absolutely discharged.

SEC. 20. Where part only of any lot or parcel of land or other premises so under lease, or other contract, shall be taken for any of the purposes aforesaid by virtue of this act, all the covenants, contracts, agreements and engagements respecting the same, upon publication of the aforesaid notice, shall be absolutely discharged, as to the part thereof taken; but shall remain valid as to the residue thereof, and the rents, considerations and payments reserved, payable and to be paid for in respect to the same, shall be so proportioned as that the part thereof justly and equitably payable for such residue thereof, and no more, shall be paid and recoverable for the same.

SEC. 21. All proceedings taken by the said board of public works, in carrying out the provisions of this chapter, shall be recorded in a book or books kept for that purpose by the clerk of said board, describing particularly the respective improvements, and the real estate taken and assessed. The said books in which said proceedings have been entered aforesaid, and the official files and papers of said board of public works, shall be deemed public records, and be *prima facie* evidence of the facts therein stated; and certified copies thereof by the clerk, or officer having proper custody thereof, with the seal of said board attached, shall be evidence in all courts to the same effect as if the originals were produced. The clerk of said board shall be entitled to receive from any private party, [for any certified copy or transcript aforesaid furnished said private party,] the like fees as are received for such services by the clerk of any court of record in this state.

SEC. 22. It is hereby made the duty of the board of public works of the city of St. Paul, as soon after the passage of this act as practicable, and annually thereafter, to cause proposals to be published in the official paper of said city, in the same manner and for the same length of time as in the case of other public improvements, for the construction, repair and relaying of such sidewalks as may be ordered built, repaired or relaid by the common council, between the first day of April and the first day of November in each year.

Provided, however, That the board of public works may, whenever in their opinion the public interest will be subserved thereby, cause proposals for bids to be published in the official paper of said city, in the manner hereinbefore prescribed, and let (award) a separate contract for the construction, repair and relaying of wood sidewalks; and also one or more contracts for the construction, repair and relaying of sidewalks of stone, brick, cement, asphalt, composition or other permanent material. General plans and specifications applicable to all sidewalks that may be ordered built, repaired or relaid during the year by said common council, shall be made and filed with the clerk of the board of public works, at least ten (10) days before the day named for the receipt of said bids by the board of public works, and the work shall be let and placed under contract as now provided by

law for the construction, relaying and repair of sidewalks for which an assessment is to be made, except that the bids for the construction, repair and relaying of said sidewalks shall be accompanied by a bond to the city of St. Paul in the sum of five thousand dollars (\$5,000), executed by the bidder and two (2) responsible sureties, conditioned that he will enter into and execute a contract to perform the work for the price mentioned in his bid, according to the plans and specifications, in case a contract shall be awarded him. And in case of default on his part to execute the contract and perform the work, said bond may be sued and judgment recovered thereon by the said city, for the full amount thereof, in any court having jurisdiction of the amount; and except further, that the question of what constitutes the lowest, reliable and responsible bidder, must be determined by said board of public works, independent and exclusive of the bond required by this section. The common council of said city may cause sidewalks to be constructed, relaid or repaired whenever they may deem that the public interest requires it, without a reference to the board of public works. Whenever said council shall order the construction of such sidewalks, a copy of such order shall be transmitted to the board of public works, whose duty it shall be, without any unnecessary delay, to transmit said order to the person or persons having the contract for the construction, repair or relaying of sidewalks for the time being, who shall, without unnecessary delay, unless the city engineer shall be of the opinion that a good and sufficient sidewalk already exists in front of said property, cause the sidewalks so ordered constructed, relaid or repaired, by the common council, to be built, relaid or repaired, as the case may be, and it shall be the duty of the city engineer, within five (5) days after having been notified by such contractor of the construction, repair or relaying of said sidewalks to examine the same, and if the said sidewalks shall be found to be constructed, repaired or relaid in accordance with the contract therefor, to report the fact to the board of public works, who shall cause an assessment to be made as hereinafter provided. At the first meeting in each and every month, unless otherwise ordered by the board, they shall give ten (10) days notice by two (2) publications in the official paper of said city, to the effect that at a certain time and place, they shall proceed to make an assessment for constructing, relaying or repairing said sidewalks. Said notice shall briefly describe the location and nature of said improvements, by streets.

The said board shall assess the amounts as nearly as they can ascertain the same, which will be required to defray the cost of such improvement, including the necessary expense of making and collecting such assessment upon the real estate or lots of land fronting on said improvement. In making said assessment, the said expense and costs shall be apportioned in accordance with the number of lineal feet of said real estate or lots of land fronting on said improvement as aforesaid. When said assessment is completed, the said board shall give six (6) days notice by two (2) publications in the official newspaper of the city, to the effect that at a time and place therein specified, that said assessment will be confirmed, unless suf-

ficient cause is shown to the contrary, and that objections must be filed one (1) day before such time of meeting, with the clerk of said board. Such objections shall be made and filed in the same manner, and said board shall proceed in hearing the same, and have the same power to revise, correct, confirm or set aside such assessment, or proceed de novo, as provided in section fifteen (15) of this chapter. Said assessment, when confirmed, shall be final and conclusive, and no appeal shall lie therefrom. A warrant shall issue for the collection thereof, and said assessment shall be enforced and collected as other assessments made under this chapter.

Whenever the said contractor shall fail to build, repair or re-lay any sidewalk within the time designated by the board of public works, or in any other respect fail to comply with the terms of [his] said contract, the said board of public works shall have power to furnish and use men and material to complete the work and charge the expense to the contractor, and the same shall be deducted from any money due him, or to become due such contractor, or may be collected from him in a suit by said city, or said board of public works may re-advertise for bids, for the completion of the uncompleted part of said contract, and let a contract in the same manner as hereinbefore provided in the original contract. In case the said contractor shall proceed to properly perform and complete his said contract, and all the provisions, clauses, matters and things therein contained, the said board of public works may, upon said contractor filing with the city engineer, an affidavit that all the work, labor and material, for which an estimate is asked is fully paid for, from time to time, as the said work progresses, grant, to said contractor, every thirty (30) days, an estimate of the amount already earned, reserving, however, fifteen (15) per cent. therefrom; *Provided, however,* That said fifteen (15) per cent. shall be included in the final estimate allowed said contractor; *Provided further,* That nothing in the foregoing section shall be construed to prevent any property owner from constructing his or her own sidewalk, under the authority and direction of the city engineer, provided said sidewalk shall have been constructed before a sidewalk had been ordered in front of the property by the common council. In that case, the property owner shall have no authority whatever in the premises, to construct said sidewalk, but the same shall be built by the city, as provided by law.

SEC. 23. Whenever any order shall be finally passed by the common council of said city as heretofore provided, for filling, grading, leveling, paving, curbing, walling, bridging, graveling, macadamizing or planking any street, levee, lane, alley, or highway, or [for] keeping the same in repair, or for filling, grading, protecting, improving or ornamenting any public square; or for constructing area walls, gutters, sewers and private drains, the city clerk shall transmit a copy of such order of said council to said board of public works. The said board of public works shall cause the said work to be let and done as hereinafter provided; and after the whole of said work shall have been placed under contract as hereafter provided, the said board shall thereupon proceed without delay, to assess the amount as nearly as

they can ascertain the same, which will be required to defray the cost of such improvement, including the necessary expense of making such assessment, in proportion, as nearly as may be, to the benefit resulting thereto, in manner hereinafter provided. *Provided, however,* That the repairing of any street, levee, lane, alley, highway, public ground, bridges or sewers, the cost of which repairs is estimated not to exceed the sum of two hundred (200) dollars, may be done under the direction of said board, and the cost thereof shall be paid out of the general fund; and, *Provided further,* That nothing herein contained shall prevent the said common council of said city from ordering the construction of one or more main sewers or culverts in accordance with any general system of sewerage which said council may adopt.

SEC. 24. When in any case, any portion of the cost and expense of making any improvement mentioned in the foregoing section, shall, by virtue of any valid law or ordinance, or by virtue of any valid contract, be chargeable upon any railway company, the amount so chargeable may be assessed upon such railway company, and the balance only upon the real estate benefited thereby, and the city may collect the amount so assessed upon said railway company, by distress and sale of personal property, in the manner provided for by the general laws of this state in the case of taxes levied upon personal property, or by suit brought for that purpose; *Provided, however,* That any real estate belonging to such railway company, and deemed benefited by the said improvement, shall be assessed as in other cases.

SEC. 25. Before proceeding to make an assessment for any improvement mentioned in section twenty-three, (23) said board of public works shall give six (6) days notice by two (2) publications in the official paper of said city, of the time and place of their meeting for the purpose of making such assessment, in which notice they shall specify what such assessment is to be for, and the amount to be assessed. The said board shall also give at least four (4) days personal notice to the same effect to all property holders interested, or their agents, resident in the city of St. Paul, if known to the said board and found, but the failure to give such personal notice shall in nowise affect the validity of said assessment, or of any of the proceedings. All persons interested in any such assessment, shall have the right to be present and be heard, either in person or by counsel, and the said board may, in their discretion, receive any legal evidence, and may adjourn, if necessary, from time to time, and place to place. The personal notice required by this section, may be made by depositing in the St. Paul post-office, a postal card, addressed to the property owners to be assessed, or their agents, resident in St. Paul, at least four (4) days prior to the making of an assessment, upon which card shall be either printed or written substantially what the personal notice by said section twenty-five (25) is now required to contain, but the failure to give such personal notice shall in nowise affect the validity of said assessment or of any of the proceedings.

SEC. 26. When the said board of public works shall have com-

pleted their assessment provided for in sections twenty-three (23), twenty-four (24) and twenty-five (25), they shall cause like notice to be given of the time and place when said board shall meet to hear objections, and for the confirmation of such assessment, as hereinbefore required in relation to assessments for the condemnation of real estate; and objections shall be made in like manner, and under the same regulations and conditions, and all parties in interest shall have like rights (except the right of appeal), and the said board of public works shall perform like duties, and have like power in relation to such assessments as are herein given in relation to assessments for the condemnation of real estate. When confirmed by the said board of public works, said assessment shall be final and conclusive upon all parties interested therein, and shall be collected as in other cases, and no appeal shall lie in any case from the order of confirmation. If any assessment be annulled or set aside, the said board of public works shall proceed *de novo* to make another or new assessment in like manner, and give like notice as herein required in relation to the first.

SEC. 27. Whenever any public improvement shall be ordered for which an assessment is to be made as aforesaid, the said board of public works shall cause proposals for doing said work to be advertised in the official paper of said city, a plan or profile of the work to be done, accompanied with specifications for the doing of the same, being first deposited with the clerk of said board, to be kept by him at all times open for public inspection; which advertisement shall be published for at least ten (10) times in said official paper, and shall state substantially the work to be done. The bids for the doing of such work shall be sealed bids, directed to the board of public works of the city of St. Paul, and shall be sealed in such manner that they cannot be opened without detection, and shall be accompanied by a bond to the city of St. Paul, in a sum not less than twenty (20) per cent. of the cost of the work, according to the price bid, as nearly as can be ascertained, executed by the bidder and two (2) responsible sureties, conditioned that he shall execute the work for the price mentioned in his bid and according to plans and specifications, in case the contract shall be awarded to him. And in case of default on his part to execute the contract and perform the work, said bond may be sued and judgment recovered thereon by the said city, for the full amount thereof, in any court having jurisdiction of the amount. Said bids shall be opened by said board at their next meeting after the time limited by such proposals, or such other time thereafter as said board may appoint, and it is hereby made the duty of the board of public works in case of the default hereafter of any contractor to complete his contract with the city within the time limited in said contract to cause suit to be commenced forthwith, upon the bond executed and delivered to the city, in accordance with the provisions of this section. And it is made the duty of said board of public works to reject all bids for contract work made by any person or persons who shall have defaulted in any contract awarded by the board of public works after the passage of this act, except as to time, or who

shall have refused to enter into a contract after the same may have been awarded to him or them.

SEC. 28. All contracts shall be awarded to the lowest reliable and responsible bidder or bidders, who shall have complied with the above requisition, and who shall have guaranteed to the satisfaction of said board the performance of said work to the satisfaction of said board, except in the case of paving streets with patented pavement or pavements, when in such case the notice for bids may call for wood, stone, or other kind of pavement, and when all the proposals therefor are in, the board may select the one which is relatively the lowest, or the most satisfactory, all things considered, and the decision of the board therein shall be final. If the pavement selected is patented, the said board shall require a license from the patentee, to lay and relay the same for all time thereafter, free from all claims of royalty. Whereupon a contract shall be made on the part of said board, in the name of the city of St. Paul, and shall be executed on the part of said city by the president of said board, or such of their members as said board may designate, and the seal of said board shall be thereto attached, and the said contract shall be countersigned by the city controller. Said contract shall be filed in the office of the city controller. *Provided, however,* That said board may reject any bid which they shall deem unreasonable or unreliable, and that said board, in determining the reliability of a bid, shall consider the question of the responsibility of the bidder and his ability to perform his contract, without any reference to the financial responsibility of the sureties on the bond. *Provided, further,* That no contract shall be awarded except upon or by a vote of at least two-thirds ($\frac{2}{3}$) of the members of said board in favor thereof. *And provided further,* That no contract shall be awarded except with the approval of the common council by a two-thirds vote of the members thereof, elect. *Provided, further,* That if during any year at the time of the completion of any contract made by the said board of public works there shall be no money in the treasury applicable to the payment of said contract after the allowance of any estimate, the city comptroller is hereby authorized to issue a certificate of indebtedness for the amount due on said estimate, said certificate to be signed by the president of said board, attested by the secretary and countersigned by the comptroller. Said certificate to be payable whenever there is money in the city treasury properly applicable to pay the same with interest not exceeding eight (8) per cent. per annum, payable semi-annually at the office of the treasurer of the city of St. Paul. The faith and credit of the city of St. Paul are and shall be irrevocably pledged for the payment of the principal and interest of said certificate.

SEC. 29. The said board of public works shall reserve the right in their said contracts in case of improper construction, to suspend the work at any time and re-let the same, or to order the entire reconstruction of said work if improperly done. In cases where the contractor or contractors shall proceed to properly perform and complete the said contracts the said board of public works may, from time to time, in their discretion as the work progresses, grant to said con-

tractor or contractors an estimate of the amount already earned, reserving fifteen (15) per cent. therefrom, which shall entitle said contractor or contractors to receive the amount which may be due thereon, when there is money applicable to the payment of such work. When the whole work has been completed, by such contractor or contractors, to the satisfaction of the board of public works, the amount or balance due him shall be audited and allowed by the common council of said city, and shall be payable out of the moneys applicable to the payment of such work.

All estimates of the engineer of the board of public works, for work done under any and all contracts, shall be made out monthly, and so allowed by the board of public works, and in no case shall semi-monthly estimates for such work be given or allowed, except final estimates, which may be given and allowed at any time after the allowance of the preceding estimate.

SEC. 30. Two or more of the notices required or authorized by this act to be given by the board of public works or the city clerk, by publication in the official paper of the city, in any special assessment proceedings, may be comprised to one advertisement. *Provided, however,* Such notices are of the same general character, or for like object, and provided, that in other respects the notice so published shall sufficiently comply with the essential statutory requirements. And the provisions of this section shall extend to and embrace all notices required to be given in the official paper of the city, by the city treasurer, or the delivery to him of all special assessment warrants for collection, and of his intended application to some court of general jurisdiction for judgment thereon, provided for by this chapter. *Provided further,* That all notices required to be given by or under this act or any act amendatory thereof, or which may be or which are to be given under this act, or any act amendatory thereof, by publication in the official paper, shall be deemed sufficient and legal, if published on the regular publication day of said official paper, and Sunday shall be considered a day, and be counted for the purpose of this act.

SEC. 31. When any special assessment shall have been confirmed, it shall be the duty of the clerk of the board of public works, to issue a warrant for the collection thereof, which shall be under the seal of said board, and signed by the mayor, controller and clerk of said board, and shall contain a printed or written copy of the assessment roll as confirmed as aforesaid, or so much thereof as describes the real estate and the amount of the assessment in each case. In case of an appeal as provided for by section sixteen (16,) said appeal shall not delay or affect the collection of the assessment under such warrant, except as to the property of such appellant appropriated aforesaid. And in case such appeal shall be sustained, and the assessment in relation to said property appropriated of said appellant shall be set aside by the court, the board of public works, shall make a new assessment as to the property of such appellant last mentioned, proceeding de novo as to the same, in accordance with the provisions relating to improvements referred to in section seven (7); and in cas-

the amount of damages or recompense which said board of public works may award such appellant upon such new assessment shall exceed the first, the board of public works shall make a new assessment upon the property to be benefited to pay the difference which may have been awarded appellant, together with the costs and expenses of such new assessment.

SEC. 32. All warrants issued for the collection of special assessments shall be delivered by the controller to the city treasurer, within five days thereafter, taking his receipt therefor.

SEC. 33. Upon the receipt of any warrant for the collection of any special assessment the city treasurer shall forthwith give notice by two publications in the official newspaper of the city, that such warrant is in his hands for collection, briefly describing its nature, and requesting all persons interested to make immediate payment at his office, and [that] in default thereof the same will be collected at the cost and expense of the persons liable for the payment of such assessments.

SEC. 34. All assessments levied under the provisions of this chapter, shall be a paramount lien on the real estate on which the same may be imposed, from the date of the warrant issued for the collection thereof.

SEC. 35. If the assessments charged in any special assessment warrant, whether made by reason of the appropriation or condemnation of land, or for any other improvements whatsoever under the provisions of this chapter, shall not be paid within thirty (30) days after the publication of notice by the city treasurer that he has received such warrant for collection, except in case it is on a collection warrant issued on or by reason of a re-assessment, or a new assessment, in which latter case the notice that such warrant is in the treasurer's hands shall require payments to be made within ten (10) days after the publication, the assessment then remaining unpaid shall be collected with interest at the rate of twelve (12) per cent. per annum thereafter until the same shall be paid.

SEC. 36. It shall be the duty of the city treasurer, immediately after the expiration of the thirty (30) days, or after ten (10) days on a re-assessment or new assessment warrant, mentioned in the preceding section, to report to the district court of Ramsey county, at any general or special term thereof, all assessment warrants for the collection of any assessments under the provisions of this chapter which have been delivered to him, and then and there ask for judgment against the several lots and parcels of land described in such warrants, for the amounts of assessments, interest and costs respectively due thereon. The city treasurer shall previously give at least ten (10) days notice by two publications in the official paper of said city, of his intended application for judgment, which notice shall briefly specify the respective warrants upon which such application is to be made, and a description of the property against which judgment is desired, and require all persons interested to attend at said term.

Said treasurer shall also give five (5) days personal notice to the

same effect to all property holders interested or their agents resident in the city of St. Paul, if known to the said treasurer and found, but the failure to give such personal notice shall in nowise affect the validity of the judgment applied for or of any of the proceedings. The advertisement so published shall be deemed and taken to be sufficient and legal notice of the aforesaid and intended application by the city treasurer, to such court for judgment, and shall be held a sufficient demand and refusal to pay the said assessment.

SEC. 37. The city treasurer shall obtain a copy of the advertisement or advertisements referred to in the preceding section, together with an affidavit of the due publication thereof, from the printer or publisher of the newspaper in which the same was published, and shall file the same with the clerk of such court, at the said term with said reports.

SEC. 38. The clerk of said court, upon the filing of such reports of the city treasurer, shall receive and preserve the same, and shall annex thereto, or file therewith, all judgments, orders and other proceedings of said court in relation thereto. Each of said reports shall constitute a separate proceeding or suit, and shall be docketed by the clerk of said court in a suitable record book, to be kept by him for that purpose, substantially in the following form, to-wit: "City of St. Paul vs. certain lots of land suit for assessment on warrant for," or in such other manner as will sufficiently indicate the nature of the improvement for which the assessment is made, in which said record book the judgment when rendered, shall also be docketed. *Provided, however,* That the court may, by rule, or otherwise, direct how and in what form such proceedings and judgments may be entered or docketed, and what further record, if any, shall be made thereof, and what papers shall be filed, and how kept and preserved.

SEC. 39. It shall be the duty of the court, upon the filing of said reports, to proceed immediately to the hearing of the same, and they shall have priority over all other causes pending in said court. The said court shall pronounce judgment against the several lots and parcels of land described in said reports, for which no objection shall be filed, for the amount of the assessment, interest, damages and costs due severally thereon. The owner of any property described in said reports, or any person beneficially interested therein, who shall be aggrieved by such assessment, shall file in said court his objections, in writing, to the recovery of judgment against such property, and shall serve a copy thereof upon the corporation attorney, at least five (5) days prior to the time designated in the city treasurer's notice, that he will apply for judgment as provided for in section thirty-six (36) of this chapter. No objection shall be interposed or sustained in relation to any [of the] proceedings prior to the confirmation of the assessment, except that the common council had no authority to order the said improvement, or that the board of public works had no authority to have the said work performed; and no objections as to any other of the proceedings shall be sustained on any mere formal irregularity or defect, and the city treasurer may amend by leave of the

court in its discretion in any matter in furtherance of justice. The court shall hear and determine all objections in a summary manner without pleadings, and shall dispose of the same with as little delay as possible, consistent with the demands of public justice; but should justice require that for any cause the suit as to one or more owners should be delayed, judgment shall then be rendered as to the other property and lands, and process shall issue for the sale thereof, the same as in all other cases. Upon the trial in the district court of an appeal from any assessment charged in any special assessment warrant, whether made by reason of the appropriation or condemnation of land, or for any other improvement whatsoever under the provisions of this chapter, the court shall give to the official act of said board in making the assessment the same weight, at least, as evidence, as it would and should give to the testimony of an equal number of disinterested and specially qualified expert witnesses upon all questions considered and determined by the board in making such assessment.

SEC. 40. In all cases where judgment shall be rendered in default against the property described in said reports, the court shall thereupon direct the clerk of said court to make out and enter an order for the sale of the same, which said order shall be substantially in the following form:

WHEREAS, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against the said lands and other property for the assessment, damages, interest and costs due and unpaid thereon; *Therefore*, It is considered by the court that judgment be and is hereby entered against the aforesaid lots and parcels of land in favor of the city of St. Paul, for the sum annexed to each lot or parcel of land, being the amount of assessment, interest, damages and costs due severally thereon, and it is ordered by the court that the several lots and parcels of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of assessment, interest, damages and costs, annexed to them severally, be sold as the law directs.

In all cases where a defense shall be interposed and judgment shall be rendered against the property, a similar order adapted to the circumstances of the case, shall be made and entered of record. Thirty-five (35) cents costs shall be laid to each lot or parcel against which judgment is rendered, and the further sum of one (1) dollar to each lot or parcel for advertising the notice of sale: *Provided*, That in all cases where a defense is interposed and not sustained, the court may direct by special order or by rule, such additional costs to be included in the judgment as may be deemed proper.

SEC. 41. It shall be the duty of the clerk of such court, within twenty (20) days after such order is granted as aforesaid, to make out under the seal of said court a copy of so much of said city treasurer's report in such case as gives a description of the land against which judgment shall have been rendered, and the amount of such judgment, together with the order of the court thereon, which shall

constitute the process on which all lands, lots, pieces and parcels of land, shall be sold for the amount of any assessments, interest, damages and costs so levied, assessed or charged upon them; and the said city treasurer is hereby expressly authorized and empowered to make sale of such lands, lots, pieces or parcels of land or other property, upon ten (10) days notice, by two (2) publications in the official paper of said city.

SEC. 42. The said advertisement, so to be published in each case of a judgment upon any collection warrant and report as aforesaid, shall contain a list of the delinquent lots and parcels of land to be sold, the names of the owners, if known, the amount of judgment rendered thereon, respectively, and the warrant upon which the same was rendered, the court which pronounced the judgment, and a notice that the same will be exposed to public sale at a time and place to be named in said advertisement by said City Treasurer. The omission of the name of any owner, or any mistake respecting the same, shall not invalidate the sale, if the property be otherwise described with sufficient certainty.

SEC. 43. In all proceedings and advertisements for the collection of such assessments, and the sale of lands therefor, letters and figures may be used to denote lots, parts of lots, lands and blocks, sections, townships, ranges, and parts thereof, the year and the amounts.

SEC. 44. Certificates of sale shall be made and subscribed by the city treasurer, under the seal of the city of St. Paul, duly acknowledged before a notary public and signed by two witnesses, which shall be delivered to the purchaser, and which certificates of sale shall contain the name of the purchaser, a description of the premises sold, the amount of the judgment for which the same was sold, adding interest at the rate of twelve (12) per cent. per annum, from the day when judgment was rendered to the day of sale, and fifty (50) cents costs on each description, for such other expenses as may be incurred by the city in selling the property; which judgment, interest and costs shall constitute the total amount for which the property shall be sold, which amount shall also appear in the certificate, and the time when the right to redeem shall expire. Said certificates shall bear interest at the rate of twelve (12) per cent per annum until paid.

Said certificates shall state upon their face, in addition to what is now required by law, that "This certificate may be redeemed in five (5) annual installments, which shall become due and payable as follows: One-fifth of said certificate at the end of each one of the successive five (5) years next ensuing the date of this certificate, together with the interest due on the whole amount thereof, unpaid at the maturity of each of said installments—provided, that said certificate may be redeemed at any time before maturity upon the payment of thirty (30) days interest in addition to the interest which has already accrued. *Provided, however,* That property belonging to minors or to a lunatic, upon which city deeds have been or may be issued can be redeemed while such disability continues by the guardian of such person filing with the city treasurer a certified copy of his appointment by the probate court as guardian of such person, together with an affidavit,

showing the facts of said inability, whereupon the treasurer shall deliver to him a certificate of redemption upon the payment of the proper sum; which certificate of redemption, together with a copy of the appointment as guardian and affidavit aforesaid shall be recorded in the office of register of deeds and shall be deemed sufficient to remove the cloud from such title by reason of such a city deed. *Provided, however,* That this installment plan shall not apply to certificates of sale issued by the city treasurer for property sold upon judgments obtained for delinquent assessments for local improvements, the contracts for which were let prior to November 1st, 1886.

SEC. 45. The person purchasing any lot or parcel of land shall forthwith pay to the treasurer the amount of the judgment due thereon, and on failure so to do, the said property shall be again offered for sale, in the same manner as if no such sale had been made, and in no case shall the sale be closed until payment shall have been made. If no bid shall be made for any lot or parcel of land the same shall be struck off to the city; and thereupon the city shall receive, in the corporate name, a certificate of the sale thereof and shall be vested with the same rights as other purchasers at such sales.

SEC. 46. The city treasurer shall enter and extend upon the certified copy of judgment and order of sale issued to him by the clerk of the district court, the interest, costs and expenses to be charged against each lot or description as provided by law, the amount of sale, to whom sold, or if struck off to the city, to whom transferred afterwards, with the amount of transfer, and attach thereto a copy of the advertisement pertaining to the sale. The city treasurer shall keep this record on file in his office. Certified copies thereof may be furnished when desired.

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SEC. 47. If at any sale any piece or parcel of land shall be sold to a purchaser or the piece or parcel be struck off to the city, the same may be redeemed at any time within five (5) years from the date of the sale by any person having any interest therein, upon the payment of twelve (12) per cent per annum in lawful money of the United States, of the amount for which the same was sold, with interest from the time of such sale, at the rate of twelve (12) per cent per annum in accordance with the provisions of section forty-four (44) of this act, and upon the terms and conditions as to installments therein provided, and any other assessments which may be made under or by virtue of this chapter, or the charter of the city of St. Paul, subsequent to the sale, with the interest accruing thereon, at the rate, and payable in accordance with the provisions of section thirty-five (35). If the real estate of any lunatic or infant be sold under this chapter, the same may be redeemed at any time within one (1) year after such disability shall be removed. Redemption shall be made by the payment of the redemption money to the city treasurer, and upon such payment the city treasurer shall execute to said redemptioner a certificate of satisfaction of said assessment, judgment and lien, upon the return of the certificate of sale, or upon proof of its loss, and the filing with the controller of an affidavit to that effect. If the property shall not

have been redeemed according to law, a deed shall be executed to the purchaser or his assigns, under the corporate seal of said city, signed by the mayor, controller and clerk of said city, conveying to such purchaser or assignee the premises so sold and unredeemed as aforesaid.

The city treasurer shall, at least three (3) months before the expiration of the time for redeeming any lot or parcel of land aforesaid, cause to be published in the official paper of said city once (1) a week for six (6) successive weeks, a list of all unredeemed lots or parcels of land, specifying each tract or parcel, the name of the person to whom assessed, if to any, and the amount of the assessment, charges and interest, calculated to the last day of redemption, due on each lot or parcel, together with notice that unless such lots or parcels of land be redeemed on or before the day limited therefor, specifying the same, they will be conveyed to the purchaser. *Provided, however,* that before the holder of such certificate shall be entitled to a deed for said property he shall pay into the city treasury the cost of such notice of the expiration of the time of redemption. A memorandum of all deeds made and delivered, shall be entered by the controller in the book wherein such sales are recorded, and a fee of one (1) dollar may be charged by the controller for every deed so issued.

Provided, That nothing in this act contained shall be construed to affect or prejudice the lieu of the state, for all taxes which have been or may be levied upon such property under the general laws of the state. In cases of redemption, the city treasurer shall notify the person holding the certificate of sale, that the amount of such certificate with the interest thereon so paid, is in the city treasury subject to his disposal.

SEC. 48. Such certificate of purchase shall be assignable by endorsement and an assignment thereof shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser.

SEC. 49. Whenever it shall appear to the satisfaction of the controller before the execution of a deed for any property sold for assessments that such property was not subject to assessment, or that the assessment had been paid previous to the sale, he shall, with the approval of the common council of said city, make an entry opposite to such property on his record of sales, that the same was sold in error, and such entry shall be prima facie evidence of the fact therein stated. *Provided,* That where the sale shall have been made to any purchaser other than the city, the common council of said city, before approving of such entry, shall first cause notice to be given, by mail, or in such manner as said council may direct, to the purchaser, his heirs, assigns or legal representatives, of the said proceeding, and, *Provided, further,* That in case such entry is approved, the purchase money shall be refunded to the parties entitled thereto with interest.

SEC. 50. All deeds made to purchasers of lots and parcels of land sold for assessments, or the record thereof, shall, in all cases, be prima facie evidence that all requirements of the law, with respect to the sale, have been duly complied with, and of title in the guarantee

therein, after the time for redemption has expired, and no sale shall be set aside, or held invalid, unless the party objecting to the same shall prove either that the court rendering the judgment, pursuant to which the sale was made, had not jurisdiction to render the judgment, or that after the judgment and before the sale such judgment had been satisfied, or that notice of sale as required by this act was not given, or that the piece or parcel of land was not offered at sale to the bidder who would pay the amount for which the piece or parcel was to be sold, nor unless the action in which the validity of the sale shall be called in question, be brought, or the defence alleging its invalidity be interposed within three (3) years after the date of the sale, and if any sale shall be set aside, by reason of any defect in the proceedings subsequent to the entry of the judgment, the court so setting aside the sale shall have power in such case to order a new sale, to be made as near as may be in accordance with the provisions of this act. That in any action heretofore or hereafter commenced, in which the validity of a deed under this act is brought into question, and on account of any irregularities, the same shall be set aside, the party holding such deeds shall recover from the adverse party the amount paid for such deeds to the city with interest thereon from date of sale, at the rate of twelve (12) per cent. per annum. All deeds referred to in this chapter shall be admitted to record without [pre]payment of taxes, and without the county auditor's certificate that the taxes have been paid.

SEC. 51. Any change made in the incumbent of the office of the city treasurer during the pendency of [any] such proceedings, shall not operate to affect or delay the same, but the successor or successors in office of such city treasurer, shall be authorized to do all acts necessary to complete such proceedings, the same as if his predecessor had continued in office. In case of a vacancy occurring in any such office, the proceedings shall be prosecuted by the controller until such vacancy is filled by election or otherwise.

SEC. 52. All sales of property for the non-payment of assessments, provided for in this chapter, shall be made in the daytime at public vendue, in the city of St. Paul, at the time and place stated in the notice of sale prescribed in sections forty-one (41) and forty-two (42) of this chapter, and may be adjourned from day to day (Sundays excepted) until the whole is completed.

SEC. 53. Any city treasurer, or other officer, who shall in any case refuse or knowingly neglect to perform any duty enjoined upon him by this chapter, or who shall consent to, or connive at any evasion of its provisions, whereby any proceeding required by this chapter shall be prevented or hindered, shall, for every such neglect or refusal, be liable to said city individually and upon his official bond for double the amount of loss or damage caused by such neglect or refusal to be recovered in an action in any court having jurisdiction of the amount thereof.

SEC. 54. No error or omission which may have heretofore been or may hereafter be made in the order, or in the proceedings of the common council or board of public works, or of any of the officers of said city,

in referring, reporting upon, ordering or otherwise acting, concerning any local improvement provided for in this chapter, or in making any assessment therefor, or in levying and collecting such assessment. Not affecting the substantial justice of the assessment itself shall vitiate or in any way affect such assessment. The reports of the city treasurer and assessment warrants held by him, referred to in section thirty-six (36) of this chapter, shall be prima facie evidence that the proceedings up to the date of such warrants were valid and regular, and the certificates of sale issued as provided for in this chapter shall be prima facie evidence of the validity and regularity of all proceedings up to the date of such certificates.

SEC. 55. No purchaser of lands or lots, or other property sold for assessments, or his heirs or assigns, shall be entitled to a deed until he or they shall have paid all assessments made thereon, prior or subsequent to the assessments, under which such purchase was made. The amount of all such prior or subsequent assessments, so paid by any such purchaser, his heirs or assigns, and all moneys paid by such purchaser, his heirs or assigns, to redeem the premises from any sale for any such assessment, shall be a lien on the premises in his favor, and the amount thereof with interest at twelve (12) per cent. per annum from the time of such payment or redemption, shall be refunded to such purchaser, or be paid to the treasurer of said city, for the use of such purchaser, his heirs or assigns, by the owner or person entitled to redeem, before any redemption shall be made, except as provided in the section next following.

SEC. 56. After any real estate shall have been bid in or struck off to the city, said city may enter upon such real estate and take possession thereof, and by its treasurer sell the same for the amount due on such special assessment, interest, penalty and costs, and a deed of the property so sold shall be executed in the same manner and by the same officers as provided in section forty-seven (47) of this chapter.

Provided, however, That if any lot or parcel of land so struck off to said city, shall be again sold for like assessments, while the said city holds its title as purchaser aforesaid, the same shall not be sold to any purchaser except said city, for less than the amount actually remaining unpaid on the preceding assessment as well as such subsequent assessment with interest aforesaid at the rate of twelve (12) per cent. per annum.

SEC. 57. For the additional duties imposed on the city treasurer by this chapter, he shall receive a fee on all collections made by him [upon warrants for special assessments,] as follows: For the year ending December thirty-first (31st), eighteen hundred and eighty-seven (1887). Upon the first two hundred thousand (200,000) dollars actually collected by him during said year two (2) per centum: Upon all moneys in excess of two hundred thousand (200,000) dollars collected by him, one (1) per centum, and after said thirty-first (31st) day of December, eighteen hundred and eighty-seven (1887), upon the first two hundred thousand (200,000) dollars actually collected by him in any one (1) year commencing January first (1st) two (2) per centum; upon all moneys in excess of two hundred thousand

(200,000) dollars collected by him in any one (1) year commencing January the first (1st) one-half ($\frac{1}{2}$) of one (1) per centum.

And it is hereby made the duty of the city treasurer on the first (1st) day of January in each and every year to include in his annual report to the common council all the fees, percentages and moneys received from any source during the year preceding.

SEC. 58. All judgments rendered under this chapter upon said assessments shall bear interest at the rate of twelve (12) per cent. per annum from the date thereof until paid.

SEC. 59. The city treasurer of said city may, at any time before or after the time of redemption has expired, assign any certificate of sale of property so bid in by the city as aforesaid, to any person, by endorsement thereon, after payment by such person into the city treasury of the amount at which the same was so bid in, together with the amount of any prior assessment with interest thereon at the rate of twelve (12) per cent. per annum and costs, and such assignee shall have the same right and title thereunder as if he had purchased the same originally at the sale, and shall be entitled to a deed as in other cases; *Provided*, That after the expiration of the time of redemption of any certificate of sale of property, if the same shall remain unredeemed, the mayor, committee of ways and means, controller, and city treasurer, or a majority thereof, may authorize the city treasurer to sell, assign and transfer the interest of the city in and to any such certificate, for such sum or price as to them may appear for the best interest of the city.

SEC. 60. In all cases where application has been heretofore, or shall hereafter be made, for judgment or judgments, either under an act to authorize "the city of St. Paul to levy assessment," approved March sixth (6th), eighteen hundred and seventy-one (1871); or under any and all acts amendatory thereof, and judgment has heretofore been refused or denied by the court, or the assessment, or any part thereof, as to any lot, lots or parcels of land assessed under any of the provisions of the aforesaid acts, for any cause whatever, has been heretofore, or may be hereafter set aside or declared void by any court, the Board of Public Works shall, upon notice thereof by the city treasurer, proceed without unnecessary delay to make a re-assessment or new assessment upon all lots, blocks and parcels of land which have been or will be benefited by such improvement, to the extent of their proportionate part of the cost and expenses thereof, as near as the same can be ascertained by the Board of Public Works, and such re-assessment or new assessment shall be made by the Board of Public Works, as near as may be in accordance with the law in force at the time such re-assessment is made; and when the same shall have been made and confirmed by said board, it shall be enforced and collected in the same manner that other assessments are enforced and collected under this act. The fact that the contract has been let, or that such improvement shall have been in whole or in part completed, shall not prevent such new assessment from being made, nor shall the omission of said board before the first assessment to furnish the council with a report that, in their opinion,

property can be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby, or the omission of said board to furnish said council with a plan, section or profile of said improvement, constitute any objection to such re-assessment or new assessment, or in any way prevent the Board of Public Works from making such re-assessment or new assessment, and no new order from the common council shall be necessary in any case whatsoever to authorize the Board of Public Works to make a re-assessment or a new assessment.

And in all cases where judgment has been heretofore, or shall be hereafter refused or denied by any court, or where any court has heretofore or hereafter shall set aside or declare void any assessment upon any lot or parcel of land, for any cause, the said lots or parcels of land may be re-assessed or newly assessed, from time to time, until each separate lot, piece or parcel of land, has paid its proportionate part of the costs and expenses of said improvements, as near as may be, to the benefits derived, or to be derived from such improvement. In case the amount of such re-assessment shall be less than the first assessment upon the lots and parcels of land re-assessed, the deficit shall be paid out of the local improvement fund.

SEC. 61. If in any case the first assessment to pay for any local improvement which has heretofore been or shall hereafter be ordered by the common council, either before or after such improvement is completed, shall prove insufficient to fully pay for the same, whether said work was done before the passage of this act or otherwise, the Board of Public Works shall upon notice thereof from the city treasurer, and without a further or new order from the common council, proceed without unnecessary delay to assess and re-assess the same upon the property benefited, or which will be benefited, until a sufficient amount is realized to pay for the same. If too large an amount shall at any time be raised, the excess shall be refunded ratably to those by whom it was paid, if the council shall so order, it being the true intent and meaning of this act, to assess and re-assess upon the real estate benefited, to the extent of such benefits, for any deficiency over and above the first assessment which said improvement may cost, whether the said improvement has heretofore been made, or may hereafter be made, under the act of March sixth (6), eighteen hundred and seventy-one (1871), entitled "An act to authorize the city of St. Paul to levy assessments for local improvements, or under any act amendatory thereof, up to the passage of this act, and no error, or omission, or irregularity, whether jurisdictional or otherwise, shall prevent a re-assessment to the extent of the benefits conferred by such improvement.

SEC. 62. In all cases where the treasurer shall be unable to enforce the collection of any special assessment, by reason of irregularity or omission in any proceeding subsequent to the confirmation of such assessment, the said board shall be authorized and empowered to cause a new warrant to issue to the treasurer for the collection of any assessment which, by reason of such irregularity or omission, remains unpaid or not collected. The treasurer shall proceed under

such new warrants to enforce and collect the assessments therein specified in the same manner, as near as may be, as is prescribed by the provisions of this chapter for the enforcement and collection of special assessments, after the same shall have been confirmed, as in this chapter provided; and as often as any failure shall occur, by reason of such irregularities or omissions, a new warrant may issue and new proceedings be had in like manner, until such special assessments shall be fully collected, as to each and every tract and parcel of land charged therewith.

SEC. 63. In all cases where the work for any improvement contemplated by the provisions of this chapter shall be suspended before final completion, by the failure of the contractor to perform the same, or for any other cause, the common council may order said board to re-let the unfinished portion of such work, [in the same manner,] as near as may be, as provided in this chapter for the letting of contracts for public improvements, and in every case of such new contract, the work shall be paid for in the same manner as contracts for other like improvements.

SEC. 64. Property owners may be allowed to construct streets and other public improvements upon or through their own property, at their own expense, in such cases and upon such terms, and under such regulations as the common council may prescribe, from time to time, by ordinance.

SEC. 65. It shall be deemed personal notice in all cases under the provisions of this chapter where personal notice is required, when the notice is served by delivering a copy, or by reading the same to the person to be notified, or by leaving a copy at his or her last usual place of abode, or at his or her place of business, with some person of suitable age and discretion, or by leaving such copy in a conspicuous place at his or her place of business. in the day time, if such person is absent therefrom.

SEC. 66. If the board of public works or the common council, in carrying out the provisions of this chapter, should find unforeseen obstacles in grading, excavating, filling, paving, or in any case of improving or opening or widening streets, levees, alleys or public highways, or sewers, not provided for, the common council may by resolution order such change or modification in such improvement to meet such unforeseen obstacles, as the said council may deem equitable and just, upon the recommendation of the board of public works, or on their own motion, either before or after the confirmation of any assessment, or before or after the letting or making of any contract to do the same, or at any time while the work is in progress, by a two-thirds ($\frac{2}{3}$) vote of the common council elect; and any additional expense occasioned by such change or modification of the improvement may be included in the original assessment, or raised by an additional assessment upon the property benefited by such improvement, to the extent of such benefits.

Provided however, That no such work shall be done until ordered by the common council by a two-thirds ($\frac{2}{3}$) vote of the members elect.

Provided further, That in all contracts, the case of such unforeseen obstacles shall be anticipated as far as possible by the board of public works causing a schedule to be made, classifying the various kinds of work and material, and fixing the price to be paid by the city for such work or material as may become necessary, but cannot be foreseen; which said schedule shall be approved by the board of public works, and a copy thereof shall be signed by the bidder and attached to his bid, and the same shall be attached to and made a part of the contract; but no additional expense shall be incurred other than may be absolutely necessary to overcome such unforeseen obstacles. The said board of public works shall have power to correct any error, omission or mistake in an assessment, either before or after the confirmation, up to the time judgment may be obtained thereon, either as to the amount, or owner, or description, so as to conform to the facts and rights of the case as intended: and if by reason of such error, omission or mistake, the assessment shall be reduced below the amount of money required to pay the costs and expenses of said improvement, the board of public works shall make a new assessment upon the property benefited to make up the deficiency, together with the cost and expenses of such new assessment; *Provided further*, That five (5) day's notice of the time and place of making such correction shall be given by one (1) publication in the official newspaper of the city, unless the owner of the real estate affected be present or consents thereto. Said correction shall be entered of record, and a copy thereof filed with the city treasurer. *Provided further*, That if the expense required to overcome such unforeseen obstacles will materially increase the cost which would be incurred in the work if such unforeseen obstacles had not occurred, then the common council shall have power by a two-thirds ($\frac{2}{3}$) vote of the members elect, to rescind the contract so far as the uncompleted part of the work is concerned, and may, in their discretion, by a two-thirds ($\frac{2}{3}$) vote of the members elect, after such rescission, order the work to be re-let as other work is let under this chapter, and the original contractor in such case shall be entitled to be paid for the portion of the work done by him, ratably, according to the contract price as nearly as the same can be ascertained, and no more.

SEC. 67. When any notice is required to be published in any newspaper, under this chapter, an affidavit of the publisher or printer of such newspaper, or [of] the foreman or clerk of such publisher or printer, annexed to a printed copy of such notice, taken from the paper in which it was published, and specifying the time when, and the paper in which, such notice was published, shall be evidence in all cases and in every court of judicial proceeding, of the facts contained in such affidavit.

SEC. 68. The proceeds of all local improvement bonds heretofore or hereafter to be issued, and all moneys collected upon local improvements, and property condemned for public use, shall constitute a fund to be known as the local improvement fund of said city. All contracts heretofore or to be hereafter made for local improvements, which are to be paid for by special assessments under the provisions

of this chapter, shall be paid for out of said local improvement fund, and said fund shall be kept inviolate, except as otherwise provided, for the payment of such contract. In the case of property condemned for public use, if, after the expiration of six (6) months after the whole assessment for benefits of the improvement shall have been finally confirmed and determined, the said assessment shall not have been fully paid in, the common council of said city may, in its discretion, advance, out of said local improvement fund, sufficient to make up the deficit occasioned by such failure; *Provided, however,* That said advance shall, in no case, exceed twenty-five (25) per cent. of the damages to be paid upon such condemnation. Such advance shall be replaced in said improvement fund, out of the assessments for such improvements which may be thereafter collected.

SEC. 69. If for any cause the proceedings of the common council or board of public works or any of its officers, may be found irregular or defective, whether jurisdictional or otherwise, the common council may order a new assessment from time to time and as often as need be, until a sufficient sum is realized from the real estate benefited by such improvement, to pay all the costs, damages and expenses incurred thereby; it being the true intent and meaning of this act, to make the cost and expenses of all public improvements provided for in this chapter, local to the city of St. Paul, payable by the real estate benefited by such improvement, to the extent of such benefits; except that in the case of sidewalks the assessment shall be made as in such case provided.

SEC. 70. After judgment shall be ordered to be entered against any lot or real estate, for the non-payment of assessments, the same shall not be opened or set aside except for mistake in entering the same, or in ordering the same to be entered, any provision of the general laws of the state to the contrary notwithstanding.

SEC. 71. It shall be the duty of the board of public works in estimating the benefits to any particular lot, piece or parcel of land, to take into consideration the nature of the owner's interest therein, the form and position of their several parcels of land, the qualified rights of the owner in reference to its employments, and any other circumstances which render the proposed improvement more or less beneficial to him or them, and the determination and assessment or estimate of benefits of said board shall be final, except where an appeal is expressly allowed under the act to which this is amendatory.

SEC. 72. If in the opinion of the board of public works, any work under any contract does not proceed each month so as to insure its completion within the time named in the contract, the said board shall have power to furnish and use men and materials to complete the work, and charge the expense thereof to the contractor, and the same shall be deducted from any moneys due him or to become due such contractor, or may be collected from him in a suit by said city.

SEC. 73. The register of deeds shall not record any deed from a private person or private corporation unless there be endorsed on such deed a certificate of the city treasurer that all assessments for local improvements have been paid, and any violation of this pro-

vision by the register of deeds shall be a misdemeanor, and be punished by a fine not exceeding double the amount of the unpaid assessment. It shall be the duty of the city treasurer upon the application of any person interested in such deed, where the assessment has been paid, and not otherwise, to make such certificate free of charge, but the said city treasurer shall not certify that said assessment has been paid in any case where the property has been purchased by the said city at the sale provided for in this act, and the time for redemption has not expired, and the city still holds the certificates of sale.

SEC. 74. The following forms of orders shall be deemed sufficient:

FORM NUMBER ONE.

It is hereby ordered by the common council of the city of St. Paul,

That the matter of..... be and the same is hereby referred to the board of public works to investigate and report.

1st. Is this improvement proper and necessary?

2d. Give the council an estimate of the expense thereof, and state whether one-half of the cost thereof is to be paid into the city treasury before the contract is let.

3d. Can real estate to be assessed for said improvement be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby?

4th. Is such improvement asked for upon the petition or application of the owners of a majority of the property to be assessed for such improvement?

5th. Send the council a plan or profile of said improvement, as required by law, if you report in favor of the same.

6th. Send the council a proper order directing the work to be done.

FORM NUMBER TWO.

It is hereby ordered by the common council of the city of St. Paul:

That the board of public works of said city of St. Paul cause the following improvements to be made, to wit:..... That said board shall cause said work to be let by contract, as provided by law. When one-half ($\frac{1}{2}$) of the estimated cost is paid into the city treasury (if this is required), and after said work shall be placed under contract said board shall proceed without delay to assess the amount as nearly as they can ascertain the same which will be required to pay the damages, costs, and necessary expenses of such improvement, upon the real estate to be benefited by said improvement, as provided by law, it being the opinion of the council that the real estate to be assessed for such improvement can be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby.

FORM NUMBER THREE.

It is hereby ordered by the common council of the city of St. Paul:

That, whereas, the common council is officially advised that upon the application of the city treasurer to the.....
of Ramsey county, Minnesota, for judgment
 against the following lots, blocks, and parcels of land heretofore
 assessed by the board of public works for.....

judgment, was denied by said court, to-wit:

Wherefore the board of public works of the city of St. Paul, are hereby ordered to re-assess the aforesaid lots and parcels of land, for their proportionate part of the cost and expense of such improvement, not exceeding the benefits accruing to such lot, block or parcel of land from such improvement, and proceed therein in the mode and manner prescribed by law, it having been made to appear to the council, and it being the opinion of said council, that said lots and parcels of land have been benefited by such improvement.

SEC. 75. That hereafter, no public improvement which requires an assessment to be made on property to be benefited, shall be ordered by the common council, except as hereinbefore provided in section five (5) of this chapter, unless at least a majority of the board of public works shall recommend the making of such improvement, except orders for sidewalks and street sprinkling.

SEC. 76. In the assessment of damages and benefits for the opening of any street or alley, it shall be lawful for the board of public works, in their discretion, in making such assessments, should there be any building in whole or in part upon the land to be taken, as aforesaid, to consider the propriety of letting said building remain upon such land taken as aforesaid, for such time after condemnation, as they may deem for the best interest of the city, and if they shall determine to let the building remain on said land for any given period, then they shall determine the value of the use of said land to the owner of said building for the time said building may be permitted to remain, which sum, when ascertained, shall be deducted from the damages awarded for said building.

SEC. 77. In addition to the other bonds required by the city charter and the acts amendatory thereof, of persons contracting with said city to do any work, labor, or furnish any material before any contract for the doing of any work, labor, or furnishing any material to or for said city, shall be binding and valid as against said city, said contractors shall enter into bond with the city of St. Paul, for the use of all persons who may do work or furnish materials, pursuant to any contract between said contractors and said city, conditioned for the payment of all just claims for such labor, work or materials as they become due under said contract, which bond shall be in such an amount not less than the contract price agreed to be paid for the performance of such contract, and with such sureties as shall be approved by one of the judges of the district court of Ramsey county, and shall file the same in the office of the city controller of St. Paul.

SEC. 78. Whenever the Board of Health shall report to the common council that stagnant or impure water stands upon any lot, lots or parcels of land; thereby creating a nuisance injurious to public health, the common council may refer said report to the Board of Public Works. Upon such reference, said board shall then proceed to investigate the same, and if they shall determine that a nuisance does exist, by reason of any stagnant or impure water standing upon any lot, lots or parcels of land, and that the same is injurious to public health, they shall report the same to the common council, accompanied by a plan for the abatement of said nuisance, together with an estimate of the expense, if real estate to be assessed for said improvement be found benefited to the extent of damages, costs and expenses necessary to be incurred thereby, and also send to the council a proper order directing the work to be done. And after the common council shall order the doing of said work, the same proceedings shall be had in relation thereto by the Board of Public Works and city treasurer, as in case of other local improvements, as provided in chapter seven (7) of the city charter, and the acts amendatory thereof.

SEC. 79. It is hereby made the duty of the Board of Public Works, at their first meeting after the approval by the common council of any contract let by the Board of Public Works, for any public improvement for which an assessment is to be made, to proceed without any unnecessary delay to the completion and confirmation of the assessment for the benefits, [damages,] costs and expenses for said improvements.

The said Board of Public Works are authorized, whenever in their opinion it may be necessary, to employ such additional clerical force as may be proper in the office of the Board of Public Works, and place the names of such additional persons so employed upon the pay roll of the employees of the board, and shall duly notify the common council thereof. The pay rolls of the employees in the office of the Board of Public Works when the same shall have been certified by the clerk of said board and approved by said board, shall be audited by the controller of said city.

SEC. 80. When the cost and expense of any of the following improvements, viz: A change of grade, a condemnation of land for a street, public market, levee, alley or park, or a condemnation of an easement in land for slopes in cuts or fills does not exceed the sum of two hundred (200) dollars, the assessment therefor shall be paid out of the general fund of the city.

CHAPTER VII.

TITLE II.

SEWERAGE.

SECTION 1. The common council of the city of St. Paul, in addition to the powers conferred on said council by the charter of said city, shall have power to establish and maintain at any time and from time to time, any general system or systems of sewerage, for said city

in such manner and under such regulations as said council may deem expedient, and such system or systems of sewerage, to alter or change from time to time, as said council may deem proper:

SEC. 2. Sewers connected or intended to be connected with such general system or systems of sewerage, may from time to time be ordered by said council, to be constructed by the Board of Public Works of said city, in the same manner and under the same regulations as in the case of other local improvements of said city.

SEC. 3. The cost of constructing, altering or repairing any of the sewers or improvements herein provided for or referred to, as nearly as can be ascertained, together with the necessary expenses of making the assessment, shall be assessed by the Board of Public Works of said city, upon the real estate benefited thereby, and enforced and collected in the manner and under the regulations provided by law for other local improvements of said city. *Provided, however,* That the said common council may order the constructing, altering or repairing sewers, or such part of them, or such proportion of the cost thereof, as said council may deem expedient to be paid by said city at large out of the sewerage bond fund.

SEC. 4. The Board of Public Works shall have power to prescribe the conditions upon which sewers may be tapped, and to grant licenses therefor, and power to suspend or revoke the same. Said board shall also have power to grant licenses to drain and sewer contractors and to any person or persons desiring to make an excavation of any kind in any of the streets, avenues, levees, or alleys of the city and to suspend or revoke the same. Said board shall prescribe the amount to be paid for such licenses (the amount of the bond required to be given shall be as hereinafter provided), and shall also prescribe such regulations for excavating streets, avenues, levees or alleys, for tapping and making connection with sewers and for the protection and maintenance thereof, and also for the granting of licenses to drain and sewer contractors or other persons and shall impose such penalties, as a punishment, for any infraction thereof as they, the said board, may deem necessary and proper. No plumber or other person shall be permitted to tap or make connection with any sewer or to make any excavation whatsoever in any of the public streets, avenues, levees or alleys of said city without having first obtained from the Board of Public Works a license therefor. An application for any license provided for in this section shall be in writing, signed by the applicant and addressed to the Board of Public Works. Said application shall be accompanied by a bond in the sum of five thousand (5,000) dollars, running to the city of St. Paul, executed by the applicant, as principal, and two responsible and satisfactory sureties, conditioned that such excavation and the tapping or connecting with sewers shall be made in accordance with the regulations prescribed by the Board of Public Works for street excavations and sewer connections, and also further conditioned to save the city harmless from all damages, loss, cost and expense to which said city may be subjected by reason of such excavation and sewer connections. Said bond shall be approved by the corporation attorney and the president

of the Board of Public Works and filed with the city engineer. No person or corporation, whether licensed or otherwise, shall make any excavation whatsoever in any of the public streets, avenues, levees, or alleys of said city without having first obtained from the engineer of the Board of Public Works a permit therefor:

Any violation of the provisions of this section by any person or persons or corporation shall be deemed a misdemeanor and any person or corporation convicted thereof, upon a complaint therefor, shall be punished by a fine of not less than fifty (50) dollars nor more than one hundred (100) dollars, *Provided, however,* That the Board of Water Commissioners, the Saint Paul Street Railway Company, the Saint Paul Gas Light Company, Board of Fire Commissioners, telegraph, telephone and electric light companies may be permitted to take out a season permit to make such excavations upon such terms and conditions as shall be prescribed by the regulations of said Board of Public Works.

All licenses to tap or make connections with sewers, and plumbers' licenses granted by said Board of Public Works prior to the passage of this act are hereby declared to be null and void.

SEC. 5. Nothing herein contained shall be construed as abridging the power of said city of Saint Paul to construct, or to order to be constructed, such sewers or drains, other than those before mentioned, as may be deemed expedient.

SEC. 6. It shall be the duty of the board of health of the city of St. Paul, from time to time, to investigate and report to the common council, where improved drainage and sewerage is necessary to the public health, and what nuisances exist, which are the result of defective drainage and sewerage, and the common council may, by a two-thirds ($\frac{2}{3}$) vote, order the construction of such sewers as are needed to preserve the public health, and to remove nuisances in accordance with the reports and recommendations of the board of health.

The cost of constructing, altering or repairing any sewer as aforesaid, as nearly as can be ascertained, together with the necessary expenses of making the assessment, shall be assessed by the board of public works of said city, upon the real estate benefited thereby, and enforced and collected in the manner and under the regulations provided by law for other local improvements.

Provided, however, That if the board of public works shall be of the opinion that property cannot be found benefited to the extent of the cost and expenses of said improvement, the common council may order any deficiency which may be reported by the board of public works, of the cost and expenses over and above the property benefited, to be paid out of the sewerage bond fund.

SEC. 7. Whenever the common council of said city may deem it necessary to cross private property and to construct a sewer thereon for the purpose of securing a proper line for sewerage, the city of St. Paul may acquire by condemnation, and may take, possess, have and hold an easement in, over, under and across such private property, for the purpose of constructing, altering, protecting, repairing and keeping in repair such sewer, and like proceedings shall be had by

the common council and the board of public works, for the condemnation of such easement, as are now by law had for the taking of property for the opening, widening, extension, or altering and straightening of streets, and the damages awarded to the owner of said property for such easement shall be paid out of the sewerage bond fund.

And whenever the board of public works of said city may deem it necessary to cross any private property, with a roadway or car track for the purpose of grading any street or alley, not otherwise conveniently accessible, the city of St. Paul, may, with like proceedings as are now had by law, for taking property for the opening, extension, widening, constructing, altering and straightening of any street, take, acquire, possess, have and hold an easement over and across said property, for the purpose of gaining access to the street or alley required to be graded, for such time as it may be necessary to do the work, and the amount of the assessment for damage accruing to the owner or owners of said land for such easement, shall be paid by the contractor [doing the work.]

CHAPTER VII.

TITLE III.

STREET GRADES.

SECTION 1. The common council shall cause to be established, under the direction of the city engineer, the grade of all streets, sidewalks and alleys in said city, and shall cause accurate profiles thereof to be made, one (1) of which shall be filed in the office of the register of deeds of Ramsey county; and one (1) shall be kept in the office of the engineer of the board of public works.

SEC. 2. Such grade may at any time thereafter be altered or changed by a two-thirds ($\frac{2}{3}$) vote of all members elect of the common council, after notice by publication in the official newspaper of said city for three (3) successive weeks, at least once (1) in each week, of the time and place when the said council will consider such proposed alteration; *Provided, however*, that no change of grade ordered by the common council shall take effect and be consummated until the board of public works shall have made and confirmed the assessment of damages and benefits resulting from such change of grade: *And provided further*, That the common council may annul any order for a change of grade, at any time prior to the confirmation of the assessment for such change of grade by the board of public works.

SEC. 3. After such alteration shall have been finally determined as herein provided, the common council shall refer the matter to the board of public works to assess the damages, if any, to property occasioned by such alteration, and also to determine what real estate, if any, will be benefited by such alteration, and to assess upon such property benefited the amount of such damages, together with the costs of proceedings.

SEC. 4. Upon such order of reference of the common council being transmitted to said board of public works, the said board shall make such assessment of damages and benefits in the same manner and

after giving the like notice, as near as may be, as in the case of improvements requiring the appropriation and condemnation of land or real estate; and when completed said board of public works shall proceed to confirm the said assessment in manner provided by section fifteen (15), title I of this chapter, and shall have all the power to correct, revise, confirm, set aside, or proceed *de novo* in said matter, and all other powers therein given and provided, and the same proceedings, as nearly as may be, shall be had as are prescribed in section fifteen (15).

SEC. 5. Any party aggrieved by such assessment of damages may appeal under the same regulations and restrictions, and in the same manner provided in section sixteen (16) of said title one (1), but such appeal shall not operate to stay any of the proceedings in the matter of such alteration.

SEC. 6. All assessments of benefits aforesaid shall be collected and enforced in the same manner as in the case of other local improvements provided for in this chapter, and the collections therefrom shall be credited to the local improvement fund.

SEC. 7. That all that part of the charter of the city of St. Paul, which allows damage for a change of grade, which has heretofore been or shall hereafter be made on any street in the city of St. Paul, or in any way growing out of, or incidental to, such change of a previously established grade, or growing out of any change of an established grade heretofore ordered or heretofore made, by the order or direction of the common council of the city of St. Paul, shall be construed to be recoverable only by and through and under the provisions of this title.

SEC. 8. All street grades which have been ordered changed by the common council by orders dated prior to October first (1st), eighteen hundred and eighty five (1885), for which assessments for the damages and benefits resulting therefrom have not been made by the board of public works, are hereby declared null and void.

CHAPTER VII.

TITLE IV.

STREET SPRINKLING.

SEC. 1. The common council shall have the power to sprinkle the streets, avenues, levees, lanes, alleys, parks and other public grounds of said city or any part thereof.

SEC. 2. For the purpose of the sprinkling provided for in section one (1) of this title, it is hereby made the duty of the board of public works, as soon after the passage of this act as practicable, and annually thereafter, to divide said city into three (3) or more sprinkling districts without reference to ward lines. Said districts shall be designated by numbers as follows, to wit: Sprinkling district No. one (1); sprinkling district No. two (2); sprinkling district No. three (3), etc.

SEC. 3. The board of public works shall annually cause proposals to be advertised for in the official paper of said city in the same man-

ner and for the same length of time as in the case of other public improvements, for the sprinkling of any and all streets, avenues, levees, lanes, alleys, parks or other public grounds or any part thereof, in each and all of said sprinkling districts, which may be ordered sprinkled by the common council in each year. General plans and specifications applicable to all sprinkling that may be ordered done in each of said districts during the year by said common council, shall be made and filed with the clerk of the board of public works at least ten (10) days before the day named for the receipt of said bids by the board of public works. And the sprinkling shall be let and placed under contract in the same way and manner as is now provided by law for other local improvements provided for in this act, except that the bids for sprinkling shall be accompanied by a bond to the city of St. Paul in the sum of three thousand dollars (\$3,000.00), executed by the bidder and two (2) responsible sureties, conditioned that he will enter into and execute a contract to perform the work for the price mentioned in his bid, according to the plans and specifications in case a contract shall be awarded to him. And in case of default on his part to execute the contract and perform the work, said bond may be sued and judgment recovered thereon by said city for the full amount thereof, in any court having jurisdiction of the amount.

SEC. 4. Contracts for sprinkling shall be awarded to the lowest reliable and responsible bidder, reference being had solely to the reliability and responsibility of the bidder, to perform his contract, without regard to his sureties, *Provided, however,* That the board of public works may reject any and all bids which they shall deem either unreasonable or unreliable. *And provided further,* That no contract shall be awarded except with the approval of a majority of the members elect of the common council. Said bond may be sued and judgment recovered thereon by said city for the full amount thereof, in any court having jurisdiction of the amount.

SEC. 5. The common council of said city may order sprinkling to be done whenever and wherever they deem the public interest, for sanitation or other cause, requires it, without a reference to the board of public works for a report upon the necessity or propriety thereof. Whenever said common council shall order any sprinkling to be done, a copy of such order shall be transmitted to the board of public works, whose duty it shall be without any unnecessary delay, to cause the sprinkling contractor to be notified thereof, and to cause said sprinkling so ordered by the common council to be done, and it shall be the duty of the city engineer to cause said sprinkling to be duly inspected and done and performed in accordance with the contract, and to report the fact to the board of public works, who shall cause an assessment to be made for said sprinkling as hereinafter provided.

SEC. 6. At the first meeting in each and every month, unless otherwise ordered by the board, they shall give at least ten (10) days notice by two (2) publications in the official newspaper of the city to the effect that at a certain time and place they will proceed to make

an assessment for sprinkling. Said notice shall briefly describe the location of the streets sprinkled by streets and districts; the said board shall assess the amount, as nearly as they can ascertain the same, which shall be required to defray the cost of such sprinkling, including the necessary expense of making and collecting such assessments, upon the real estate or lots of land fronting on said improvement, without regard to the cash valuation thereof, or whether the same shall be improved or otherwise. In making said assessment the said expense and costs shall be apportioned *pro rata* upon the lineal foot of said real estate or lots of land fronting on said improvement aforesaid. When said assessment is completed, the said board shall give six (6) days notice by two (2) publications in the official newspaper of the city, to the effect that at a time and place therein specified, said assessment will be confirmed unless cause is shown to the contrary, and that objections must be filed one (1) day before such time of meeting, with the clerk of said board. Such objections shall be made and filed in the same manner, and said board shall proceed in hearing the same, and have the same power to revise, correct, confirm or set aside such assessment, or proceed *de novo*, as provided in section fifteen (15) of title one (1) of this chapter. Said assessment, when confirmed, shall be final and conclusive, and no appeal shall lie therefrom. A warrant shall issue for the collection thereof, and said assessment shall be enforced and collected as other assessments made under title one (1) of this chapter.

SEC. 7. Whenever [the] said contractor shall fail to do and to perform the sprinkling contract to be done by him within the time designated by the board of public works, or in accordance with the terms and provisions of his contract, or in any other respect fail to comply with the terms of his [said] contract, the said board of public works shall have power to furnish [and use] men and material to complete the work and charge the expense to the contractor, and the same shall be deducted from any money due him, or, to become due such contractor, or may be collected from him in a suit by said city, or said board of public works may re-advertise for bids, for the completion of the unexpired term of said contract, and let a contract in the same manner as hereinbefore provided in the original contract. In case the said contractor shall proceed to properly perform and complete his said contract, and all the provisions, clauses, matters and things therein contained, the said board of public works may, upon said contractor filing with the city engineer, an affidavit that all the work and labor for which an estimate is asked is fully paid for, from time to time, as the said work progresses, grant to said contractor, every thirty (30) days, an estimate of the amount already earned, reserving however fifteen (15) per cent. therefrom; *Provided, however*, That said fifteen (15) per cent. shall be included in the final estimate allowed said contractor.

SEC. 8. The chapters hereby amended, except as hereby amended, are continued in full force and effect, and all rights acquired or existing and all things whatsoever done, acted or performed under said chapters, or either of them, are hereby established, continued and

saved, and all matters and things whatsoever commenced or pending under said chapters, or either of them, are hereby saved and continued to be had, done and completed under this act. All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its passage.

Approved March 1st, 1887.

CHAPTER 8.

[S. F. 450.]

AN ACT TO AMEND AND CONSOLIDATE THE CHARTER OF THE CITY OF MANKATO. STATE OF MINNESOTA.

Be it enacted by the Legislature of the State of Minnesota:

The act entitled "An Act to Incorporate the City of Mankato," approved March six (6), eighteen hundred and sixty-eight (1868), and all acts amendatory thereof and of all other acts affecting the charter of the said city of Mankato at any time passed by the legislature of this state are hereby amended and consolidated into this act, which shall constitute and be the charter of the city of Mankato, and which shall read as follows, to-wit:

CHAPTER I.

CITY AND WARD BOUNDARIES.

SECTION 1. All the district of country in the county of Blue Earth, Minnesota, contained within the sub-divisions and boundaries hereinafter described, shall be a city of the name of Mankato, and the people now inhabiting the same and those who shall hereinafter live within or inhabit the territory or district of country hereinafter designated and described shall be a municipal corporation by the name of the city of Mankato, and by that name shall be sued and be impleaded in any court, make and use a common seal and order it at pleasure, and take, hold and purchase, lease and convey, and own any and all such real, personal, or mixed estate, as the purposes of the corporation may require, within or without the limits aforesaid. Said city shall be capable of contracting and being contracted with; and shall have the general powers possessed by municipal corporations at common law, and in addition thereto shall possess the powers hereinafter specifically granted, and the authorities thereof shall have perpetual succession